

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 13504 of 2021

Chandrakala Nayak

Vs.

CESC Limited and another

With

W.P.A. No. 13902 of 2021

Ehtesham Shakil

Vs.

CESC Limited and another

With

W.P.A. No. 14845 of 2021

Gayatri Devi @ Singh

Vs.

CESC Limited and another

For the petitioner

In all the matters : Mr. Bidyut Kr. Halder,
Mr. Indranil Halder

For the CESC Limited

In W.P.A. No. 13504 of 2021 : Ms. Sumouli Sarkar

For the CESC Limited

In W.P.A. No. 13902 of 2021 : Mr. Rajiv Lall

For the CESC Limited

In W.P.A. No. 14845 of 2021 : Mr. Madhusudan Sur

Hearing concluded on : 25.11.2021

Judgment on : 08.12.2021

Sabyasachi Bhattacharyya, J:-

1. Although the matters were not heard analogously, common questions arise for consideration in all the three writ petitions. As such, the matters are being decided by a common order.
2. The petitioners pray for separate, new connections being given to their respective premises in their own names. It is contended that the petitioners, being tenants in respect of their respective premises, applied duly for such separate connections but the CESC Ltd. rejected their applications on the grounds of splitting of load and on technical considerations that allegedly make it extremely dangerous to have more than one source of supply for a particular unit.
3. Learned counsel for the petitioner argues that it is an essential and fundamental right of the petitioners to get electric supply at the premises. Moreover, Section 43 of the Electricity Act, 2003 specifically confers a right on an occupier to get electric supply at the occupied premises.
4. In this context, learned counsel for the petitioner cites two unreported co-ordinate Bench judgments of this Court, one dated July 19, 2017 passed by Harish Tandon, J. in *W.P. 10456 (W) of 2017 [Rama Shankar Pandey vs. CESC Ltd. & Ors.]* and the other dated January 9, 2018 delivered by Debangsu Basak, J. in *W.P. 331 (W) of 2018 [Pravat Mondal vs. CESC Ltd. & Anr.]*.
5. The CESC Ltd., which is the distribution licensee, objects on the ground that, by virtue of such applications, the petitioners are

attempting to split the load of consumption at their respective premises for getting advantage of lower rates; since there are existing connections in the names of the landlords in all the premises, from which the petitioners have already been enjoying electricity. Learned counsel for the petitioner argues that such disputes are to be referred to the Grievance Redressal Officer, then to the Ombudsman in view of amendment to Regulation 14 of the West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connection) Regulations, 2013.

6. Regulation 14, as it stands after the second amendment which has come into force on and from September 15, 2021, clearly provides that any grievance regarding the applicant/new consumer/consumer applying with the intention of splitting of load to obtain the benefit of lower charges or furnishing of wrong/inaccurate/false statements has to be taken up before the Grievance Redressal Officer (GRO). If the applicant is dissatisfied with the order of the GRO or does not receive any order from the GRO within the time specified in the Grievance Redressal Regulations, she/he can approach the Ombudsman for redressal of his grievances as per the provisions of the Grievance Redressal Regulations.
7. Learned counsel appearing for the CESC next cites two Division Bench judgments (also unreported), one passed in *CESC Ltd. & Anr. Vs. Asifa Bibi*, on February 5, 2021 and the other dated August 12, 2021 in *CESC Ltd. & Anr. Vs. Sk. Ansar Ali*, in support of his propositions.

8. The first question which arises is, whether a tenant has an unqualified right to get independent, separate electric meter in her/his own name.
9. The second is, whether the a dispute regarding splitting of load is to be referred to the forums provided under Regulation 14 (as amended till date) of the 2013 Regulations or can be decided by the writ court.
10. The learned Single Judge, in *Pravat Mondal (supra)*, did not lay down any blanket proposition that whenever a tenant applies, she/he has to be given electric supply in consonance with Section 43 of the Electricity Act, 2003, even violating the norms laid down by the governing law and regulations. Moreover, in the said judgment, there arose no question of any objection of the distribution licensee regarding splitting of load or other hazard. Hence, the said judgment is not a precedent relevant in the present context.
11. As far as the order passed by the learned Single Judge in *Rama Shakar Pandey (supra)* is concerned, with utmost respect, I cannot agree with the blanket proposition laid down therein that, merely by virtue of being an occupier as a tenant, an unqualified right to get electric supply is vested on the applicant by virtue of Section 43 of the 2003 Act and that Clause 14 of the 2013 Regulations has no manner of application. On the contrary, Clause 14 was enunciated under the power of delegated legislation conferred on the West Bengal Electricity Regulatory Commission by Section 181 of the 2003 Act. The said clause supplants the provisions of the 2003 Act; thus, the provisions of Section 43 of the Act are circumscribed by Clause 14 of the 2013

Regulations which, in turn, was promulgated by the Commission under the Rule-making authority conferred by Section 181 of the 2003 Act. Since Clause 14 does not distinguish between tenants and other occupiers but is applicable to all applicants, it is squarely applicable to a tenant as well.

12. Even if the proposition, that the bar as to splitting of load does not apply to a tenant, is tested on the anvil of an illustration, there may very well be hypothetical cases in which the tenant and landlord are in collusion, or have a mutual understanding or agreement to share the electric bill equally, in which case both would be benefitted equally by the splitting of load, inasmuch as the shared charges payable by both are lowered than they would otherwise be if the landlord sought to increase the load. In such cases, the fact that the occupier is a tenant, *ipso facto*, does not make it improbable for the applicant to seek splitting of load.
13. Moreover, the ratio laid down in *Rama Shankar Pandey (supra)*, with all humility, is no longer good law in view of the Division Bench judgment dated August 12, 2021 of this court in *CESC Ltd. vs Sk. Ansar Ali*, which comprehensively discusses the law holding the field on the subject and lays down that Section 43 of the 2003 Act is circumscribed, inter alia, by Section 181 of the Act and that there is no repugnancy between Regulation 14 and Section 43. The matter was relegated by the Division Bench to the Ombudsman, who was then empowered to decide such disputes under Regulation 14.

14. The Division Bench, in the said judgment, also referred to a previous Division Bench decision dated February 5, 2021 passed in *CESC Ltd. & Anr. Vs. Asifa Bibi*, which had held in similar lines.
15. Also, both the Division Bench judgments cited by the CESC Ltd. were passed subsequent to the Single Judge decisions relied on by the petitioner in the present case.
16. Moreover, on September 15, 2021, Regulation 14 was amended for the second time, thereby introducing a two-tier hierarchy of forums for challenge in case of allegations of splitting of load, the first being the Grievance Redressal Officer and next the Ombudsman. Hence, in any event, as of today, the said forums are the appropriate authorities to deal with the challenge raised in the present three writ petitions.
17. Not only do the said forums provide an equally efficacious alternative remedy, but it would be more appropriate for a Grievance Redressal Officer or an Ombudsman, who are technically far better equipped than the High Court in matters of splitting of load, to decide the matter than this court.
18. In such view of the matter, WPA No. 13504 of 2021, WPA No. 13902 of 2021 and WPA No. 1485 of 2021 are dismissed as not maintainable, with liberty to the respective petitioners in all the matters to approach the concerned Grievance Redressal Officers on the same issues as raised in the present writ petitions. If so approached, the said Officers shall decide such questions independently in accordance with law, without being unduly influenced on merits by any of the observations made herein.

- 19.** There will be no order as to costs.
- 20.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.
- 21.** Let copies of this order be kept in all the three files separately.

(Sabyasachi Bhattacharyya, J.)