
(2007) 09 CAL CK 0079
In the Calcutta High Court
Case No : F.M.A. No. 936 of 2007

West Bengal State Electricity Board and Others	APPELLANT
Vs	
Mehedi Hassan Reza	RESPONDENT

Date of Decision : 12-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 181, 185(2), 43, 46

Citation : AIR 2007 Cal 296 : (2007) 4 CHN 767

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Sumit Panja, for the Appellant; P.K. Drolia and Anirban Mukherjee, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—This mandamus-appeal is at the instance of the respondent in a writ-application under Article 226 of the Constitution of India and is directed against the order dated June 11, 2003 passed by a learned single Judge of this Court by which his lordship disposed of the writ-application filed by the respondent before us by quashing the quotation dated October 3, 2002 being Annexure P-4 to the writ application with further direction upon the appellants to issue fresh quotation to the respondent without demanding any amount towards the cost of the transformer and other sub-station equipments within two weeks from the date of communication of such order.

2. The facts giving rise to filing of the writ-application may be summed up thus:

a) The writ-petitioner with an intention to get electrical connection for running his submersible pump set fitted with a shallow tube well obtained necessary clearance certificate from the Senior Geologist/Geologic al Division-II, Suri, attached to the State Geological Directorate on February 6, 1998.

b) Thereafter temporary electric connection was given to the petitioner after the payment of the amount demanded by the West Bengal State Electricity Board.

The petitioner subsequently applied for permanent connection for effective irrigation of his land as well as the neighbouring lands.

c) As the State Electricity Board took no step for giving permanent connection, he in the past, filed another writ-application alleging inaction on the part of the Board when a learned Judge of this Court disposed of such application by directing the Board to consider such application in accordance with law within a specified period.

d) Pursuant to such order passed by this Court in the past, the Board gave a quotation for depositing a sum of Rs. 61,859/- being the amount including the costs of the transformer. According to the writ-petitioner, such cost of transformer is to be borne by the Board and not by the consumer.

3. The learned single Judge by the order impugned herein has accepted the contention of the writ petitioner and has held that the transformer is a part of the transmission system and as such, the consumer is not obliged to pay the cost of such transformer. In arriving at such conclusion, His Lordship relied upon the two decisions of this Court passed in the year 2000 and 2002 respectively.

4. Being dissatisfied, the Board has come up with the present mandamus-appeal.

5. Mr. Panja, the learned Counsel appearing on behalf of the appellants has at the very outset submitted that the learned single Judge erred in law in relying upon those two decisions based on provisions contained in the Electricity Act of 1910 by totally overlooking the fact that Sections 43 and 46 of the Electricity Act, 2003 have brought about a total change of the earlier position and according to those provisions, the licensee is entitled to take the charge of the transformer from the consumer. In support of such contention, Mr. Panja relies upon the decisions of this Court in the cases of *Sk. Based Ali and Others Vs. W.B.S.E.B. and Others*, and the *Secretary, West Bengal State Electricity Board and Others Vs. Deb Kumar Jash and Another*, . Mr. Panja further submits that in exercise of power conferred u/s 46 read with Section 181 of the Electricity Act, the West Bengal Electricity Regulatory Commission has already made the West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connection) Regulation, 2005 laying down the guidelines for assessing the cost of transformer in this type of a case.

Mr. Panja next contends that during the pendency of this appeal, the West Bengal Legislature has enacted the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 and the Rules framed thereunder and without complying with the provisions contained therein, no electric connection can be given. Mr. Panja points out that the permission relied upon by the writ petitioner annexed to the writ application itself shows that the said certificate had lost its force long ago and thus, in the absence of clearance given under the new Act of 2005 mentioned above, no connection can be given to the writ petitioner. Mr. Panja, therefore, prays for setting aside the order passed by the learned single Judge.

6. The learned advocate appearing on -behalf of the respondent has, on the other hand, supported the order passed by the learned single Judge and has contended that the new enactment passed during the pendency of this appeal cannot guide the fate of his client and the present case should be governed by the law as it stood at the time of passing the order impugned in the writ-application. According to him, the question whether his client has the required permission under the West Bengal Water Resources (Management, Control and Regulation) Act, 2005 is not the subject-matter of the dispute involved in this mandamus-appeal. He, therefore, prays for dismissal of this appeal.

7. Therefore, the questions that fall for determination in this mandamus-appeal are, first, whether the learned single Judge was justified in passing a direction for giving fresh quotation without taking into consideration the cost of transformer and secondly whether in view of the change of law introduced during the pendency of this mandamus appeal, the order impugned in this appeal can be sustained under law.

8. After hearing the learned Counsel for the parties and after going through the materials on record, we find that the provisions contained in Sections 43 and 46 of the Electricity Act, 2003 have been given effect to from June 10, 2003 whereas the learned single Judge passed the order impugned on the very next day, i.e., June 11, 2003. Therefore, on the date of delivery of the judgment, the old Electricity Act of 1910 stood repealed and consequently, the two decisions of this Court based on the Electricity Act, 1910 relied upon by the learned single Judge were no longer a good law. After the coming into operation of the Electricity Act, 2003, if the Court wants to pass any direction for quotation for a connection yet to be given, the same must be in accordance with law as it stands on that day because the law as in stood earlier is inconsistent with the provision of the Act of 2003 and consequently, is not saved by Section 185(2) of the Act of 2003 and therefore, His Lordship committed substantial error of law in passing direction upon the licensee not to include the cost of transformer while giving permanent electric connection to the writ-petitioner by following the provisions of the Electricity Act of 1910 which stood repealed by that time.

9. The other point raised by Mr. Panja is definitely of great importance and substance. After the coming into operation of the West Bengal Groundwater Resources (Management, Control, and Regulation) Act, 2005, and the Rules framed thereunder, if a Writ-Court wants to pass any direction upon the licensee to give permanent connection for the purpose of extraction of water from the underground, the Court must be satisfied that the person claiming such electric connection has complied with the provisions contained in that Act and the Rules framed thereunder. In the absence of compliance of formalities for extraction of water mentioned in the said Act through the electricity, no writ-Court can pass direction upon the licensee to give connection of the electricity for the purpose of extraction of underground water. In this case before us, the writ petitioner cannot get an order of electric connection for such purpose without complying

with the formalities required under the aforesaid Act of 2005 even if he is ready to pay the cost of transformer.

10. We, therefore, set aside the order passed by the learned single Judge and hold that the appellants are entitled to charge the price of the transformer from the respondent before us in accordance with the provisions contained in the West Bengal Electricity Regulatory Commission (Recovery of Expenditure for providing New Connection) Regulation, 2005 and that the connection of electricity can now be given provided the writ petitioner has complied with the requirements of the West Bengal Ground Water Resources (Management, Control and Regulation) Act, 2005 and Rules framed thereunder for extracting water from under-ground.

11. The mandamus-appeal is, thus, allowed to the extent indicated above. In the fact and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

12. I agree.