
(1997) 05 CAL CK 0006
In the Calcutta High Court
Case No : F.M.A.T. No. 3491 of 1996

Besco Limited

APPELLANT

Vs

West Bengal State Electricity Board

RESPONDENT

Date of Decision : 15-05-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Electricity Act, 1910 — Section 26(6)

Citation : (1997) 2 CALLT 213

Hon'ble Judges : Rabin Bhattacharyya, J;Nure Alam Chowdhury, J

Bench : Division Bench

Advocate : D.K. Basu, N.K. Manna, R.K. Mitra and M. Chakraborty, for the Appellant;A. Mitra and U. Sen, for the Respondent

Judgement

Rabin Bhattacharyya, J.—The appellants, who are the writ petitioners, have initiated the above noted appeal, since aggrieved by the dissatisfied with the judgment and order passed by the learned trial Judge dated 31.7.96 in connection with Civil Order No. 877(2) of 1996.

2. To get a grip to the core controversy, the narration of the factual exposure of the case is in its essence a necessity for dispensation of justice, in default, there would be an overwhelming confusion worse confounded.

3. Howbeit, the court cannot avoid its duty. The main thrust of the claim of the appellants is interwoven in the writ application which glaringly shows that they filed a writ which couched a good number of reliefs wherein it included amongst others a prayer for setting aside the order of the Chairman West Bengal State Electricity Board dated 4.7.91. The petitioner also in his writ application fought for an order of restraint against the respondent opposite party from snapping of the supply of Electricity to the factory premises of Besco Limited, the appellants, till the determination is made dominating the multiplication factor and the effective date. The imposition of multiplication factor from "1" to "2" w.e.f. June 28, 1988 is not consequent upon any norms. The appellants silently

paid the entire bills raised by the Board from the month of August 1989 to March 16, 1990. Being baffled of their attempts to secure relief, they moved the matter from time to time to various courts and a good number of orders was passed governing the subject.

4. The Board, however, inspected the meter at their behest which revealed that the CT ratio had been changed from "1" to "2". There is no impelling need for the respondent opposite party to change the ratio. The payment arising out of the bills was forced upon the appellants which they paid without any demur. They already made payment of a sum of Rs. 880/- from March 17, 1990 till December, 1995 entitling them to a refund of Rs. 4.40 Crores for arbitrary change in the CT ratio. This itself is an engine of oppression when they rose up. The learned trial Judge decided the issue that became germane for consideration of the writ court. They have vindicated their grievances and having suffered a Judgment there in the writ application, their appeal arose as the decision of the Chairman of the Board was tainted, since it was bereft of principle of natural justice.

5. To cater the need for decision on the issue in the realm of an administrative Justice they are vocal in their application that the principle of natural justice was sacrificed where the Chairman on its own tried to become a judge of his own cause, which is highly inflammable. The decision of the Chairman, since rendered contrary to statutory agreement, has created a major dent in the decision of his. The dispute, according to the appellants fairly and squarely falls on the premises of Section 26(6) of the Indian Electricity Act, 1910, as such the respondents can not derive any comfort from the decision of the Chairman.

6. The Counsel in the appeals have crossed their swords on jurisdiction, violation of natural justice, meter dispute and bias which have been controverted by learned Additional Solicitor General about the maintain- ability of the appeal, acquiescence, estoppel and the scope of Section 26(6) of the Electricity Act, 1910. We will deal with them as we proceed.

7. The appellants in the writ application, gave a bold publicity that the opportunity to adduce evidence by the appellants before the Chairman was denied resulting in infraction of the principle of natural Justice, if not the statutory provisions. The Chairman never considered the meaning, import and implication of the word "dispute" within the realm of the statute and passed a decision which never met the ends of Justice nor the ends of law. The dispute was referred to the Chief Electrical Inspector for a decision dwelling on the question about the change in the CT ratio and the effect of such change of the multiplying factor of " 1" to "2" consequent upon an order of the court dated 23.10.89. The Joint Inspection, thus held established the change of CT ratio which consequently gave rise to change in multiplying factor from "1" to "2".

8. Since it is having an impact on the meter bearing the threat of disconnection, which can be translated to be a "dispute" under the Indian Electricity Act, 1910, the claim of the Board for payment of rate based upon arbitrary multiplying

factor was, however, accepted by the appellants and orders, were passed by courts following payments were made by the appellants from time to time for the offensive approach of the respondent but the claim of the Board prior to March 1970 was not honoured. The order of the Chief Inspector dated 4.7.91 was set aside by the Hon"ble Mr. Justice A.K. Sengupta in his order dated 20.5.94 where the Board pleaded that the limitation of 6 months in the state of materials on record could not have any manner of application.

