
(2015) 04 CAL CK 0061
In the Calcutta High Court
Case No : Writ Petition 4872(W) of 2006

Kartick Chandra Chandra

APPELLANT

Vs

C.E.S.C. Ltd. and Others

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Electricity Act, 2003 — Section 43

Citation : (2015) 04 CAL CK 0061

Hon'ble Judges : Ashis Kumar Chakraborty, J

Bench : Single Bench

Advocate : Ashok Kumar Ganguly, for the Appellant; Utpal Bose and Rita Mukherjee, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ashis Kumar Chakraborty, J.

1. This writ petition is pending disposal before this Court from 2006. On March 12, 2015, this writ petition appeared under the heading old writ petitions and the petition was called on hearing Mr. Ashok Kumar Ganguly appeared for the writ petitioner but none appeared either for the respondent Nos. 1 to 3 or the private respondent and the matter was adjourned till March 13, 2015. On March 13, 2015, once again none appeared for any of the respondents. However, Ms. Rita Mukherjee who normally represents CESC Limited was present in Court and she was requested to represent CESC Limited, the respondent No. 1 in this matter. On March 30, Mr. Utpal Bose, learned Senior Advocate appeared for CESC Limited (hereinafter stated as "CESC") and all its officers. However, none appeared for the private respondent.

2. The petitioner is the owner of the building situate at Premises No. 91, Acharya Jagadish Chandra Bose Road, Kolkata. The grievance of the petitioner is that CESC has installed a meter at his premises for supplying electricity to the shop of the private respondent which is not part of his premises.

3. Complaining the aforesaid grievance, in the year 2005, the petitioner filed a writ petition being W.P. 17998(W) of 2005. By an order dated September 19, 2005 a learned Single Judge of this Court held that CESC did not follow a fair procedure while taking decision to give supply of electricity to the private respondent treating him as a tenant under the petitioner and directed CESC to give a reasoned decision after considering the cases of the parties. By the said order it was specifically directed that if it is found that supply could not be given to the private respondent, then necessary steps should be given for withdrawing supply and to remove the meter immediately after the decision is given.

4. In terms of the said order dated September 19, 2005 passed by this Court the respondent No. 3, the Deputy Manager (Mains) of CESC held hearings in the matter which was attended by both the petitioner and the private respondent. The short point required to be decided by the respondent was whether the shop room of the private respondent is located within the building of the petitioner at Premises No. 91A, A.J.C. Bose Road or not.

5. The specific objection raised by the petitioner before the respondent No. 3 was that the shop room of the private respondent is not located at any portion the Premises No. 91, A.J.C. Bose Road, and the same is located outside the boundary of his premises.

6. After hearing the petitioner and the private respondent on December 28, 2005 the respondent No. 3 passed his decision that he is unable to resolve the issue and referred the matter to the Commissioner of Kolkata Municipal Corporation to decide the issue and directed the parties to approach Kolkata Municipal Corporation for adjudication of the dispute. Challenging the said order dated December 28, 2005 passed by the respondent No. 3 (hereinafter referred to as "the impugned order") the petitioner has filed this writ petition.

7. All along it has been the contention of the petitioner that since the shop room of the private respondent does not form part of his Premises No. 91, A.J.C. Bose Road and as such the electric meter for supply of electricity to the private respondent cannot be installed by CESC at any portion of his property, that is, Premises No. 91, A.J.C. Bose Road. During the course of hearing Mr. Asoke Ganguly, learned Advocate appearing for the petitioner submitted that if CESC wants to supply electricity to the said shop of the private respondent, let them do so but for that purpose CESC cannot use the premises of the petitioner for installing the meter.

8. From the impugned order it is evident that before passing the impugned order a site inspection was made by the officers of the CESC and report of such inspection has been quoted in the impugned order as follows:

"a) 91 A.J.C. Bose Road and 90 A.J.C. Bose Road are two separate adjacent premises which are separated through a common boundary wall in between. The building line of 91 A.J.C. Bose Road is more on the footpath of A.J.C. Bose Road. The shop is situated on the footpath of A.J.C. Bose Road apparently in front of

the premise No. 90 A.J.C. Bose Road at the side of the main entrance (drive way) of 90 A.J.C. Bose Road.

b) The shop is structurally separated from 91 A.J.C. Bose Road but attached to 91 A.J.C. Bose Road; whereas the other shops at 91 A.J.C. Bose Road are located on the ground floor of 91 A.J.C. Bose Road and not structurally separated from 91, A.J.C. Bose Road."

