

(1997) 02 CAL CK 0001
In the Calcutta High Court
Case No : Civil Order No. 5475 (W) of 1996

Satyanarayan

APPELLANT

Vs

Calcutta Electricity Supply Corporation Ltd.

RESPONDENT

Date of Decision : 10-02-1997

Acts Referred:

Electricity Act, 1910 — Section 19A, 2, 21(2), 22, 3
Electricity Rules, 1956 — Rule 58

Citation : (1997) 2 ILR (Cal) 53

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : B.K. Halder, for the Appellant; R. Deb, for the Respondent

Final Decision : Allowed

Judgement

Satyabrata Sinha, J.—These two writ applications involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. The Petitioners in both the writ applications applied for grant of electrical connections. The Petitioners in CO. No. 20355 (W) of 1996 sought for electric connection for domestic purpose whereas the Petitioners in the other writ application sought for supply of electrical energy for commercial purpose. The C.E.S.C. Ltd. by a letter dated May 15, 1996 addressed to the Petitioner of CO. No. 20355 (W) of 1996 stated thus:

With reference to your application for supply, we regret to inform you that our medium voltage network in the area is loaded to capacity and we are unable to accommodate your requisition immediately. We are in search of a suitable indoor accommodation measuring about 6M x 5M on ground floor level it road frontage on nominal monthly rental for commissioning a new medium voltage source of supply in the area, relieving the existing network and catering to new requisitions for supply.

We shall be grateful to you for any assistance that you may be able to offer us in this regard.

While we would assure you of our earnest endeavour, in expediting augmentation of our supply in the area and provision of supply to you against your requisition, we would request you to bear with us a little while.

Assuring you of our best attention at all times.

3. Thereafter, the premises were inspected and an identical letter dated December 20, 1994 were issued in favour of the Petitioners in the aforementioned case. However, by another letter dated October 25, 1996 the Respondent company demanded from the Petitioner Compact System a sum of Rs. 2,45,237.00 purporting to be proportionate contribution of the consumer towards L.T. network re-organise and other equipments. A similar demand was made against the Petitioners in the other writ application by the Respondent company in terms of its letter dated June 26, 1996 demanding a sum of Rs. 3,10,160.00.

4. The only question which has been raised in these applications by the learned Counsel for the parties is as to whether the Applicants for grant of electric connection are required to bear the proportionata costs for installation of transformer.

5. Mr. Haider, the learned Counsel appearing on behalf of the Petitioner has, inter alia, submitted that in view of the statutory obligation on the part of the C.E.S.C. Ltd. to supply electrical energy to the premises to the Petitioner, they are not bound to pay the proportionate costs of the transformer.

6. Mr. Dev, learned Counsel, appearing on behalf of the C.E.S.C. Ltd. on the other hand, submitted that the transformer is overloaded and a large number of applications are pending and the Respondent Company in order to supply the electrical energy to the Applicants are required to re-organise the MVAC network in the area and, therefore, the Respondents were required to pay the proportionate costs therefor. Mr. Dev in this connection has placed strong reliance upon proviso (b) appended to Clause VI of the schedule appended to the Indian Electricity Act, 1910 as also the definition of the word "service line" as contained therein.

7. It is not in dispute that the Respondent company is a licensee within the meaning of the Indian Electricity Act, 1910 (hereinbefore referred to as "the said Act").

Section 3 of the said Act empowers the State Government to grant licence to any person to supply energy in any specified area and also to lay down or place electric supply lines for the conveyance and transmission of energy where the energy to be supplied is to be generated outside such area from a generating station situated outside such area to the boundary of such area, or where energy is to be conveyed or transmitted from any place in such area to any other place

therein across an intervening area not included therein across such area. Clause (f) of Sub-section (2) of Section 3 of the said Act provides that the provisions contained in the schedule shall be deemed to form part of licence granted under the said part.

8. Section 21(2) authorises the licensee with the previous sanction of the State Government to make conditions of supply not inconsistent with the said Act, or the conditions of licence or with any rules made under this Act, to regulate his relations with persons who are or intend to become consumers and may, with the like sanction given after the like consultation, add to or alter or amend any such conditions ; and any conditions made by a licensee without such sanction shall be null and void. It is stated that such conditions of supply framed by the Respondent Company has received the sanction of the State of West Bengal.

