

(2016) 02 CAL CK 0084

In the Calcutta High Court

Case No : M.A.T. No. 406 of 2015 with CAN No. 3368 of 2015.

Vinod Kumar Tewari

APPELLANT

Vs

C.E.S.C. Ltd. and Others

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Electricity Act, 2003 — Section 56

Citation : (2016) AIR(Calcutta) 195 : (2016) 3 CalHCN 276 : (2016) 5 WBLR 113

Hon'ble Judges : Manjula Chellur, C.J.;Arijit Banerjee, J.

Bench : Division Bench

Advocate : Sandip Ghosh, Advocate, for the Appellant; Subir Sanyal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

1. It is necessary to indicate certain facts relating to the present appeal in order to appreciate the stand of the appellant and the respondent company in the right perspective.

2. It is not in dispute that the appellant has two lines of supply as indicated in Annexure "P-6" at page 48 of the stay application, one for commercial consumption and the other for residential consumption. Both the commercial supply and the domestic supply of electricity is to the consumer name of Vinod Kumar Tewari, the appellant herein.

3. The challenge before us can be ascertained reading the prayers at page 83 of the stay application papers wherein the appellant has asked the respondent company to restore the line of the appellant/petitioner in respect of Meter No. 4158440 domestic connection with reference to premises situated in holding no. 139/C/4, Ananda Palit Road, C.I.T. Road, Kolkata -700 014. He has also sought consequential reliefs. The main contention of the petitioner before the Trial Court was to the effect that in view of different nature so far as the electricity supply, domestic and commercial, irrespective of the consumer being the same it has to

be treated as different connections. Therefore, the disconnection notice under challenge ought to have been quashed by the learned Trial Judge by restoring the electric supply to the domestic line of the writ petitioner.

4. The main challenge on behalf of the respondent company was that there was no proper relief sought with regard to the facts and the demand notice remains unchallenged except challenging the disconnection. Learned counsel for the respondent company submits that the Court could not travel beyond considering whether restoration could be done in the absence of challenge to demand notice.

5. Learned Judge on consideration of the matter proceeded to hold that since there is no challenge with regard to the demand, therefore there has to be conditional order directing the respondent company to restore electricity supply subject to deposit of 50% of the demand within a given time and balance amount to be paid by two instalments as indicated in the order impugned.

6. Aggrieved by the same, the appellant is before us contending that Section 56 of the Electricity Act alone is the provision which could be relied upon by both the parties before the Court and he contends that irrespective of the character of the supply since the consumer is the same, there cannot be any uniformity in course of action taken by the supplying company since both the supplies have different consumer numbers, different lines, different purpose and different consumption charges, i.e. rate at which consumption is charged.

7. As against this learned counsel representing the company contends that even to substantiate the present stand of the appellant no pleadings are forth coming, therefore question of considering the submission would not arise at this stage since Section 56 does not distinguish between the nature of consumption and there is no reference to premises to which the connection is given. Section 56 of the Electricity Act of 2003 reads as under:

"56. Disconnection of supply in default of payment.- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days" notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee-

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

8. Section 56 nowhere indicates the nature of electricity line or refers to any particular premises. It speaks of consumer charge for electricity or any sum other than a charge of electricity, due to a licensee or a generating company in respect of supply, transmission or distribution or wheeling of electricity to him.

9. Apparently, there was unauthorised consumption of electricity so far as the commercial line of the very same appellant and a sum of Rs. 4 lakhs was due from the appellant. After serving several notices, the appellant did not pay the demand charges and without challenging the demand notices which were served much earlier to the disconnection intimation, the appellant has approached the Court challenging the disconnection alone.

10. In the absence of any provision which gives a right to the present appellant to claim that there are two contracts different from one another under which supply of electricity was done to him he being the consumer who is liable to pay the charges towards the consumption of electricity to the licensee company the demand in question falls within the purview of Section 56.

11. For example, if the consumer was altogether different with two different nature of supplies, one being commercial and/or industrial and another being residential or domestic, even if the consumer had some interest in the other supply probably Section 56 would not come to the assistance of the licensee company. For illustration if the consumer who has domestic connection is the Managing Director of a company or Managing partner of a partnership firm and if any amount for supply of electricity is due towards one line then the consumer may be justified in contending that the interest of the consumer being different in two separate entities, the two cannot be clubbed.

12. Here, we are facing a totally opposite situation. Since the consumer though has two separate supplies for two different kinds of supply, he being the same consumer he definitely fits into the character of any person neglecting to pay the amount demanded by the licensee as contemplated in the statute.

13. In that view of the matter and also for want of proper material to base his relief in the writ petition, we are of the opinion that there are no good grounds

made out warranting interference. Accordingly, the appeal is dismissed along with application.

14. It is needless to say that if the consumer/appellant approaches the respondent company for restoration of electricity subject to compliance of all formalities including the payments in accordance with the procedure contemplated, the respondent company would restore the electricity.