

(2004) 09 CAL CK 0017

In the Calcutta High Court

Case No : Writ Petition No. 7865 (W) of 2003 and C.A.N. 6101 of 2004

Samsons Processing Industries and Others

APPELLANT

Vs

West Bengal State Electricity Board and Others

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 CALLT 174

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Saptangshu Basu and S.K. Ash, for the Appellant; Debasish Ghosh, for the Respondent

Judgement

Soumitra Pal, J.—The petitioner, a consumer of the West Bengal State Electricity Board (for short "the WBSEB") filed a title suit challenging certain electricity bills raised by the WBSEB. Ultimately, being dissatisfied with the orders passed by the learned Trial Court, the petitioner moved a revisional application before this Court which was disposed of by an order on 19.9.97. The relevant portion of the said order is as follows:

"(f) Since the issue in the suit appears to be a meter dispute the matter is referred to the Chief Electrical Inspector for adjudication as to the quantum of charges to be paid by the petitioners from June, 1989 to April, 1995. Steps be taken by the parties to have the suit disposed of accordingly."

2. Pursuant to the order, the Deputy Chief Electrical Inspector (for short "the D.C.E.I."), as directed by the Chief Electrical Inspector, adjudicated the dispute and passed an order on 8.4.2003.

3. Being aggrieved by the said order, the petitioner has moved the instant writ petition. At the time of moving the writ petition, orders were passed for filing the affidavit in opposition and the affidavit in reply. Parties were directed to maintain status quo. I find Affidavits have since been exchanged.

4. Mr. Basu, learned advocate for the petitioner, assailing the order submitted, though the WBSEB failed to produce any record which was pointed out by the petitioner by letter dated 18th June, 2001, order has been passed mechanically accepting the contentions of the WBSEB. The order is perverse as the same is based on no evidence and conclusion has been reached without testing the meter in question. Submission was made that the petitioners filed the relevant documents in support of their claim.

5. Perused the order. I find that the D.C.E.I. at the outset has indicated that the order is based on "facts and figures, examination of documents/papers submitted by both the parties and also from the facts as disclosed by both the parties during hearing." However, I find it has been held that "the accuracy of the old meter cannot be judged at this stage as the same was taken out and was not tested by any independent Government Laboratory". It has also been further indicated in the order that "It is also seen from the records that during raising bills from June 89 to April 95 WBSEB claimed that the meter was sometimes defective and sometimes it was correct. But WBSEB could not prove with documents when and how the defect in the meter was detected and when and how the defect in the meter was rectified." Even though it was found that the WBSEB could not prove their case with documents and the meter was not tested, yet the D.C.E.I. directed the WBSEB to prepare fresh bill.

6. It assumes significance as correctly mentioned by Mr. Basu that the petitioner by letter dated 18 pointed out that no document was filed before the D.C.E.I. by the WBSEB in spite of several directions. Further, it has been stated in paragraphs 27 to 36 of the petition that the test report of the meter was not before the D.C.E.I. and the WBSEB failed to produce any document to substantiate its claim. The WBSEB while dealing with paragraphs 27 to 36 of the petition in paragraph 34 of its affidavit in opposition (for short "the affidavit") did not deny the fact that the WBSEB failed to submit documents and if it had what were the documents, though in the said paragraph of the affidavit it has been stated "I deny that the Board failed to produce document in support of their claim to the Deputy Chief Electrical Inspector". Such an averment by the WBSEB in its affidavit, bereft of any details of the documents submitted, is not acceptable. Since the statements in the writ petition have not been controverted, the allegations made therein are deemed to be correct. If the D.C.E.I. sought to rely on documents furnished by the WBSEB it should have clearly indicated the same in the order itself, instead of stating that order is based on documents submitted by the WBSEB which were not there at all. Thus admittedly though no documents were produced before the D.C.E.I. by the WBSEB, the order passed by the D.C.E.I. is a product of non-application of mind and is invalid in the eye of law. The principles of law laid down in paragraph 9 of the judgment in Fertiliser Corporation of India Limited v. Bharat Painters reported in AIR 1986 Orissa 82, wherein it has been held that "the award ex facie shows that the arbitrator has not applied his mind to the records of the case which is apparent from the fact that though admittedly no documents were produced before him, yet the

arbitrator indicates that he has gone through the documents produced before him by both the parties. It is too well settled that an award which is the product of non-application of the mind of the arbitrator cannot be permitted to be sustained in law" relied on by Mr. Basu is applicable in the facts of this case.

7. In my view, when the D.C.E.I. found that the WBSEB could not prove with documents when and how the defect in the meter was detected, and subsequently rectified, and when the accuracy of the meter, a vital piece of evidence, was not tested, the order directing the WBSEB to prepare fresh bill cannot be sustained as it is clearly perverse.

8. Mr. Ghosh, learned Advocate for the Board has raised two preliminary issues relating to the maintainability of the writ petition--(a) res judicata and (b) the alternative remedy.

9. The argument of Mr. Ghosh that as the same set of facts and issues were before the Civil Courts, the instant writ petition is hit by the principles of res judicata is not tenable, since the High Court by its order dated 19.9.97 referred the matter for adjudication by the D.C.E.I. Thereafter, the petitioner being aggrieved by the order passed by the D.C.E.I. moved the writ petition.

10. So far the issue of alternative remedy is concerned, I accept the submission of Mr. Basu that an order passed should be on some rational basis and if an error in the order is apparent and does not require scanning of evidence, then the efficacious remedy is to make an application under Article 226 of the Constitution. Mr. Basu was justified in drawing analogy from the principles laid down in the judgment of the Apex Court in *Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another*, and *Joharmal Murlidhar and Co. Vs. Agricultural Income Tax Officer, Assam and Others*, which are applicable in the facts and circumstances of the case. Moreover if an order is ex facie illegal and perverse as in the instant case, in my view, it requires intervention by appropriate orders under Article 226 of the Constitution of India.

11. Further, I find that the observation in the order "but it is true that any consumer converts his M.V. connection to HT, connection when consumption is high" is based on mere surmise as in the preceding sentence it has been recorded that "the record of the monthly consumption of the consumer before H.T. connection was effected could not be supplied either by WBSEB or by the consumer."

12. Moreover, as the orders passed by the learned trial Court were under challenge in the Revisional jurisdiction before this Court, the observation in the order that "It is seen from the records that with the help of the order of the Court the consumer was always trying to pay the less amount than the bill raised by WBSEB." is uncalled for and is deprecated since it is always open for a consumer to approach Courts for proper remedy. It also speaks of bias.

13. In view of what has been held in the aforesaid paragraphs I find that the order dated 8.4.2003 suffers from bias, based on surmise and since not based on records, is perverse.

14. Thus, the order dated 8.4.2003 passed by the Deputy Chief Electrical Inspector, Government of West Bengal being annexure P-8 to the writ petition, is set aside and quashed.

15. I, therefore, direct the Chief Electrical Inspector or any other Electrical Inspector authorized by him, other than the Electrical Inspector who had passed the order dated 8.4.2003, to adjudicate the dispute. At the time of such adjudication, the Chief Electrical Inspector or any Electrical Inspector authorized by him shall rely on the documents submitted by the petitioner.

16. The writ petition, therefore, succeeds. Application is also disposed of accordingly.

However, in the facts and circumstances, there shall be no order as to costs.

Urgent xerox certified copy of this order and judgment, if applied for, be given to the appearing parties on priority basis.