

21.01.2021

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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 5301 of 2020

**Biplab Das
Vs.
C.E.S.C. Limited & Anr.**

Mr. Indranil Halder
....For the petitioner.

Mr. Somnath Bose
.... For CESC Ltd.

The petitioner approached the CESC Limited, the licensee for a new connection. The petitioner's case in brief is that the petitioner is staying along with his father a co-sharer of premises No.26/9, Pashupati Bhattacharjee Road, Kolkata – 700 041 (hereinafter referred to as the said premises) and has been enjoying electricity from the meter which stands in the name of the petitioner's father. The petitioner says that the relationship between the father and son so far as the consumption of electricity is concerned has soured resulting in some disputes for which the petitioner wants a new connection. The petitioner says that under Section 43 of the Electricity Act, 2003 (hereinafter referred to as the 2003 Act) the licensee is obliged to grant electricity, but the licensee has refused to do so. The petitioner refers to a letter issued by the licensee on 25th February, 2020 and in particular,

paragraphs 2 and 3 thereof and submits that the only ground on which the petitioner's application has been rejected is under Clause 14 of Regulation 53 (hereinafter referred as the said Regulation). The said regulation has been published in the Kolkata Gazette on 2nd April, 2013 by West Bengal Electricity Regulatory Commission. The petitioner also says that the rejection of petitioner's application apart from being devoid of any merit does not clearly say as to why the petitioner has become disentitled to a new electric connection.

CESC Limited refers to Sections 43 and 2(51) of the 2003 Act to suggest that the definition of premises in Section 2(51) is very clear. The obligation of the licensee is fulfilled the moment the licensee gives a connection to a particular premises as defined under Section 2(51) of the 2003 Act. It is the case of the licensee that in such view of the matter there is no violation of Section 43 of the 2003 Act as alleged by the petitioner. The licensee further refers to Section 22 of the of the Electricity Act, 1910 (hereinafter referred as the Act of 1910) to show the departure in the definition between Section 22 of the 1910 Act and Section 2(51) of the 2003 Act. The licensee then places Regulation 14 to emphasise upon the fact that the application made by the petitioner, according to licensee, is with the intention of splitting load to obtain the benefit of

lower charges. The licensee submits that the petitioner's father is a consumer enjoying electricity. The petitioner admittedly is enjoying electricity while residing at the premises with his father. In the event the petitioner is granted a new connection, then the load already sanctioned in respect of the meter standing in the name of the petitioner's father will be reduced and the same is impermissible under Regulation 14.

The letter of the licensee dated 25th February, 2020 does not give the details as submitted by the licensee in course of hearing. The licensee's plea of alleged splitting of load in the light of Clause 14 of Regulation 53 particularly in respect of a domestic connection needs to be gone into in details as a premises can have only one service connection but there can be several meters installed at the premises from such connection.

In Regulation 14 it is clear that in case of any dispute as to reduction or splitting of load in the event a new connection is sought for, the same has to be settled in the office of the Ombudsman. In the instant case the petitioner is seeking a new low tension meter connection from the existing service connection and not a new service connection.

Considering the nature of objection raised by CESC Limited, the writ Court will not be able to go into

such matters at this stage due to lack of expertise. Even if affidavits are called for, the position will not improve.

In the facts and circumstances as aforesaid, I grant leave to the petitioner to lodge a complaint as against the refusal to grant a new connection by CESC Limited as indicated in the letter dated 25th February, 2020 (at page 13 of the writ petition) to the electricity Ombudsman.

The learned Ombudsman shall consider the matter from all aspects – (1) as to whether the demand made by the petitioner for a new low tension metered connection is hit by the provisions of Clause 14 of Regulation 53 as referred to hereinabove (2) Does the same amount to reduction of load or amount to splitting of load? The learned Ombudsman shall be free to decide on the procedures of hearing but should comply with the principles of natural justice. The learned Ombudsman shall pass a reasoned order on the two issues referred to hereinabove within a period of three months from the date of the petitioner approaching the said Ombudsman after hearing the parties.

The petitioner shall approach the learned Ombudsman within 3rd February, 2021, taking all points required for adjudication of the two issues hereinabove.

It is made clear that I have not gone into the merits of the case except what has been referred to hereinabove and the learned Ombudsman shall give its findings without being influenced in any manner by the instant order.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Arindam Mukherjee, J.)