9. The learned trial Judge upon due consideration of the writ out of which this appeal arose evenly decided the doctrine of bias and the principle of natural justice, if at all violated by the Chairman in deciding the issue where due care was taken note of by the learned trial Judge about the role of the Chairman dominating public importance and the matters which were within the fold of public law. The learned Judge upon examining the issue in question set aside the order of the Chairman dated 27.12.95 directing the Chairman further to hear the matter afresh consistent with the principle of natural justice where an opportunity of hearing filled in the judgment impugned to all concerned. The appellants acted upon the same.

10. Thereafter, the matter went back to the Chairman to decide the issue in the light of the directions contained in the judgment impugned dated 31.7.96. The appellants have raised a hue and cry that neither the judgment impugned nor the decision of the Chairman could hook them with any liability as the demonstration of bias in deciding the issue is predominant.

11. It has been debated at the bar that the Chairman cannot proceed in the matter to decide the controversy on the strength of the judgment dated 31.7.96 which had not the jurisdiction to push the matter to the Chairman again for a decision afresh as the decision impugned harbours hostility to the provisions of the Indian Electricity Act, 1910. The Chairman by the introduction of the Indian Electricity Act, 1910 is denuded of power to adjudicate upon the dispute between the parties which the learned trial Judge significantly ignored. The learned trial Judge by his judgment and order conferred power on the Chairman to decide the dispute being oblivious of the position that the dispute between the party could only be adjudicated upon by the Chief Electrical Inspector. Such decision of the learned trial Judge has generated an avalanche or cascade in judicial decision or judicial approach. The court cannot take the role of a legislator which can derive power from the legislation and nothing more. According to them, the judicial activism demonstrated in the judgment acting in a reversal gear which has made a mess of the whole situation. The dispensation of justice instead of being subserved has been defeated when recourse had been taken to decide a matter by a person stripped of power to decide it. This according to them is bristled with illegalities.

12. To explore relief, the learned Counsel is candid in his submission that surrendering itself to the jurisdiction of the court Referee (Chairman) does not or did not forfeit the right to challenge the decision in appeal involving the dispute.

The conduct of the appellants according to the learned Counsel for the appellants attributes to submission to the jurisdiction of the court Referee without prejudice. The change or sub- situation of the meter within the power and control of the respondent opposite party in respect of the checked period "June 1988 to March 1990" in absence of notice to the consumer has resulted in a conflagrant violation of the principles of natural justice.

13. Mr. Basu and Mr. Manna appearing for the appellants, have referred to Paragraph 3 & 4 of the injunction petition to lay the claim of the appellants namely that the judgment impugned transgressed not only the principle of natural justice but also the law as well. The respondent, according to him, cannot reopen the issue when the matter was finally decided by an order passed by the Hon"ble Mr. Justice S. Chatterjee on 14.12.88. The learned Counsel had referred to Section 26(6) of the Electricity Act, 1910 to axe the claim of the respondent disentitling the respondent to any sum on account of consumption of electricity. The conduct of the court Referee is stricken with bias which cannot snatch away the right of the appellants to exploit remedy in the court of law.

To strengthen his claim, he has relied on Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, .

14. Thus, at any rate, the judgment impugned should be struck down and the relief claimed in the writ should be allowed, entitling them to refund.

15. The learned Counsel for the appellant No. 2 has also relied on Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, and Union Territory, Chandigarh Admn. and others Vs. Managing Society, Goswami, GDSDC, to contend that the decision of the learned trial Judge is contrary to the principle of natural justice which should be repaired by the decision of the appeal court by according relief. It has created a jurisdictional error curable in appeal.

16. The learned Additional Solicitor General in controverting the claim of the learned Counsel for the appellant has argued with dexterity that the appeal is "Much Ado about Nothing". The appellants are not entitled to any remedy as the appeal should easily be shoot down at the very threshold for the law of limitation being alive, since filed beyond the period of limitation. The appeal is not maintainable as the grounds canvassed during the submissions of the learned Counsel for the appellants are of no avail. Section 26(6) of the Indian Electricity Act, 1910 has no application and the doctrine of bias is a contrivance to secure relief contrary to law.

17. We have given our anxious consideration to the points at issue which have showed their heads during the contentions of the learned Counsel for the parties but we are not unmindful while adjudging the dispute in the appeal that the law of limitation is not the act of the court but. the act of the parties. The appeal is a statutory right which must have its founding in the law of limitation.

18. It is manifest that the judgment impugned was passed on 31.7.96 and the

appellants applied for certified copy of 14.8.96. On 20.8.96, certified copy was issued to the appellant. Thereafter, on 26.8.96 review application was filed by the appellant. In between 26.8.96 and 8.10.96, the appellant submitted to the jurisdiction of the court Referee and participated in the proceedings on 20.9.96, 4.10.96 and 8.10.96 respectively.

