

(2013) 04 CAL CK 0078
In the Calcutta High Court
Case No : W.P. No. 14603 (W) of 2012

Sankar Kumar Gayen

APPELLANT

Vs

Calcutta Electric Supply Corporation Limited

RESPONDENT

Date of Decision : 18-04-2013

Acts Referred:

Citation : (2014) 2 CHN 352

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Dipankar Datta, J.—The petitioners were consumers of electricity, supplied by the respondent No. 1. For the purpose of such supply, cables had been laid under a common passage owned admittedly by the private respondents. An incident of lightning and thunder showers on June 16, 2012 led to disruption of supply of electricity to the petitioners' premises. The meters were burnt as a consequence. The petitioners had applied before the respondent No. 1 for reconnection and/or restoration of supply. Technical personnel were engaged by the respondent No. 1 pursuant to receipt of the request from the petitioners. However, they were resisted by the private respondents as a result whereof supply could not be restored. The petitioners moved the Executive Magistrate, Alipore, South 24-Parganas u/s 144(2), Criminal Procedure Code. Although the Magistrate passed an order on June 20, 2012 directing the Officer-in-Charge, Budge Budge Police Station to ensure that repair work undertaken for restoration of supply of electricity to the petitioners' premises is not obstructed, no fruitful action was taken resulting in the petitioners spending their days in darkness.

2. This writ petition was thereafter presented on July 9, 2012 praying for, inter alia, order on the respondents 2 and 3 to restore supply of electricity with the help of the police.

3. The writ petition has since been heard on affidavits.

4. According to Mr. Bandopadhyay, learned Advocate for the private respondents, the respondent No. 1 has no right to dig the passage owned by them for laying cables or to repair the same for restoration of supply of electricity to the petitioners and that they must locate an alternative route for such purpose. It is also his submission that if at all the petitioner is aggrieved, recourse must be taken to Rule 3 of the Works of Licensees Rules, 2006 by approaching the District Magistrate.

5. Mr. Sanyal, learned advocate for the petitioner submits that Rule 3 would have no application in the present case, since it is not a matter of new connection but repair of supply lines for restoration of electricity. According to him, it is section 163 of the Electricity Act, 2003 that is applicable and the respondent No. 1 has a duty to act in terms thereof to come to the aid of the petitioners.

6. Learned advocate representing the respondents 1 to 3 submits that they are always ready and willing to repair the supply lines for the purpose of supply of electricity to the petitioners and that any direction passed by this Court in this behalf would be complied with without any delay.

7. Having heard learned advocates for the parties, this Court is of the considered view that the private respondents are attempting to settle scores with the petitioners by resisting the efforts of the respondent No. 1 to restore electricity in the premises of the latter. The private respondents have not disputed that before the incident of June 16, 2012, the petitioners were enjoying electricity supplied by the respondent No. 1 through cables placed below the surface of the passage owned by them. What could be the way out for respondent No. 1 to restore supply and what are the consequences the private respondents are likely to face if the attempt of the respondent No. 1 is resisted by them?

8. The statutory provisions governing the field may now be noted to find an answer. Sub-section (1) of section 163 of the Act permits the licensee or any person authorised by it to inform the occupier of a premises to which electricity has been supplied, his intention to repair electric supply lines at any reasonable time. The statute cannot be interpreted to mean that the supply lines leading to supply of electricity to the owner of the premises can only be repaired. A purposive construction of sub-section (1) leads me to hold that the respondent No. 1 is empowered to repair the supply lines for restoring supply to the petitioners' premises notwithstanding the fact that the passage is owned by the private respondents. The licensee may also approach the Executive Magistrate for issuance of a special order in this behalf for any of the purposes mentioned in sub-section (1) of section 163. This is a permissible course of action in terms of sub-section (2) thereof. The Magistrate may pass such order as is justified on facts and in the circumstances for giving effect to the object of the Act of, inter alia, protection of interest of consumers and supply of electricity to all areas, including passing an order for police assistance. Sub-section (3) of section 163 empowers the licensee to disconnect supply of electricity to a consumer who indulges in resisting it or its authorised person, after service of notice in the

manner mentioned therein.

9. Bare perusal of the aforesaid provisions leaves no manner of doubt in respect of the powers conferred on a licensee. It is an all pervasive power hedged with certain conditions and should there be compliance with such conditions, it would be impermissible to resist the attempt of the licensee to carry out works of the nature mentioned in sub-section (1) of section 163.

10. The submission of Mr. Bandyopadhyay that the respondent No. 1 has no right to dig the common passage owned by the private respondents and that recourse to Rule 3 of the Rules must be taken is without substance. Mr. Sanyal is right in his submission that Rule 3 would have no application here since it is not a case of new connection. As noticed above, power is conferred by sub-section (1) of section 163 of the Act on the respondent No. 1 to effect repairs to the supply lines. Resistance offered by the private respondents is, therefore, in the teeth of the provisions contained in sub-section (1).

11. The petitioners, thus, are entitled to an order on the respondent No. 1 to repair the supply lines, and it is ordered accordingly. The respondent No. 1 must inform the private respondents in advance of its intention to effect repairs to the supply lines/apparatus, etc. In the event of resistance being offered by the private respondents once again, the respondents 1 to 3 shall be free to approach the Executive Magistrate for a special order in terms of sub-section (2) of section 163. Special order, if made, shall be complied with by the respondents 1 to 3 as well as the respondent No. 4 (the Officer-in-Charge) within the time stipulated for such purpose. If resistance is offered by the private respondents even to the police authorities, they shall be liable to prosecution as provided in law and the respondent No. 1 shall disconnect supply of electricity to the private respondents in terms of sub-section (3) of section 163.

12. This order shall be complied with by the respondents 1 to 3 as expeditiously as possible so as to ensure restoration of supply of electricity to the petitioners before May 1, 2013. The writ petition stands disposed of with the aforesaid directions. There shall, however, be no order as to costs. Urgent photostate certified copy of this order, if applied for, shall be furnished to the applicant at an early date.