

(2004) 05 CAL CK 0032

In the Calcutta High Court

Case No : Writ Petition No. 10070 (W) of 2002

Zilt Forms Pvt. Ltd. and Another

APPELLANT

Vs

West Bengal State Electricity Board and Another

RESPONDENT

Date of Decision : 12-05-2004

Acts Referred:

Electricity (Supply) Act, 1948 — Section 26

Citation : (2004) 4 CHN 49

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Tapan Kr. Mitra and S.K. Kundu, for the Appellant; Debasish Chattopadhyay, for the Respondent

Judgement

Soumitra Pal, J.—The petitioner company made an application on 26.8.99 for new industrial electric connection to the West Bengal State Electricity Board (hereinafter referred to as the said Board) along with the requisite fee of Rs. 500/-. Pursuant to such application the respondent No. 2 by letter dated 20.7.2000 being Annexure P-8 to the writ petition, enquired whether the petitioner No. 2 was ready to bear the infrastructural cost as per the rules of the Board to effect the said industrial connection since the existing transformer was unable to cater to the load. Thereafter the respondent No. 2 by letter dated 21.6.2001 being Annexure P-11 to the writ application furnished a quotation for Rs. 1,05,625/- being the cost of industrial service connection charges. It was also intimated that agreement and test report were required to be executed before the commencement of supply of power. The said sum of Rs. 1,05,625/- was paid on 2.7.2001. An agreement between the petitioner No. 1 and the Board was entered into on 11.7.2001 and other formalities were complied with. As the supply of electricity was not effected, the petitioner No. 2 by letter dated 8.10.2001 in the form of reminder requested the respondent No. 2 to expedite the matter regarding supply of electricity. Thereafter, another letter dated 4.3.2000 in the form of reminder was sent to the respondent No. 2. Being unsuccessful the petitioner by letter dated 21.3.2002 demanded justice.

Pursuant to such letter the respondent No. 2 by letter dated 26.4.2002, being Annexure P-16 to the writ petition intimated as follows :

".....Reference to your Advocate's letter dated 21.3.02 on the issue, we like to inform you that necessary steps are being taken to provide you electricity as early as possible".

2. However, as electricity was not provided the petitioner filed the instant writ application. The reliefs which are relevant for adjudication are as follows :

"(a) A writ of and/or order in the nature of mandamus be issued commanding the respondents to grant New Industrial Electric Connection to the petitioners" factory premises within 2 weeks from the date of the order to be passed herein and to proceed in accordance with law.

(b) A writ of and/or order in the nature of mandamus be issued commanding the respondents to pay interest @ 18% per annum on the deposited sum of Rs. 1,05,625A to the petitioner company for the period from 2nd July, 2001 until grant of New Industrial Electric Connection to the petitioners" factory premises and to give credit of the said amount in the first bill to be raised by the respondents upon the petitioner company after grant of such New Electric Connection and to proceed in accordance with law".

3. The writ petitioner also prayed for an interim order which is set out hereunder:

"Interim order directing the respondents, their servants and agents to grant New Industrial Electric Connection to the petitioners" factory premises within 2 weeks from the date of the order pending disposal of the writ petition".

4. Directions were issued for filing the affidavit-in-opposition and the affidavit-in-reply. Affidavits have since been exchanged.

5. Mr. Tapan Kr. Mitra appearing for the petitioner along with Mr. S. K. Kundu submitted he was not praying for an order in terms of prayer (a) as the Board in compliance with the order passed on 6th September, 2002 had provided electricity connection on 2.7.2003. Mr. Mitra, however, prayed for an order in terms of prayer (b) since production in the said factory suffered due to inordinate delay for no valid reason by the Board in providing electricity connection to the new factory. Prayer was made for payment of interest to the petitioner company @ 18% per annum on the sum of Rs. 1,05,625/-for the period from 2.7.2001 that is the date on which the money was deposited for new industrial connection, up to 2.7.2003, the date on which such connection was provided.

6. Mr. Debasish Chattopadhyay, learned Advocate for the respondent relied on the statements contained in paragraphs 15,16,17,18 and 19 of the affidavit-in-opposition in support of his contention. The said affidavit-in-opposition has been affirmed by the respondent No. 2 in the writ petition. Paragraphs 15,16, 17, 18 and 19 of the said affidavit-in-opposition are set out hereinunder :

"15. With reference to paragraphs 16 to 21 of the instant writ application I must

say that the applicant is a member of same family and he is also one of the owner who has also owned another factory under name and style as M/s. Unique Forms Pvt. Ltd. Reckjoani, Police Station Rajarhat which is within 5 kilometers to the proposed factory of M/s. Zilt Forms Pvt Ltd. as stated in the writ application. The said factory of M/s. Unique Forms Pvt. Ltd. had an electric connection under service connection No. RTY/2496 (Industrial) and RTY/2497 (Commercial) which is now lying disconnected since 10.1.1997 for the non-payment of the bills of Rajarhat Group Electric Supply, value of Rs. 1,85,515/- besides other bills of Rs. 70,795/- as per the assessment of slow motion of the meters by the Internal Inspection Team of WBSEB during their visit at the said factory on 4.5.1993. One K. C. Agarwal stated to be one of the owner of the Unique Forms Pvt. Ltd. belongs to the same family who applied for the electric connection for M/s. Zilt Forms Pvt. Ltd.