Section 22 of the said Act mandates:

Where energy is supplied by a- licensee, every person within the area of supply shall, except insofar as is otherwise provided by the terms and conditions, of the license, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply ;

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum and annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration.

9. Apart from the schedule appended to the said Act a model form of license is contained in the Indian Electricity Rules as contained in Annexure "A" thereto. Clause (4) of the schedule appended to the said Act mandates a licensee to execute to the satisfaction of the State Government of such works as may be specified in the licence and do not so specified as the State Government made by order within six months from date of the commencement of the licence. Clause (5) of the said schedule reads thus:

Where, after the expiration of two years and six months from the commencement of the licence, a requisition is made by two or more owners or occupiers of premises in or upon any street or part of a street within the area of supply or by the (State Government) or a local authority charged with the public lighting thereof, requiring the licensee to provide distributing mains throughout such street or part thereof, the licensee shall comply within six months with the requisition, unless -

(a) where it is made by such owners or occupiers as aforesaid the owners or occupiers making it do not within fourteen clear days after the service on them

by the licensee of a notice in writing in this behalf, tender to the licensee a written contract (in a form approved by the State Government) duly executed and with sufficient security binding themselves to take or guaranteeing that there shall be taken, a supply of energy for not less than two years to such amount as will in the aggregate (assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen per centum of the cost of the distributing mains (not including transformers and other sub-station equipment) required to comply with the requisition) ; or

(b) where it is made by the (State Government) or a local authority, the State Government or local authority, as the case may be, does not, within the like period, tender a like contract binding itself to take a supply of energy for not less than seven years for the public lamps in such street or part thereof.

10. Clause (vi) of the schedule provides for the manner in which requisition for supply to owners or occupiers in vicinity has been made in the following terms:

1) Where (after distributing mains have been laid down, under the provisions of Clause (iv) or Clause (v) and the supply of energy through those mains or any of them has commenced), a requisition is made by the owner or occupier of any premises situate within (the area of supply) area of the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition (or within such longer period as the Electrical Inspector may allow) supply, and, save insofar as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply energy in accordance with the requisition ;

Provided, first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it -

(a) within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the (State Government), duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will (assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen per centum of the cost of the service line required to comply with the requisition), and

(b) if required by the licensee so to do, pays to the licensee the cost of so much of any service-line as may be laid down or placed for the purpose of the supply upon the property in respect of which the requisition is made, and of so much of any service-line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main, although not on that property.

11. Clauses (4) and (5) of the model forms of the license read thus:

Notice for fixing the position of service, meter, etc. - Upon receipt of the requisition for supply, seven clear days" notice shall be sent by the licensee to

the Applicant for supply or to the contractor acting on his behalf, for his representative to meet the engineer of the licensee for the purpose of inspecting the premises and fixing the point of entry of supply mains and the position of the mains, cut-outs or circuit-breakers and meters. The licensee will in no case, fix meters and main cutouts, nor allow the same to remain in any position which entails entry of employees into purdah or religious quarters.

Quotation, etc. for laying service lines - (a) The position for the service having been agreed upon as provided for in condition No. 4 above, the licensee shall thereafter submit to the Applicant a quotation of the estimate of the cost of carrying out the work. The quotation having been accepted, the Applicant shall be required to deposit the amount of the estimate with the licensee before the service is laid. The deposit having been duly paid, orders shall be issued for the work to be put in hand and the amount so deposited shall be subsequently, adjusted, if necessary, on completion of the figures of the actual cost of the service line. Other conditions being equal, service lines shall as far as possible be laid in the order of the dates of receipt of the deposit money.

Note-The service line, notwithstanding that a portion of the cost has been paid for by the consumer, shall remain the property of the licensee by whom it is to be maintained.

(b) If a consumer desires to have the position of the existing service line altered, the licensee shall carry out the work and charge the consumer the cost of the additional material used and the labour employed plus 15 per cent of the latter as supervision charges.

(c) Service lines for temporary illumination shall be laid by the licensee where possible and the cost incurred in laying and removing such service lines as determined in the manner laid down in Clause (b) above shall be paid by the consumer.

