

(2010) 05 CAL CK 0034
In the Calcutta High Court
Case No : Writ Petition 2046 (W) of 2009

Chandan Kumar Maity

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Constitution of India, 1950 — Article 300(A)
Electricity Act, 2003 — Section 181(2), 42(6), 57(1), 59(1)
West Bengal Electricity Regulatory Commission (Standards of Performance of
Distribution Licensees Relating To Consuming Services) Regulations, 2005 —
Regulation 3.1.2

Citation : (2011) 7 RCR(Civil) 2419

Hon'ble Judges : Syamal Kanti Chakrabarti, J

Bench : Single Bench

Advocate : Sumit Panja and R.M. Chattopadhyay, Tarun Kumar Das, Pradip Paul and Dilip Kumar Sanyal, for the Appellant; Pratik Dhar and Rittik Pattanayak for Additional Respondents, for the Respondent

Final Decision : Dismissed

Judgement

Syamal Kanti Chakrabarti, J.—In this writ petition the petitioner has contended that he is a owner of a piece of agricultural plot of land bearing No. 170 of Talda Mouza under Sabang Development Block in the District of Paschim Medinipore by purchase in 2006. He installed a submersible pump for supply of water to the said agricultural plot of land before coming into force of the West Bengal Ground Water Resources (Management Control and Regulation) Act, 2005 with the permission of the Senior Geologist, Division No. 1, State Water Investigation Directorate, Water Investigation and Development Government of West Bengal. He submitted an application being No. AD/07/(06-07)/Agr dated 11.10.2006 on the basis of which the respondent No. 5, The Station Manager, Sabang Group Electricity Supply, West Bengal State Electricity Distribution Company Limited, has offered a quotation demanding a sum of Rs. 1,57,935/- only fur such supply connection. He deposited the amount on 28th May, 2007 against proper receipt.

But his service connection was not effected within reasonable time. So he issued a reminder on 24th December, 2007 which also remained unattended to.

2. Thereafter he moved a writ petition being W.P. No. 16230(W) of 2008 before this Hon''ble Court which was disposed of by order dated 12th September, 2008 in presence of the respondent distribution company with the following directions:

If the petitioner applies for permanent connection for electricity for his STW/submersible pump, the Board shall take necessary steps under the provision of law for effecting electricity to the petitioner's STW/submersible pump within six weeks from the date of complying with the necessary formalities by the petitioner including the production of water availability certificate from the concerned authorities.

3. On 06.12.2008 the respondent No. 5 issued a notice to the petitioner intimating that in view of objection raised by some local people regarding installation of such supply connection the petitioner is required to submit the way leave clearance/permission. The petitioner contends that after acceptance of the quotation the respondent cannot deny supply of electricity at the instance of some objectors since it is the duty of the respondent distribution company limited to install the service connection at the plot of land possessed by the petitioner where submersible pump has been installed.

4. The respondent Nos. 1, 2, 3, 4 and 5 have opposed the move and contended that on the basis of application of the petitioner on 11.10.2006 they offered the quotation subject to some conditions and the petitioner deposited the money only without fulfilling other conditions. It is there further contention that after implementation of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 the intending or existing consumer has to comply with the necessary formalities including submission of "permit" or "certificate of registration" issued by the competent authority prescribed in the said Act for running submersible pump. On the verbal assurance of submitting such permit or certificate of registration the quotation was offered to the petitioner and the deposit was accepted and thereafter they instructed the enlisted contractor concerned to effect supply of electricity. Accordingly the contractor tried to erect some P.C.C. poles required to be posted on the lands owned by other persons but they raised resistance for which those poles could not be erected.

5. It is their further contention that on 21.11.2007 one Gobindo Prasad Gatait along with 12 persons submitted written objection requesting the respondent No. 5 to refrain from installing any such pole or draw any cable over their agricultural land for effecting electric supply to the petitioner. In a separate petition another person namely Surya Kumar Maity has also raised similar objection. One Ashok Gatait also submitted an objection dated 26.11.2008 refusing to install any such pole on their undivided land. On 02.12.2008 the respondent No. 5 also received similar objections Madan Mohan Manna and 13 others.

6. Accordingly the respondent No. 5 asked the petitioner on 19.12.2007 to submit way leave clearance from respective land owners of plot Nos. 188, 196, 221, 182, 183, 179, 184, 207, 195, 205 and 206 of the Mouza Danterda. But no such way leave clearance was submitted by the petitioner for which they issued another reminder on 06.12.2008. It is further contended that the respondent distribution company cannot place or draw electricity supply line or erect poles on the land of other persons without the consent of the owner or occupier of such land.

