
(1991) 07 CAL CK 0015
In the Calcutta High Court
Case No : Matter No. 4613 of 1988

N.M. Banka

APPELLANT

Vs

Calcutta Electric Supply Corporation Ltd.

RESPONDENT

Date of Decision : 12-07-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 21(2)

Citation : (1992) 1 ILR (Cal) 313

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Advocate : D. Pal, for the Appellant; Ranadhir Deb, for the Respondent

Judgement

Paritosh K. Mukherjee, J.—The present writ petition was moved challenge a communication dated September 22, 1988, issued by the District Engineer, Northern District, Calcutta Electric Supply Corporation (India) Ltd. (hereinafter referred to as C.E.S.C. Ltd.), whereby the writ Petitioner was informed that M/s. Rajkumar Dyeing and Printing Works, a sister concern of the Petitioner within the same premises has been advised by the Petitioner's letter dated June 10 and June 15, 1988, to obtain power by way of installation of a point of supply at 6000 volts to cater to all power requirements at the premises No. 11, U.N. Mukherjee Road, Ariadaha, Calcutta 700076.

2. Accordingly, the C.E.S.C. Ltd. requested the Petitioner to derive power from the proposed service at 6000 volts, subject to statutory compliance.

3. The writ Petitioner N.M. Banka is a businessman by profession and has number of business either in partnership with the same partner or other or in proprietorship and he is a partner of M/s. Rajkumar Dyeing and Printing Works, which is situated at U.N. Mukherjee Road, Ariadaha, Calcutta-76.

4. As the Petitioner decided to start a new factory at the same premises independent of M/s. Rajkumar Dyeing and Printing Works and for this purpose

supply of electricity was required. During the second week of November 1986, the Petitioner applied for supply of electricity before the C.E.S.C. Ltd. being Respondents Nos. 1 and 2 whereupon the C.E.S.C. Ltd. intimated the Petitioner by a letter dated November 18, 1986, that an engineer of the Corporation would call for an inspection on November 28, 1986, at about 10.30 a.m. During the inspection the concern engineer asked the Petitioner to arrange for vacant land "6 metres x 6 metres area" for installation of transformer which was required for further supply of power. The Petitioner by his letter dated November 19, 1986, offered vacant land industrial estate and submitted a sketch map for approval by the C.E.S.C. Ltd.

5. The Petitioner also submitted a duly filled up provisional requisition on November 19, 1986, required for supply of energy as per Rules.

6. On or about February 5, 1988, the Petitioner was directed to deposit a sum of Rs. 6,735.20p. for converting existing overhead service to underground and shifting of the line including the cost of one R.C.D. form and for providing of two additional meter loops.

7. But such deposit was not at all. outright one and instead it was conditional, the Petitioner was asked to fulfil the conditions first. Accordingly, the Petitioner as per instructions carried out the following instructions:

(a) returned the enclosed consent form duly signed by the person concerned,

(b) submitted the usual test notice through his licensed electrical contractor after shifting the existing main switch to the new position as per direction of the Respondents,

(c) constructed the shed incurring at least Rs. 45,000 as per direction of the Respondents,

(d) submitted consent letter of M/s. Rajkumar Dyeing and Printing Works to the effect that they would shift the existing meter to the new place.

8. According to the Petitioner, in spite of fulfilment of the terms and conditions as directed by the Respondents vide their letter dated February 5, 1988, by spending huge sum of money not less than Rs. 60,000 when the Respondent did not send the bill for Rs. 6,735-20 P., the Petitioner had written two letters one on July 29, 1988, and the other on August 18, 1988, requesting the Respondents to send the bill enabling the Petitioner to deposit the money in order to get power connection in his new erected machineries.

9. As nothing was done, the writ Petitioner finding no other alternative, send a letter through his Advocate on September 12, 1988, for sending the bill for Rs. 6,735-20 P. towards supply of electricity having 40 K.W. power load.