(d) Where any difference or dispute arises as to the cost or position of the service lines, the matter shall be referred to the Electrical Inspector for... and shall be decided by him.

(e) A consumer requiring high voltage supply must provide and maintain at his expense a locked and weather proof enclosure of agreed design, for the purposes of housing the licensee's metering equipment. Such an enclosure may be used by the consumer for his own similar metering equipment but for no other purposes.

Service Lines.- The licensee shall lay free of charge 100 feet of service line from his nearest distribution main outside the limits of the property in respect of which the requisition is made. Any length in excess of 100 feet, as defined above and the whole of the service line within the limits of the property in respect of which the application is made shall be paid for by the Applicant. The cost mentioned above, however, shall be exclusive of the proportionate cost of such poles and

fittings shall be in the same ratio as 100 feet is to the length of the line beyond 100 feet from the point or tap-off of the service and the second support of the service line.

The main cut-cuts or fuses shall be inserted and sealed by the licensee free of cost to the consumer.

The Petitioners in this application do not require high voltage supply.

12. The provisions, as noticed hereinbefore, clearly go to show that a licensee is bound to bear the costs of supply apart from the cost for drawing up service line beyond 30 meters.

13. With a view to appreciate the matter further it may be necessary to note that the definition of "electric supply line", main "service line" and "works" as contained in the Act:

"electric supply-line" means a wire, conductor or other means used for conveying, transmitting or distributing energy (whether by overhead line or underground cable), together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy and includes any support, cross-arm, stay, strut or safety divide erected or set up for that purpose ; "main" means any electric supply-line through which energy is, or is intended to be, supplied to the public ;

"service-line" means any electric supply-line through which energy is, or is intended to be, supplied -

(i) to a single consumer either from a distributing main or immediately from the (supplier premises) or

(ii) from a distributing main to a group of consumers on the same premises or on adjoint premises supplied from the same point of the distributing main ;

"works" includes electric supply-line and any building, plant, machinery, apparatus and any other thing of whatever description required to supply energy to the public and to carry into effect the objects of a licence of sanction granted under this Act or any other law for the time being in force.

14. The expression "service line" read with Clauses (g) and (ii) means:

(a) any wire, conductor or other means used for conveying transmitting or distributing energy for any purpose other than transmission of a message ;

(b) any casing, coating, covering tube, pipe or insulator enclosing, surrounding or supporting any wire conductor or other means for conveying transmitting or distributing electrical energy ;

(c) any apparatus connected therewith for the purpose of so conveying, transmitting or distributing electrical energy ;

(d) any support, "cross-wire, stay, strut or safety device erected or set up for the purpose of conveying, transmitting or distributing electrical energy.

15. "Service Line" is a supply line intended to serve a consumer or a group of consumers. The "distributing main" is or is intended to be connected to the "service line" through which the consumer is supplied electricity. "Service Sine" is thus a connecting link between licensee's supply system and the consumer's interior wiring system. Though in practice it may not be difficult to distinguish between the "distributing main" and "service line", often it is difficult to determine where the "distributing main" ends and the "service line" begins. Sometimes this point requires to be sharply distinguished as often questions of legal liabilities of parties arise either for maintenance of lines or for their ownership or for liability in tort for negligence, accidents etc. A "service Sine" may be said to terminate at a point where the consumer's system begins. Under the Indian Electricity Act, 1910, Section 19A it is laid down that "for the purposes of this Act", the point at which the supply of energy by a licensee to a consumer shall be deemed to commence shall be determined in such manner as may be prescribed. Rule 58 of the Indian Electricity Rules, 1956 provides that -

The point of commencement of supply of energy to a consumer shall be deemed to be the point at the outgoing terminals of the cut-outs inserted by the supplier in each conductor of every service line other than an earthed or earthed neutral conductor or the earther external conductor of a concentric cable at the consumer's premises.

