

05.02.2021
Item No.2
Ct no. 16
SG & Saswata

CAN 1 of 2021
in
MAT 73 of 2021

C.E.S.C. Limited & Anr.
-vs-
Asifa Bibi

Mr. Subir Sanyal,
Dr. Madhusudan Saha Ray,
Mr. Debanjan Mukherjee, Advocates
... for the appellants

M/s Bidyut Kumar Halder,
Indranil Halder, Advocates
... for the respondent

Challenge in the present intra-court appeal is to the order dated January 12, 2021 passed by the learned single Judge. Vide impugned Order the writ petition filed by the respondent seeking a direction to the appellants herein for release of domestic electric connection, was allowed.

Learned counsel for the appellants submitted that the respondent/writ petitioner is residing along with her husband in the residential building owned by her father-in-law. There are already four domestic electric connections in the building where she is residing. The electric connection is in the name of the landlord of the premises, which was later on purchased by the father-in-law of the respondent/petitioner. New connection was not released as it was found to be a case of splitting of load. The rejection was conveyed to the respondent/writ petitioner vide communication dated December 5, 2020. The writ petition was filed seeking a direction to the appellants for release of connection, immediately after application was filed.

At the time of hearing, communication regarding rejection of the application of the respondent/writ petitioner was not disclosed by her.

Challenging the order passed by the learned single Judge, the argument raised is that in terms of the West Bengal Electric Regulatory Commission (Recovery of Expenditure for Providing New Connections) Regulations, 2013 (for short 'the Regulations') in case there is any dispute pertaining to splitting of load on the ground of which new electric connection is not released, the remedy is before the Ombudsman. In that case the onus lies on the applicant to prove that the electric connection is not for the purpose of splitting of existing load. The respondent/writ petitioner should have availed of alternative remedy by approaching the Ombudsman instead of filing writ petition in this Court.

Further, the grievance raised is that to clarify the factual aspects raised in the writ petition, time ought to have been granted to the appellant to file affidavit-in-opposition. The matter was taken up for hearing on the first date of hearing and disposed of at the motion stage without affording any opportunity to the appellants to file affidavit-in-opposition.

The learned counsel for the respondent/writ petitioner submitted that Section 43 of the Indian Electricity Act, 2003 provides that in case an application is filed by a person for release of electric connection for any premises being the owner or occupier thereof, the same has to be released by the licensee within a period of one month after receipt thereof. As the application for electric connection was filed on December 2, 2020 and the connection was not released, writ

petition was filed on December 10, 2020. By that time the respondent/writ petitioner had not received the communication regarding rejection of her application. It is the duty cast on the licensee to release electric connection in any premise. There can be different portions for which independent electric connections can be applied for. There are already four electric meters installed in the premises and there was no issue in case fifth meter is also installed. The respondent/writ petitioner at present is residing with her husband and there is no electric connection either in her name or in the name of her husband. They have been getting power supply from other electric connections installed in that premises for which they are made to pay double/triple.

Heard learned counsel for the parties and perused the paper book.

The primary ground raised by the respondent/writ petitioner, who approached this Court seeking a direction to the appellants herein for release of electric connection, is based on Section 43. It lays down that electric connection is to be released by a licensee within one month of filing of application for the purpose.

Admittedly, the respondent/writ petitioner filed an application with the appellants herein on December 2, 2020 and the writ petition was filed in this Court on December 10, 2020. This would mean that the Court was approached eight days after filing of the application, which was totally premature. Further letter dated December 05, 2020, rejecting application for release of new electricity connection must have been received by the petitioner when the writ petition was

taken up for hearing on January 12, 2021, but the petitioner did not apprise the court about the same.

As far as the stand taken by the learned counsel for the appellants regarding splitting of connection and the remedy available to the respondent/writ petitioner, if application for release of new connection is rejected on that ground, we find merit therein. Regulation 14 of the Regulations clearly provides that in case any application is rejected on the ground of splitting of load, the remedy available to an applicant is to file application before the Ombudsman. The onus to prove that the application for new connection is not for the purpose of splitting the load is on such applicant, which may be matter of evidence also in some cases as facts will be in dispute. Instead of availing that remedy the respondent/writ petitioner hurriedly approached this Court without even waiting for one month, the period is available to the licensee for release of connection.

The letter of rejection for release of new electric connection was produced by the appellants herein before the learned single Judge when the writ petition was taken up at the motion stage and was disposed of without affording any opportunity of filing affidavit-in-opposition. The communication clearly established, as is noticed by the learned single Judge that it was said to be a case of splitting of connection, the ground of which the application was rejected.

For reasons mentioned above, we find merit in the present appeal. The same is accordingly allowed. The order passed by the learned single Judge is set aside. The writ petition filed by the respondent/writ petitioner is dismissed

with liberty to her to avail appropriate remedy against rejection of the application.

At this stage learned counsel for the respondent/writ petitioner submitted that the respondent will file application before the Ombudsman within two weeks. As it is a case where domestic electric connection has been applied, direction be issued to the Ombudsman to decide the application within certain specified time.

Learned counsel for the appellants submits that he does not have any objection to the aforesaid prayer being granted.

In case the respondent/writ petitioner files an application before the Ombudsman, the same shall be decided within a period of 6 weeks after receipt thereof.

(Rajesh Bindal, J.)

(Aniruddha Roy, J.)