10. The Respondent No. 2 by his impugned letter dated September 22, 1988, intimated the Petitioner that his requisition for supply of power was kept in abeyance, and the said order and/or decision was passed on the purported

pretext that the Petitioner's firm was a sister concern of M/s. Rajkumar Dyeing and Printing Works within the same premises and it was felt by them that the Petitioner was to derive power from the proposed service of 6000 volts, subject to statutory compliances and, as such, directed the Petitioner to take up the matter with M/s. Rajkumar" Dyeing and Printing Works, which has been challenged in the instant writ petition.

11. Dr. Debiprosad Pal, learned Advocate appearing on behalf of the writ Petitioner, at the final hearing of the writ petition in the first place submitted that the Respondents having promised to install new energy line for the Petitioner upon fulfilment of certain terms and conditions, laid down in their letter dated February 15, 1988, and the Petitioner having fulfilled the terms and conditions upon spending a sum of Rs. 60,000 approximately, the Respondents are legally bound to act, on the basis of the letter dated February 15, 1988, and they are obliged to give connection, accordingly.

12. Secondly, he has submitted that the Petitioner, being a newly proposed proprietorship concern, the connection sought to be given in the newly proposed concern not being a sister concern of M/s. Rajkumar Dyeing and Printing Works it is not open for the Respondents to direct the writ Petitioner to take up the matter with M/s. Rajkumar Dyeing and Printing Works and further when the Respondents have offered their promise by letter dated February 15, 1988 by keeping their eyes open, the Respondents are directed to supply energy, as per requisition form submitted by the present writ Petitioner, as newly constructed proprietorship firm.

13. Lastly, he submitted that the Petitioner having acted to their detriment by spending a huge sum of money, the Respondent's cannot "backtrack".

14. Mr. Ranadhir Deb, learned Advocate appearing for the C.E.S.C. Ltd., has submitted the following facts from the affidavit, affirmed on behalf of Dipendra Nath Mazumdar, Deputy Chief Commercial Officer (Revenue), on February 13, 1989, which are as follows:

(a) The Respondent No. 1 received an application for supply of electricity (50 H.P. Industrial load) from the writ Petitioner on or about December 4, 1987, at premises No. 11, U. N. Mukherjee Road, Calcutta-700076. Upon "receipt of the said application necessary inspection was carried out when it was found that the Petitioner wanted the load through a new service to be installed in a large factory compound. The Respondent No. 1 by its letter dated February 5, 1988, offered supply to the writ Petitioner, subject to compliance with the requisitions contained in the said letter. The said offer was, however, subject to commissioning of a new transformer at the premises.

(b) Pursuant to the said offer letter M/s. Rajkumar Dyeing and Printing Works of the same premises by its letter dated February 18, 1988, addressed to the District Engineer, Northern District of the Respondent No. 1, informed that they have no objection to shifting the Meter to the new position as suggested in the

offer letter dated February 5, 1988, issued to the writ Petitioner.

(c) Thereafter, the writ Petitioner by its letter dated February 18, 1988, informed the District Engineer, Northern District, of the Respondent No. 1, that he is ready and willing to pay the amount of charges and with regard to the other requirements he was taking necessary action in the matter and all papers would be sent to the Respondent No. 1 shortly. He also stated that the consent form duly signed by the owner of the premises was sent under the cover of the said letter,

(d) The writ Petitioner in several correspondence with the Respondent No. 1 described himself a partner of M/s. Rajkumar Dyeing and Printing Works at premises No. 11 U.N. Mukherjee Road, Calcutta-700076 M/s. Rajkumar Dyeing and Printing Works is an existing registered consumer of the Respondent No. 1 having an unauthorised connected load of 271 H.P.; and to add to this illegality, the writ Petitioner has further requisitioned for about 50 H.P. Industrial load.

(e) An application under Article 226 of the Constitution of India was made on behalf of M/s. Rajkumar Dyeing and Printing Works and by Sri Nath Mal Banka, a partner of the said firm (who is the writ Petitioner in the instant application) and the said writ application was also verified by Sri Nath Mai Banka. The application is still pending and leave is craved to refer to the papers therein.

