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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 11505 of 2022

Sombhu Adhikary

-vs.-

The State of West Bengal & Ors.

Mr. Rajib Kumar Basu

...for the petitioner

Mr. Malay Krishna De,

Mr. Biswajit Dutta

...for the State

Dr. Madhusunad Saha Roy

...for the CESC Limited

Learned counsel appearing for the petitioner contends that in view of the petitioner having entered into a registered family arrangement with his erstwhile co-owners, the petitioner has a separate and exclusive right, title and possession in respect of his own portion of the building-in-question.

However, the CESC Limited has refused to give a new electric service connection to the petitioner at his own portion on the ground that there is already an existing service connection at the same premises.

It is contended, by placing reliance on the proviso to sub-section (2) of Section 43 of the Electricity Act, 2003, that no person shall be entitled to demand, or to continue

to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

In the present case, it is contended by learned counsel for the petitioner, in view of the said proviso, the CESC Limited has the discretion to give a separate service connection to the petitioner, subject to the petitioner paying the CESC Limited the price as determined by the Commission.

Hence the blanket refusal of the CESC Limited, it is argued, was *de hors* the law.

Learned counsel appearing for the CESC Limited submits that the right conferred under Section 43 of the 2003 Act is not an unfettered right, but is subject to the various right and liabilities of Distribution Licenses as stipulated in the other provisions of the said Act.

In the present case, it is submitted, the CESC Limited filed a report pursuant to a direction of this Court, where it was specifically indicated that there is no physical plot demarcation and, during inspection, the petitioner was unable to produce any document in support of his occupancy at the said portion exclusively.

It is further mentioned in the report that the CESC Limited may provide a loop meter at the existing meter board in favour of the petitioner upon compliance of all required formalities and payment of necessary charges.

Upon consideration of the submissions of the parties, it is seen on a composite reading of the 2003 Act that Section 43(1) of the 2003 Act is preceded by the phrase "Save as otherwise provided in this Act...". As such, the right conferred under Section 43 is not unfettered and is circumscribed by the other provisions of the said Act. Section 53 of the 2003 Act, as rightly pointed out by learned counsel for the CESC Limited, stipulates provisions relating to safety and electricity supply and confers ample power on the Distribution Licensee to take appropriate steps for eliminating or reducing the risks of injuries of any person or damage to property.

Taking the safety hazards into consideration, no further service connection can be given at the premises occupied by the petitioner.

Moreover, the proviso to sub-section (2) of Section 43 of the 2003 Act is not an independent stand-alone provision but is a natural corollary of the earlier portions of the said section. As such, the proviso does not operate independent of the section itself. Hence, the discretion of the CESC Limited conferred therein, to give several service connections to a single premises upon payment of adequate costs, is subservient to the other provisions of the statute and is circumscribed by Section 53 of the said Act.

In any event, the CESC Limited, fairly enough, has taken the stand that a separate loop meter can be given to the petitioner but the energy has to be drawn for the same from the existing meter board location at the premises.

It is evident from the submissions of the parties that such offer cannot be construed as curtailment of the right conferred to the petitioner under Section 43 of 2003 Act, in view of the possibility of an independent loop meter being given separately to the petitioner, although from the existing service connection.

However, in the event the petitioner faces obstruction from the private respondents in so enjoying electricity from the said loop meter, it will always be open to the petitioner to take due recourse to law, either by approaching the criminal forum or the competent civil forum in that regard.

As such, W.P.A. No. 11505 of 2022 is disposed of by granting liberty to the petitioner to apply for a metered connection to his portion of the premises.

Upon filing of the application by the petitioner, the CESC Limited shall process the same expeditiously in accordance with law, if necessary, by providing a separate loop meter to the petitioner from the existing service connection at the premises.

Alternatively, it will be open to the petitioner and/or the other electricity consumers at the premises to take out an appropriate application(s) for shifting of the entire

location of the meter room, that is, the service connection, upon payment of due costs as assessed by the CESC Limited, if the said shifting is otherwise feasible.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)