

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

(Appellate Side)

FMA 398 of 2021
With
IA CAN 1 of 2021

(Through Video Conference)

Reserved on: 20.01.2022

Pronounced on: 25.01.2022

CESC Limited

...Appellant

-Vs-

Md. Faisal Majid and Another

...Respondents

Present:-

Mr. Subir Sanyal,
Mr. Om Narayan Rai,
Ms. Sumouli Sarkar, Advocates
... for the Appellant.

Mr. Bidyut Kr. Halder,
Mr. Indranil Halder, Advocates
... for the Respondent No. 1

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this appeal, the Calcutta Electric Supply Corporation has challenged the order of the learned Single Judge dated 05th February, 2021 whereby the W.P. No. 10003 of 2020 has been allowed and a direction has been issued to the appellant to raise a quotation to the

respondent No. 1 (writ petitioner) and subject to the respondent No. 1 paying the cost and expenses as per the quotation and complying with the other formalities, the appellant is to grant connection to the respondent No. 1 within seven days.

2. Submission of learned Counsel for the appellant is that no opportunity was given to the appellant to file the affidavit-in-opposition before the learned Single Judge as the writ petition was disposed of on the first day itself. He has further submitted that the respondent No. 1 is residing in the same flat in which his mother is residing and in that flat there is already a connection in the name of the mother, therefore, the second connection in the same flat will lead to splitting of load which is not permissible.

3. Learned Counsel for the respondent No. 1 has submitted that the respondent No. 1 is residing in a different flat on a different floor, therefore, a separate connection is required.

4. Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that before the learned Single Judge, the appellant had no opportunity to file the affidavit-in-opposition. In CAN 1 of 2021 in paragraph 4 (b), (c) and (d), it has been specifically stated by the appellant that there are three flats on the first floor and there are three meters for three flats and one of them is standing in the name of Shabana Majid, the mother of the respondent No. 1 and that respondent No. 1 is residing in the same flat along with his father and mother. The said flat contains only two rooms, one kitchen and one bathroom, admeasuring 700-750 sq. ft., and that the respondent No. 1 had applied for new connection in the flat in the first floor, whereas

the stand of the respondent before the Court is that he is residing in different flat in different floor. This disputed question of fact as to whether the respondent No. 1 is residing with the mother on the first floor or is residing on the second floor in a separate flat cannot be decided in exercise of the writ jurisdiction. That apart, the order dated 08th October, 2020, which was the subject matter of challenge in the writ petition, clearly states that the premises in question was already provided with supply of electricity connection, therefore, the new connection with the intention of splitting the load to obtain the benefit of lower charges is not permissible. In the writ petition, respondent No. 1 had raised a factual issue contrary to the conclusion in the order dated 08th October, 2020. A perusal of the order of the learned Single Judge reveals that this aspect could not be highlighted before the learned Single Judge for want of affidavit-in-opposition, which resulted in the direction which is questioned before this Court.

5. In such cases, Clause 14 of the West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connections) Regulations, 2013 (for short ‘the Regulations’) provides for remedy of raising the grievance before the Grievance Redressal Officer and thereafter, before the Ombudsman. Amended Regulation 14 of the Regulations reads as under:

“14. Effect of splitting of load:

If any applicant/intending consumer/consumer submits any application for new connection(s) with the intention of splitting the load to obtain the benefit of lower charges or furnishes wrong/inaccurate/false statements, his

application would be liable to be rejected under the provision of the Act, or the regulations made thereunder, and 25% of payments/deposits if already made by him by way of charges for obtaining new connection in terms of these regulations, shall be forfeited by the distribution licensee before the rest of the charges is refunded to him. While rejecting the application the consumer/intending consumer is to be intimated in writing about the ground for rejection. It will be the onus of the applicant to prove that the application for new connection is not for the purpose of splitting the load. For any dispute in this regard the applicant/intending consumer/consumer may lodge his grievances along with all necessary documents before the Grievance Redressal Officer (GRO) of the said Licensee as per provisions made in Grievance Redressal Regulations for redressal. If the affected consumer/intending consumer is not satisfied with the order of the Grievance Redressal Officer or does not receive any order from that Grievance Redressal Officer within the time specified in the Grievance Redressal Regulations he can approach the Ombudsman for redressal of his grievances as per provisions made in the Grievance Redressal Regulations.”

6. The Co-ordinate Bench of his Court in similar circumstances by the order dated 05th February, 2021 passed in MAT 73 of 2021 in the matter of **C.E.S.C. Limited & Anr. Vs. Asifa Bibi**

has duly considered Section 43 of the Indian Electricity Act, 2003 and thereafter, has found that a proper remedy to such an aggrieved person is to approach appropriate forum under Regulation 14 of the Regulations by observing as under:

“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 of 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.”

7. In the present case also application has been rejected on the ground of splitting of load.

8. The same issue again came up in MAT 117 of 2021 in the matter of **CESC Limited and Anr. Vs. Sk. Ansar Ali** and the Division Bench of this Court by order dated 12th August, 2021 referring to the order in the case of **Asifa Bibi (supra)** has set aside

the order of the learned Single Judge and had granted liberty to avail the remedy under Regulation 14 of the Regulations.

9. For the reasons stated above and considering the disputed questions of facts involved in the matter we are of the opinion that the proper remedy available to respondent in the present case is to seek recourse to Regulation 14 of the Regulations. Hence, order of the learned Single Judge issuing a direction to the appellant to grant connection cannot be sustained and is hereby set aside, however, with liberty to the respondent No. 1 to avail the remedy as provided under Regulation 14 of the Regulations.

10. The appeal is accordingly allowed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
25.01.2022

PA(RB)