7. It is also provided in notification being No. 24/WBERC dated 28.10.2005 that application form to be used by a consumer or intending consumer requesting the distribution licensee for connection, for new service/new load under existing service/additional load or shifting or alteration or strengthening of service/street light/pump house/others are required to submit no objection from the owners/occupiers concerned for the "way leave" under Clause 9 of such form.

8. It is further contended that the petitioner submitted an application before the learned Ombudsman on 29.08.2008 being Grievance Redressal Case No. W-938/K of 2008 u/s 42(6) of the Electricity Act, 2003 in which the Chief Engineer, CRM Cell and PGRO, WBSEDCL was asked to furnish a report by 18.09.2008. But the same was dismissed for default on 11.11.2008. This has been suppressed by the petitioner. As the distribution licensee is not entitled to take away anyone's legal right in holding private property they cannot ensure supply of electricity by erecting poles or drawing cables without permission of the owners of the land concerned. Therefore, without way leave/permission from the concerned land owners they cannot compel to ensure supply of electricity to the petitioner. Under such circumstances there is no merit in this writ petition which should be dismissed.

9. Thus the only point for consideration is that whether the distribution authority is bound to supply electricity to the intending consumer ignoring the objection of the land owners on whose land the poles are to be erected to effect the supply connection to the submersible pump of the petitioner and whether entertaining of such prayer will be violative of the Article 300A of the Constitution and whether non-compliance of the requisite formality mentioned in Clause 9 of the application form render such application invalid and as such liable to be rejected and quotation amount received should be refunded to the petitioner.

10. There is no denial of the fact that a good number of local people raised objection to the installation of electric poles on their land to effect the supply connection to the submersible pump of the petitioner. Learned lawyer for the petitioner submits that since none of these objectors have appeared in this proceeding even after due service notice their claim should be ignored and mere installation of any electric pole on their land cannot be treated as invasion in their right to hold peaceful possession of the landed property within the meaning of Article 300(A) of the Constitution. I am unable to accept such contention because even though a party is absent and is not contesting a proceeding, it is

the duty of the Court to see whether the petitioner has legal right to claim the relief or not. I also cannot agree with the views that erection of the electrical pole on the land of a person does not at all affect his peaceful possession of the land because the overhead line may cause danger at any time on account of accident, storm, thunder etc. which is an encumbrance upon such property. The concept of absolute right over property and possession thereof is not in conformity with any such risk or encumbrance upon one's land. Non-availability of consent of the actual owner of a land is a valid ground for refusal of such prayer by respondent No. 5 being violative of Article 300(A) of the Constitution.

11. It is also not denied that Clause 9 of the application form provides the following condition:

I/We also enclose a Way Leave form including permission for necessary civil works and modifications on private property, indicating "no objection" from the owner(s)/occupier(s) of the premises/relevant part of the premises. I/We am/are the owner(s)/occupier(s) of the premises/relevant part of the premises.

It appears that the said format/application is annexed with the West Bengal Electricity Regulatory Commission (Standards of Performance of Distribution Licensees Relating to Consumer Services) Regulations, 2005 which was published in the Kolkata Gazette dated 19th October, 2005. The said regulation came into force on the date of its publication in the official gazette. Admittedly the writ petitioner applied for supply of electricity on 11.10.2006, i.e., long after implementation of the regulation of 2005 and as such is bound to comply with and is supposed to be governed by the said regulation of 2005. There is also no denial of the fact that by letter dated 19.12.2007 the respondent asked the petitioner to submit way leave/clearance from the respective land owners of plot of 188, 196, 221, 182, 183, 179, 184, 107, 195, 205 and 206 of Mouza Danterda which is neither illegal nor improper. Thus, the said notice was issued in due discharge of the official duties of the concerned officer to verify the requirement of Clause 9 of the application form in question followed by another reminder on 06.12.2008. But the petitioner did not submit any satisfactory reply to them.

12. Annexure P-2 to the writ petition is the quotation offered by the respondent No. 5 in response to the application of the petitioner. There are five conditions mentioned in such quotation which are quoted below:

4.(i) The quotation is valid for 60 days from the date of issue.

(ii) The service line remains the property of the Board.