(f) During inspection, it was found that the Meters, which was controlling the supply of M/s. Rajkumar Dyeing and Printing Works, was catering to a total industrial load of 271 H.P. together with a 10 KVA Welding Transformer. The entire load was ascertained on an average to be used for 12 hours. It was also noted during the inspection that due to overloading, the service apparatus including the load in wires to the cutouts and the cutout thumbless, were also burt. Supply was, therefore, withheld by the Respondent No. 1 from July 22, 1986.

(g) Supply was, however, resumed through a new Meter upon receipt of payment of arrear dues of April 1986, a/c. bill together with "an additional security deposit" of Rs. 20,000. The additional security deposit, on the basis of the load requirement, should have been Rs. 33,000 at the rate then prevailing.

(h) During a visit by the Loss Control Cell of the Respondent No. 1 on May 4, 1988, it was found that the Industrial Meter No. 1302872 had burnt out though the supply was not disturbed. It was also found by the Loss Control Cell that M/s. Rajkumar Dyeing and Printing Works was using almost the same quantum of excess load, as found during inspection on July 22, 1986. The supply was not, however disconnected in view of the fact that M/s. Rajkumar Dyeing and Printing Works expressed its willingness to settle the matter. It is well known that the Medium Volt connection of M/s. Rajkumar Dyeing and Printing Works cannot ever connect up a load of more than 50 kw (i.e., about 67 H.P.), as that would violate the Conditions of Supply framed under and sanctioned by the Government, in accordance with Section 21(2) of the Indian Electricity Act, 1910. Moreover, the

sanctioned load of M/s. Rajkumar Dyeing and Printing Works is not the maximum limit load of 67 H.P., but is only 50 H.P. as per the written agreement of supply.

(i) Following negotiations, the unmetered consumption of 2,47,587 units were billed on May 13, 1988, amounting to Rs. 3,14,436 covering the unmetered period from May 24, 1986 to July 28, 1986, and again between September 21, 1986 to May 4, 1988, on the basis of the leniently assessed maximum demand of 50 H.P., sustained for 8 hours per day. To this was added the consumption of 52,587 units, on the basis of actual registration of the Meter between July 28, 1986 to September 21, 1986.

(j) During negotiations, it was agreed that the payment will be made in instalments. Accordingly, a sum of Rs. 34,435 was paid by M/s. Rajkumar Dyeing and Printing Works in cash on May 23, 1988, and the balance amount of Rs. 2,80,000 was payable in instalments. M/s. Rajkumar Dyeing and Printing Works was advised to obtain High Tension supply and before such supply is obtained it should restrict its consumption within the sanctioned limit of 50 H.P.

(k) M/s. Rajkumar Dyeing and Printing Works agreed to settle the matter and made an initial payment of Rs. 34,436 against the total claim of Rs. 3,14,436 leaving a balance of Rs. 2,80,000 to be paid by instalments. A writ application was thereafter moved before His lordship Hon'ble Susartta Chatterji J. on August 17, 1988, and His lordship directed the writ petitioner to pay a sum of Rs. 60,000 against the claim of the Respondent No. 1 and His lordship also gave directions for affidavits.

(l) Subsequently, another application was moved for further interim order on September 22, 1988, and His lordship was pleased to direct the said M/s. Rajkumar Dyeing and Printing Works to pay Rs. 16,000 against the August 1988, a/c. bill in which disputed June 1988, a/c. bill for Rs. 3,03,162-31 p. have been included against which the said M/s. Rajkumar Dyeing and Printing Works obtained an order on August 17, 1988. His lordship was pleased to direct the matter to come up for hearing two weeks after the Puja Vacation. Both the aforesaid writ applications appear to have been affirmed by Sri Nath Mal Banka, the writ Petitioner, in the instant writ application.

(m) As soon as the unauthorised connected load and relationship between the writ Petitioner and M/s. Rajkumar Dyeing and Printing Works became known to the Respondent No. 1, it advised its existing consumer M/s. Rajkumar Dyeing and Printing Works on June 15, 1988, to call at the office of the Respondent No. 1 for necessary discussion in the matter for installation of H.T. service of 6000 volt.