16. M/s. Unique Forms Pvt. Ltd. filed a suit before the learned Munsiff of the Barasat Court against us to confer payments of outstanding bills as stated above. The order was passed in favour of the Board challenging the same a SLP was filed before the Hon"ble Supreme Court of India and the Hon"ble Supreme Court of India was also pleased to dismiss the said appeal on 5.10.1999 and thereafter my office approached Shri K. C. Agarwal to settle the payments of pending bills of M/s. Unique Forms Pvt. Ltd. before commencement of new connection to M/s. Zilt Forms Pvt. Ltd. Mr. K. C. Agarwal by its letter dated 18th and 19th January, 2002 informed this office that they would pay 50% of outstanding payment on account of M/s. Unique Forms Pvt. Ltd. Xerox copy of the said letter dated 18.1.2002 and 19.1.2002 and along with xerox copy of the order passed by the Hon"ble Supreme Court of India are annexed hereto and marked with the letter R1.

17. I further say that the West Bengal State Electricity Board approached vide the letter No. RHI/Tech/16/3008 dated 15.3.2002 to M/s. Unique Forms Pvt. Ltd. to pay 50% of outstanding dues before commencement of the connection to M/s. Zilt Forms Pvt. Ltd. It was also directed to the M7s. Unique Forms Pvt. Ltd. to pay the rest of the amount in four instalments.

18. I further say that M/s. Unique Forms Pvt. Ltd. vide letter dated 8.4.2002 intimated the Board that they pay only 50% of its outstanding dues and also requested the restoration of the connection of M/s. Unique Forms Pvt. Ltd. which are now lying disconnected.

19. I also say and submit that to avoid for making the outstanding payments of M/s. Unique Forins Pvt. Ltd. the petitioners of same family now applied for a new connection under the name and style of M/s. Zilt Forms Pvt. Ltd."

7. Mr. Chattopadhyay submitted that new connection of electricity to the respondent No. 1 was withheld as the applicant is a member of same family and is also owner of another factory under the name and style as Unique Forms Pvt. Ltd., a company which defaulted in payment of the dues of the Board and the

Board disconnected the supply for such non-payment. It was submitted that the petitioner had applied for a new connection under the name and style of M/s. Zilt Forms Pvt. Ltd. in order to avoid for making outstanding payments of M/s. Unique Forms Pvt. Ltd. Mr. Chattopadhyay submitted that the steps taken by the Board was just and proper and the writ petition should be dismissed.

8. I have heard the learned Advocates for the parties. It is an admitted fact that the petitioner made an application for the supply of electricity, paid the charges, entered into an agreement with the Board, complied with the formalities and as there was delay in providing supply issued letters in the form of reminders for effecting such supply. Ultimately pursuant to an order passed on 6.9.2002 the supply was effected on 2.7.2003. The petitioners having deposited the sum and complied with the formalities, as directed by the Board was entitled to supply of energy within a month. In this regard it is apt to set out the relevant portion of Section 26 of the Electricity (Supply) Act, 1948 which is applicable in the instant case. It is as follows :

"26. Board to have powers and obligations of licensee under Act 9 of 1910.-- Subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 (9 of 1910), and this Act shall be deemed to be the licence of the Board for the purpose of that Act:

* * * * *

Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced".

9. Hence, Clause VI of the schedule of Indian Electricity Act, 1910 applies to the Board in respect of new supply.

10. Relevant portion of Clause VI of the Schedule to the 1910 Act is as set out hereinunder :

"VI. Requisition for supply to owners or occupiers in vicinity.-- (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] requiring 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.

11. Therefore, under the said clause the Board is statutorily bound to supply electricity within one month. In the instant case the Board neither approached

the Electrical Inspector for enlargement of time to provide supply nor was prevented by such events as enumerated in the said clause.

12. Proviso to the said clause is not relevant in the context of the case in hand as the petitioner paid the charges and complied with other formalities demanded by the Board for effecting new supply. The reasons cited by the Board in its affidavit-in-opposition for the delay in effecting supply speaks of reasons other than what is enumerated in the said clause. The reasons which have been put forward by the Board for the delay in providing electricity connection is not tenable. The petitioner No. 1 and the said Unique Forms Pvt. Ltd. are distinct and separate entities. The petitioner No. 1 cannot be made to suffer for the default or laches of the said Unique Forms. Thus, the respondents have deliberately and wilfully delayed the commencement of supply to the petitioner No. 1. The action of the Board in providing supply after 2 years from the date of deposit of the amount is high handed, unjust, arbitrary and illegal. Respondents have not been able to sustain their action with cogent reasons. On the contrary in its affidavit-in-opposition the respondents have tried to justify the said action. The reasons put forward by the respondents in its affidavit-in-opposition for the delay in providing supply cannot be accepted. Since necessary deposit was made on 2.7.2001 and the formalities were complied, the Board should have provided supply within a month as envisaged under the statute. Instead the petitioners were made to suffer for no reason whatsoever.

13. In view of the aforesaid, the respondent No. 1 is directed to pay interest @ 15% per annum on the sum of Rs. 1,05,625/- to the petitioners for the period from 2.8.2001 to 2.7.2003 that is the date on which industrial connection was effected. Further the respondent No. 1 shall pay costs quantified at Rs. 1,700/- to the petitioners. Such interest and costs shall be paid within a period of 4 weeks from the date of communication of the order. The respondent No. 1 is, however, at liberty to recover the loss of revenue which they may incur for such payment of interest and costs from the officers and members of the staff who are responsible for such delay in effecting electric connection. The writ petition is allowed to the above extent.

14. Urgent xerox certified copy of the judgment and order be supplied to the appearing parties, if applied for, on priority basis.