(iii) An agreement must be executed with a non-judicial stamp of Rs. 10.00 & a Revenue Stamp of Rs. 1.00 before deposition of money.

(iv) Test report and material voucher must be submitted before deposition of money.

(v) Way leave is to be arranged by the applicant.

On the basis of such quotation the writ petitioner has deposited the amount as per receipts shown in Annexure P-3 and thereby accepted all the conditions. Therefore, merely accepting the money on the basis of such quotation the respondent No. 5 has not exonerated the petitioner from complying with all those five conditions and it is obvious and apparent on the face of record that service connection shall be made subject to furnishing way leave certificate which shall be procured by the appellant himself. When offer of one party is conditional and the other party accepts such condition a binding contract ensues from such transaction. Non-compliance of any such condition obviously constitutes a breach of such contract and no obligation remains for the other party to act in terms of such contract at the instance of such defaulting party.

13. Therefore, I do not subscribe to the contention of the learned lawyer for the petitioner that the offer of quotation and acceptance of money by the distribution authority has created a binding contract to be enforced even after the petitioner fails to comply the other conditions.

14. Clause 3.1.2 of the said regulation of 2005 provides the following:

3.1.2. An intending consumer shall, after making the payments/deposits through banker's cheque, bank draft or cash to the distribution licensee, as aforesaid, within a period of 45 (forty-five) days from the date of receipt of the intimation from the distribution licensee determining the payments and deposits in this behalf, submit an application in the form specified in Annexure-B, completed in every respect, seeking supply of electricity to his premises.

15. The said regulation was issued in exercise of the powers conferred by Clause (za) and (zb) of Sub-section (2) of Section 181 read with Sub-section (1) of Section 57 and Sub-section (1) of Section 59 of the Electricity Act of 2003 and as such has got statutory forces behind it which is binding upon the intending consumer. Therefore, unless a consumer fulfils all the conditions laid down in the prescribed application form, Annexure B to the said regulation and other conditions referred to in the quotation offered by the distribution authority, and accepted by the petitioner he cannot claim any right to have electricity through the line of so many land owners which invades the absolute property right of those dissenting owners.

16. Therefore, I hold that the said provision of the regulation of 2005 is mandatory and non-compliance of the same by intending consumer render such application liable to be rejected and the deposit made is liable to be refunded to him unless he procures way leave certificate from the dissenting plot owners as mentioned in the notice of the distribution authority within such time as will be granted to the petitioner by them.

17. Moreover, it appears from a copy of such the application filed in terms of Regulation 3.1.2 above by the writ petitioner that he has undertaken terms of Clause 9 by putting his signature dated 28.05.2007 in presence of two witnesses namely, Nimai Chand Rau and Gouranga Samanta but surprisingly he has not

filled up Clause 12 of the said application which is meant for enclosing copy or copies or documents in support of such application and any other documents compliances of which are called for. After depositing quotation money no agreement has been executed by and between the parties. It is prescribed that after deposit of such money this form is to be filled in all respect including column No. 4 showing the payment or tender of the amount of quotation. Therefore, prima facie the petitioner did not fill up column Nos. 9 and 12 of the said application on 28.05.2007. Meanwhile the plot landholders have raised objection and the respondent No. 5 has rightly asked him to obtain no objection certificate from those objectors. Therefore, merely by submitting the application form in duplicate the petitioner cannot claim as of right any service connection to his agricultural plot of land in the wake of vehement resistance from the adjoining plot holders. When supply of electricity is meant for a domestic consumer for his personal use there is no statutory obligation to invade the property right of all other adjoining land owners against their will to ensure service connection at the plot of the petitioner.

18. Therefore, I hold that refusal to ensure supply of electricity by the respondent on the wake of resistance from the adjoining plot holders and on account of non-fulfilment of demands made in Clause 9 and 12 of the prescribed application form and failure to comply with condition (e) of the quotation constitutes breach of Regulation 3.1.2 of the West Bengal Electricity Regulatory Commission (Standards of Performance of Distribution Licensees Relating to Consumer Services) Regulations, 2005 and disentitles an intending consumer to get service connection even after acceptance of money on the basis of quotation offered by the distribution authority and violative of Article 300A of the Constitution if done against will of adjoining land owners.

19. Under the circumstances I do not find any merit in this writ petition, which is accordingly dismissed. I make no order as to costs.

20. Urgent certified photostat copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.