18. Electric supply lines is a generic term which means wires or conductors conveying, transmitting or distributing energy, whether such conveyance is for the purpose of generation or distribution: but the term excludes wires for transmission of messages. The general term "electric supply line" should be distinguished from the more specific terms such as "transmission line" or "main transmission lines" defined in the Electricity (Supply) Act, 1948. "Main transmission lines" means all high pressure cables and overhead lines (not being an essential part of the distribution system of a licensee) transmitting electricity from a generating station to another generating station or to a sub-station, together with any step-up and step-down transformers, switch-gear and other works; necessary to and used for the control of such cables or overhead lines, and such buildings or part thereof as may be required to accommodate such transformers-, switch-gear and other works and the operating staff thereof. Transmission lines means all works mentioned above used wholly or partially for the purpose of distribution.

17. The definition of "service line" suggests that although it is a part of a electric supply line but it is essentially a line from the distributing mains to the premises of the consumer or group of consumers. A transformer is always installed before the distributing means and thus the transformer cannot be a part of the service line.

18. In U.P. State Electricity Board Vs. Smt. Lakshmi Devi Sehgal and Another, a division bench has held that a transformer is not a part of the service line. It is, therefore, clear that in terms of the model form of the licence the licensee has a statutory obligation to make all arrangements for supply of electrical energy once a licence has been granted to him. The meaning of the word "electric supply line" must be understood in the light of the definition of "works" as, contained Section 2(n) of the said Act. From the definitions of words as aforementioned, there cannot be any doubt whatsoever that "electric supply Sine" would mean a wire conductor or other means used for conveying, transmitting or distributing energy and the service line or electric supply line would mean any apparatus connected therewith for the purpose of so conveying, transmitting or distributing electrical energy and includes any separate cross-arms or set up for that purpose. A transformer has a separate role to play as thereby the frequency of a voltage can be converted from high to low or low to high and thus the same cannot be held to be a supply line.

19. The Respondent company, as noticed hereinbefore, had categorically contended that it wanted to Petitioners to pay the proportionate cost for a re-organizing the MVAC net work of the area. An intended consumer cannot by any stretch of imagination be asked to pay the proportionate cost for installation or re-organize the NVAC net work in the area, inasmuch as Section 22 of the Electricity Act in no uncertain terms mandates upon the licensee to supply electrical energy once supply of energy has been started in any particular area. The licensee is under a statutory obligation to supply electrical energy in terms of the aforementioned provisions subject to the conditions imposed in the proviso appended thereto. In the instant case the Petitioner has not sought for a supply of energy having a separate supply.

20. It is now well-known principles of interpretation of statute that in case of doubt or dispute as regards the meaning of a word, the same has to be interpreted in favour of a person for whose benefit the Act has been enacted. The conjoint reading of the provisions as noticed hereinbefore leaves no room for doubt that the Petitioners are not liable to bear the cost of the transformer.

21. In Draupadi Devi Agarwal v. C.E.S.C. Ltd. A.K. Chakraborty J. by an order dated July 25, 1994 as contained in Annexure "C to CO. 5475 (W) of 1996 rejected a. similar contention in the following terms:

whether installation of a transformer is necessary or not, is a matter for consideration of the C.E.S.C. and for that supply of energy to the Petitioner's premises cannot be withheld u/s 22 of the Indian Electricity Act. In what manner energy is to be supplied is a matter which is exclusively concerned with the C.E.S.C. authorities and cannot be the reason for withholding the supply to the Petitioner's premises.

22. Although it was not argued but it appears that the Respondents have also directed the Petitioners to clear all the arrears in respect of the premises whereas

the supply is made if any. Apart from the fact that no details thereof had been furnished for such dues, it is now well settled in view of the decision of this Court in *Shree Balasaria Construction Co. v. C.E.S.C. Ltd.* VI C.W.N. 15 that a person cannot be denied of his right to obtain supply of electrical energy on the ground of existence of dues owing to a third party. All consumers for consumption of electrical energy must be treated alike and no discrimination can be made on the ground that in the particular place, the licensee is to carry out the reorganisation of its net work. Such a construction would neither serve the purpose for which the Indian Electricity Act has been enacted nor the same would be in furtherance of the right of the consumers.

23. For the reasons aforementioned these writ applications are allowed and the Respondents are directed to supply electrical energy to the Petitioners without insisting upon them to pay any amount by way of the proportionate cost for re-organisation of MVAC net work,.

No order as to costs.