9. From the aforesaid report it is evident that the respondent No. 3 found that the shop of the private respondent is not part of the building of the petitioner at Premises No. 91, A.J.C. Bose Road and clause (a) of the report states that the shop is situated on the footpath of A.J.C. Bose Road. The said report further stated that the shop is structurally separated from 91, A.J.C. Bose Road and the other shops at 91, A.J.C. Bose Road which are located on the ground floor of 91, A.J.C. Bose Road are not structurally separated from 91, A.J.C. Bose Road and that the shop is situate on the footpath of A.J.C. Bose Road. In the instant case, it is the respondent No. 1 CESC and its officers who installed the said meter at the premises of the petitioner, in spite of the petitioner repeatedly stating that the said shop by the private respondent does not form part of premises No. 91, A.J.C. Bose Road.

10. By the said order dated September 19, 2003 this Court specifically directed respondent No. 1 CESC through its officer dealing with an application under Section 43 of the Electricity Act, 2003 to give a reasoned decision in the matter and if it is found that supply could not be given to the private respondent, then necessary steps should be taken for withdrawing supply and remove the meter immediately after decision is given.

11. However, in spite of the aforesaid inspection report of CESC's own officer, the respondent No. 3, an officer of CESC, held that the Kolkata Municipal Corporation should first decide whether the shop of the private respondent is situated on Kolkata Municipal Corporation land or not.

12. It is interesting to note that, in spite of the petitioner's specific objection that the shop room is not located within his premises, when CESC granted connection of electricity to said shop of the private respondent, after installing the meter within the building of the petitioner at 91A, A.J.C. Bose Road, they did not refer the matter to the Kolkata Municipal Corporation, for any decision.

13. The impugned order does not contain any objection of the private respondent to the said inspection report considered by the respondent No. 3. From the impugned order passed by the respondent No. 3 when it is evident that the said shop room is situated on the foot path of A.J.C. Bose Road, the respondent No. 2 could pass no other decision but to hold that no meter could be installed at the building of the petitioner at 91 A.J.C. Bose Road for supplying electricity to the said shop.

14. Mr. Utpal Bose, learned Senior Advocate appearing for the respondent Nos. 1

to 3 submitted that the respondent No. 3 passed the impugned order in discharge of his duties under Section 43 of the Electricity Act, 2003 and as such this Court should not interfere with the impugned order passed by the respondent No. 3. I am, however, unable to accept such submission of Mr. Bose. While discharging functions as a licensee under the Electricity Act, 2003 the respondent No. 1 CESC and its officers are required to act bona fide and not to use a citizen's property for supplying electricity to an occupier of a different property or to any person occupying pavement of a public street. In the instant case, from the very beginning the petitioner raised objection to the installation of the meter at his premises for supplying electricity to the said shop of the private respondent, on the specific ground that the said shop room does not form part of his premises being premises No. 91 A.J.C. Bose Road. However, without disclosing any reason to the petitioner, the respondent No. 1 installed the said meter at the premises of the petitioner.

15. By the said order dated September 19, 2005 this Court specifically directed CESC to give a reasoned decision in the matter. The inspection report of the officer CESC discloses that the said shop room of the private respondent is structurally separated from 91 A.J.C. Bose Road and the shop is situated on the foot path of A.J.C. Bose Road, apparently in front of premises No. 90 A.J.C. Bose Road.

16. The respondent No. 3, while discharging public duties under the Electricity Act, 2003 had no authority to abdicate his duty as directed by this Court by the said September 19, 2003 and refer the matter to be decided by Kolkata Municipal Corporation. The impugned order passed by the respondent No. 3 is aimed to nullify the direction of this Court by the said order dated September 19, 2005 and the impugned order cannot be sustained. In any event, the impugned order has been passed by the respondent No. 3 in utter violation of the direction of this Court by the said order dated September 19, 2005 and the same is void.

17. For the foregoing reasons the writ petitioner being W.P No. 4872(W) of 2006 is allowed. The impugned order dated December 28, 2005 passed by the respondent No. 2 being Annexure-P8 to the petition is set aside and the respondent Nos. 1 to 3 is directed to forthwith, within a period of seven days from today, remove the meter installed at the property of the petitioner at 91 Acharya Jagadish Chandra Bose Road, Kolkata for supplying electricity to the shop room of the private respondent.

18. However, there will be no order as to costs.