

(2009) 06 CAL CK 0065
In the Calcutta High Court
Case No : F.M.A. No. 250 of 2005

The West Bengal State Electricity Board and Others	APPELLANT
Vs	
Sri Sakshi Gopal Chowdhury	RESPONDENT

Date of Decision : 24-06-2009

Acts Referred:

Electricity Act, 2003 — Section 2(22)

Citation : (2009) 3 CALLT 438

Hon'ble Judges : Md. Abdul Ghani, J;Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : Sumit Kumar Panja and Mr. Sumit Roy, for the Appellant;

Final Decision : Allowed

Judgement

1. Despite the matter being called on yesterday and today also, none appears for the respondent/writ petitioner.
2. By this appeal, the small judgment and order of learned trial Judge dated 29th August, 2003 has been assailed. The respondent/writ petitioner approached before the learned single Judge with a prayer for energizing his submersible pump in a cultivable land upon payment of all lawful costs and expenses.
3. After hearing the parties, the learned single Judge has directed by the impugned order to energise the respondent/writ petitioner's pump without realising any costs of the transformer which was and is required to be installed to energise the pump. The Board appellant is aggrieved only with the portion of the aforesaid order for non-realisation of the charge of transformer.
4. The learned single Judge in order to justify His Lordship's judgment and order has relied on the decisions rendered in the case of Banamali Chowdhury v. West Bengal State Electricity Board and Ors., reported in 2002 (1) CHN 262 and also in the case of Kartick Chandra Ghosh Vs. West Bengal State Electricity Board and Others, .

5. We have heard Mr. Panja who has submitted that in view of commencement of the present Act viz. Electricity Act of 2003 read with the Regulations framed by the West Bengal Electricity Regulatory Commission under the aforesaid Act, his client is entitled to realise the cost of transformer. He has drawn our attention to section 46 of the said Act and also the regulations framed by the Electricity Regulatory Commission in connection thereto. He, therefore, concludes that under no circumstances, the aforesaid portion of the judgment and order is sustainable.

6. We do not have the advantage of hearing the respondent/writ petitioner. We have got the fullest assistance of Mr. Panja. We find his submission in this regard, has got substantial force as the learned Single Judge was not justified asking the Board not to realise the cost of transformer relying on the decisions, quoted above.

7. The aforesaid two decisions, in our view, are no longer applicable in view of commencement of the new act and those decisions were rendered in relation to the old Electricity Act of 1910. When there has been a change of law, decisions rendered in connection with the said law will not have any force unless the same are decided on an abstract proposition of law for universal application. We do not find that the aforesaid two cases have been decided for universal application.

8. Here the question arises whether the Board is authorised to recover the cost of transformer or not. The West Bengal State Electricity Board is a statutory body. Therefore, it must function within the four corners of statute unlike a private individual, who can do whatever he thinks fit unless prohibited by law. In quest of reaching the conclusion, we have found section 46 of the Electricity Act, 2003 which provides as follows:

Section 46: Power to recover expenditure:

The State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 and expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply.

9. Mr. Panja has given us a copy of the regulation framed by the West Bengal Electricity regulatory Commission and submits that by virtue of clauses 4.2 and 4.2.1 of the said Regulation, Board is authorised to realise cost on various heads for giving new connection to any sort of consumer.

10. Clauses 4.2 and 4.2.1 of the said regulation run as follows:

Clause 4.2.:

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Where distribution mains will need to be extended or new plants, lines, distribution mains are to be installed or both in order to supply consumer(s), the any applicants(s)/intending consumers(s), the distribution licensee shall recover

the cost for the same from the applicant(s)/intending consumer(s) in the manner specified hereinafter.

Clause 4.2.1.:

The cost of the extended portion of the common facilities, including the costs of electrical plants, lines, distribution mains etc. shall be borne by a new consumer/consumers in proportion to his/their respective connected loads.

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11. Therefore, it appears from the aforesaid clauses of the said Regulation that the Commission has authorised the board to realise costs on the aforesaid heads.

12. The meaning of "electrical plant" has been defined in section 2(22) of the aforesaid Act of 2003. It provides as follows:

Section 2(22):

"Electrical Plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, distribution or supply of electricity but does not include-

(a) an electrical line; or (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or

(C) an electrical equipment, apparatus or appliance under the control of a consumer;

13. Thus, on conjoint reading of the aforesaid two clauses of the said regulation and the aforesaid definition, we are of the view that the Board is authorised to realise the cost of transformer which is one of the "electrical plant" having inclusive definition.

14. We are told that each and every operators of submersible pump need separate 10 K.V. transformer. Therefore, the cost of the same has to be borne by the operator.

15. We have got on our hands a Division Bench judgment of this Court in the case of Secretrary, West Bengal State Electricity Board and Ors. v. Deb Kumar Jash and Anr. reported in 2005 (4) page 24, to support the aforesaid views in substance. The Division Bench of this Court in this judgment, of course has not dealt with the implication of section 2(22) of the said Act as well as the Regulation; but on fact the identical order was not accepted nor approved by the Division Bench.

16. Under those circumstances, we are of the view that the direction upon the Board not to realise the cost of transformer by the learned single Judge is not sustainable in view of the aforesaid discussion. We therefore, allow the appeal to the extent, as above.

17. We are told that there has been stay of operation of the impugned judgment and order. Now, we direct the Board to estimate the cost of transformer and intimate the same to the respondent/writ petitioner within a period of one month from the date of receipt of a copy of this order and upon payment of the aforesaid cost and other cost, as directed by the learned single Judge to be paid, the submersible pump of the respondent/writ petitioner shall be energised, if he is still interested to get the connection to the submersible pump. However, costs of transformer may be realized by suitable installments.

18. This appeal is, thus, disposed of. There will be no order as to costs.

Urgent Xerox certified copy of this order, if applied for, be supplied to the applicants.