19. There is an ominous silence as evident by the conduct of the appellants, about the jurisdiction of the court and the jurisdiction of the court Referee. This silence, according to the law, amounts to an estoppel as the appellant never brought the matter to the notice of the Referee about the fate of the review application. Strangely enough, the appellant again obtained a certified copy on 9.10.96 and the review application being review tender No. 2696/96 was, however, stood rejected on 13.12.96. Therefore, the appeal is admittedly time barred when filed on 10.10.96. A party cannot prosecute both review and the appeal. A review application according to us is not maintainable when the appeal is presented. In the instant case, the review application appears to be patently incompetent when the appeal was filed on 10.10.96 during the life time of the review application. The review application spent its force by presentation of the appeal. The appeal becomes also incompetent when the certified copy was obtained on 20.8.96 and the appeal preferred on 10.10.96 without explaining the delay. It will be legitimate to infer from the materials on record that the appellants were prosecuting the proceedings before the Referee when the criticism now levelled against the judgment and the court Referee was not even secretly nursed in the heart of theirs. It would be patently illogical if the appellants are permitted to reprobate or approbate. Nor the appellants could be allowed to run with the hare and hunt with the hounds. They are caught up in their own trap when they are much aware that it is not a dispute about the meter where they could vindicate their grievance, but about the rate founded upon multiplying factor where Section 26(6) of the Indian Electricity Act, 1910 cannot be imported under the pretence that there is a dispute about the meter. It is the multiplying factor which knocks out such dispute which is more imaginary than real. They proceeded in a calculated manner being much aware when to temporise and when to strike. Since they failed to explore remedy after submission of the jurisdiction to the court Referee they have raised a furore in the court of appeal on the false pretext of meter dispute, infraction of principle of natural justice and the bias. Alas! they are of no avail to them. It is settled law that a party may succeed on the point of fact but if he does not succeed on the point of law, the court cannot come to the aid of the litigant for dispensation of justice.

20. It is indeed ironic to suggest that the Court Referee was suffering from bias. We are of the view from the materials on record that the appellants having failed to iron out the crease of their claim have resorted to a convenient plea of without prejudice which never showed its head in any proceeding. Such plea can never be construed as panacea to heal up all sore in the litigation. It would be legitimate to hold that the thought of equity which is the basic foundation of Writ apart from natural justice had been shunted by them not only to obscurity but

also buried into oblivion. The clarity of action on that score was sorely absent. It is quite apposite to mention in the state of materials on record that the plea of without prejudice had been lost in verbiage and sloth. The contention of the appellants does not verge at any rate on the premises of without prejudice.

21. Therefore, it is now too late in the day to cry over the spilt milk. However, the appellants may say they have no fulcrum of their claim. The multiplying factor is unconnected with the matter in dispute which can never be interpreted as dispute under the Indian Electricity Act, 1910. The claim of the appellants is based upon slippery foundation which can never be put on solid rock. Thus, the contentions of the learned Counsel for the appellants hold no field as the contentions of the learned Additional Solicitor General appearing for the respondents do.

22. However, taking the lock, stock and barrel of the case of both the parties, we are of the view, in the state of materials on record, that the writ application and the injunction petition though bore the label of infraction of natural justice and bias yet If one tastes the bottom of it, he pleas are devoid of logic as there is nothing for this court to interfere with the judgment impugned. However, giving our anxious consideration to a large number of employees engaged in the industry and keeping in view on the socio economic justice which is one of the elements of modern Jurisprudence, the electricity if disconnected, shall result in labour unrest which also may have serious reflection on their livelihoods. The dues have been piled up to Rs. 63,52,214.32 according to the letter of the respondent dated 16.4.97.

23. In the perspective of the above, we afford opportunity to the appellants to pay up the aforesaid dues in terms of the letter dated 16.4.97 by payment of 15 equal monthly instalments the first of such instalments shall be paid by the 31st May 1997 and all subsequent instalment shall be paid within 15th of the next month following the month, for which, it is payable. The residue, if any, shall be paid along with the last instalment. If the appellants commit two consecutive default within a period of the entire instalments, the respondent may proceed with the disconnection of supply of the factory premises and may take suitable action to realise the said dues in accordance with the provisions of law.

24. With the above observations, the writ and the injunction application are disposed of on consent of the parties.

Nure Alam Chowdhury, J.

25. I agree

Later : The prayer for stay of the operation of the order passed by us this day, as sought for by the learned counsel for the appellant, stands rejected.