(n) Though the writ Petitioner has complied with all the requisitions contained in the aforesaid offer letter dated February 5, 1988, in the meantime, yet in the aforesaid circumstances the Respondent No. 1 by its letter dated September 22, 1988, informed the writ Petitioner, that his requisition for supply of electricity has been kept in abeyance as he will have to draw power from the proposed H.T.

service of 600 volts, subject to statutory compliance. The writ Petitioner was also advised to take up the matter with M/s. Rajkumar Dyeing and Printing Works for expeditious action in this regard, which has been impugned in the instant writ Petitioner.

(o) Under the Conditions of Supply framed u/s 21(2) of the Indian Electricity Act, 1910, any particular premises having a load requirement exceeding 50 KW must have High Tension supply at a minimum of 6000 volt. This is a technical necessity for safety and efficiency of supply. Since M/s. Rajkumar Dyeing and Printing Works is already in extreme excess drawing region contrary to agreement and load sanction, no question arises for giving yet another supply with more load to a sister concern of its, i.e., to the writ Petitioner. Accordingly, the impugned order was issued.

15. Mr. Deb has further referred to clauses 15 of the Conditions of Supply, which is set out hereinbelow:

Low Pressure Supplies Hereinafter called

225 Volts direct current 225 Volts D.C.

230 Volts alternating current single phase 50 cycles. 230 Volts A.C.

Medium Pressure Supplies 450 Volts direct current 450 Volts D.C.

400 Volts alternating current 3 phase 50 cycles 400 Volts A.C.

Hi eh Pressure Supplies 3,300 Volts alternating current

3 phase 50 cycles 6,000 Volts alternating current 3,300 Volts A.C.

3 phase 50 cycles 20,000 Volts alternating current 6,000 Volts A.C.

3 phase 50 cycles 20,000 Volts A.C.

33,000 Volts alternating current 3 phase 50 cycles 33,000 Volts A.C.

16. I have considered the relevant submissions of the respective parties and also considered the facts stated in the writ petition and the affidavit and I am of the view that although the Respondent C.E.S.C Ltd, is not entitled to take a different stand having regard to the fact that the Petitioner had fulfilled the promises contained in the offer letter dated February 1958 and the Respondent C.E.S.C. Ltd is duty bound to give supply to the writ Petitioner accordingly. At the same time, I am of the view that the Respondent C.E.S.C. Ltd. will be entitled to insist the writ Petitioner to obtain High Tension Line for giving supply of 6000 Volts, which is a technical necessity for safety and efficiency of supply and since M/s. Rajkumar Dyeing and Printing Works is already in extreme excess drawing region contrary to agreement and load sanction, and as such, the Respondent C.E.S.C. Ltd. is entitled to insist for giving separate High Tension supply to the present writ Petitioner of 6000 Volts, and that only be done through mutual negotiations.

17. I have also considered the facts stated in the writ petition and the affidavit, which mostly related to consumption of power by M/s. Rajkumar Dyeing and Printing Works, which is the existing partnership concern of the writ Petitioner and I am of the view that the Respondent C.E.S.C. Ltd. has every right to regulate supply strictly on the basis of Conditions of Supply, but at the same time the said Respondent is not entitled to insist the writ Petitioner to take up the matter with M/s. Rajkumar Dyeing and Printing Works.

18. On the basis of the stand taken in the affidavit and Clause 15 of the Conditions of Supply, this Court is of the view that since it is a very technical matter, authorities will be entitled to settle the same by mutual negotiation, but Respondent C.E.S.C. Ltd. cannot insist the writ Petitioner to take up the matter with M/s. Rajkumar Dyeing and Printing Works which is an existing partnership firm of the writ Petitioner, and according to the Respondents, is a sister concern of the present newly constructed firm of the writ Petitioner.

19. In the result, the impugned letter dated September 22, 1988, is quashed. Respondents C.E.S.C. Ltd. the writ Petitioner are directed to negotiate the matter from technical point of view and the Respondents are directed to give supply in accordance with the Rules contained in the Conditions of Supply and subject to fulfilment of all the conditions in the said Rules, accordingly.

20. The writ petition is disposed of, as above.

21. There will be no order as to costs.