

M/L. 23.
December 5, 2022.
MNS.

WPA No. 7610 of 2011

CESC Limited and another
Vs.
The Ombudsman and another

Mr. Subir Sanyal,
Mr. Somnath Bose

... for the petitioners/CESC Limited.

None appears for the private respondent when the matter is called for hearing.

Learned counsel for the petitioners files an affidavit-of-service, whereby a notice was sought to be served on the private respondent indicating the next returnable date. However, the envelope sent to the private respondent has returned with the endorsement "left".

Since the private respondent was previously represented and, thereafter, chooses not to appear on any of the occasions when the matter is called for hearing, the matter is taken up *ex parte* in the absence of the respondents.

Learned counsel for the petitioners argues that the Ombudsman, while passing the impugned order dated March 7, 2011, acted palpably without jurisdiction since Section 42(6)

of the Electricity Act, 2003 (2003 Act) does not vest power on the Ombudsman to decide a challenge at the behest of an intending consumer.

It is submitted that the private respondent alleged that the private respondent was seeking a new electricity connection at a premises, upon which the CESC Limited raised a question of nexus between the private respondent and the previous owner, who had a default in respect of payment of electricity charges with regard to the same premises.

It is argued that the definition of “consumer” as given in the 2003 Act does not take into contemplation any intending consumer or applicant, in order to bring the present dispute within the ambit of the Ombudsman’s jurisdiction.

It is further contended that the private respondent was never given any possession in respect of the property, nor has it been shown anywhere in any of the documents produced by the private respondent that such possession was given or that the private respondent has been in possession during the relevant time. That apart, it is contended that the private respondent merely relied on an agreement of sale, but no title was

created by virtue thereof in favour of the private respondent to claim electricity. The clauses of the agreement for sale, it is argued, indicate erringly towards the fact that the same was a sham document for the purpose of enabling electricity connection to be taken at the premises by evading the default left in respect of electricity charges by the erstwhile consumer.

Upon a perusal of the definition of the expression “consumer” as given in Section 2(15) of the 2003 Act, it does not appear that any proposed consumer or applicant for electricity has been included within the fold of the said definition.

Section 42(6), on the other hand, specifically enumerates that any ‘consumer’, who is aggrieved by non redressal of his grievances under sub-section (5) of the said Section, may make a representation for the redressal of his grievances to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

Hence, it appears on the face of it that the Ombudsman could not entertain the challenge as raised by the private respondent, in the capacity of an applicant for electricity connection, within the contemplation of the 2003 Act.

That apart, the private respondent has placed reliance on a purported agreement for sale. It is well-settled and provided in the Transfer of Property Act that an agreement for sale simpliciter does not create any title in a property. As such, it cannot be said by any stretch of imagination that the private respondent has been able to establish, even *prima facie*, a title or present right to the property-in-question.

Moreover, a perusal of the agreement for sale annexed to the writ petition as Annexure P7 at page 46 of the writ petition does not reveal that anything to even *prima facie* indicate that possession was handed over with regard to the premises in favour of the private respondent. Since being an occupant of a premises is a precondition of getting electricity or to invoke the right given in Section 43 of the 2003 Act, there is no scope of granting any relief in favour of the private respondent, as prayed for or otherwise, within the ambit of Section 43 of the 2003 Act.

Thirdly, it is seen from a mere perusal of the impugned order that the Ombudsman has consistently been referring to different Regulations, including the Regulations of 2005, 2007 and that of 2010, without ascertaining the

Regulation applicable at the relevant juncture. As such, the premise on which the Ombudsman proceeded was patently faulty and, as such, the impugned order is tainted by perversity.

In view of the above circumstances, the impugned order of the Ombudsman dated March 7, 2011 cannot be sustained in law.

Accordingly, WPA No. 7610 of 2011 is allowed, thereby setting aside the order of the Ombudsman dated March 7, 2011 in GR Case No. C-131 K of 2010.

However, it is made clear that the allegations levelled by the writ petitioners have not been gone into on merits while deciding the present writ petition and it will be open to all parties to urge their respective contentions on merit before any forum, if otherwise available in law.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)