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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 12267 of 2019

Arijeet Doss Mullick & Anr.

-vs.-

CESC Limited & Ors.

Mr. Siddhartha Banerjee,

Mr. Rajesh Upadhyay,

Mr. Meghnath Datta,

Mr. J. Routh,

Mr. S. Majumder

...for the petitioners

Mr. Somnath Bose

...for the CESC Limited

Affidavit-in-opposition and affidavit-in-reply filed in
Court today be kept on record.

Learned counsel appearing for the petitioners contends that, within the purview of Section 163 of the Electricity Act, 2003, the licensee has ample power to enter premises and remove fittings or other apparatus of licensee and even with regard to examination and testing electric wires for the use of electricity belonging to the consumer. Learned counsel places specific reliance on Section 163(2)(b) of the 2003 Act for laying stress on the proposition. Learned counsel further submits that not only the licensee (in the present case, the CESC Limited), but also the Central Electricity Authority, which has been defined under Section 2(6), read with Section 70, of the 2003 Act, has power to take such measures.

It is submitted that, in terms of Section 53 of the 2003 Act, the Central Electricity Authority, constituted under Section 70 of the Act, has ample power to take suitable measures for several purposes, including the dangers apprehended by the petitioners in the present case.

Learned counsel for the petitioners, as such, contends that appropriate direction may be given on the CESC Authorities who have the resources to take care of several aspects of the matter, including the apprehension of the petitioners with regard to fire and electricity hazards.

Learned counsel appearing for the Distribution Licensee contends that an inspection has already been held pursuant to the direction of a coordinate Bench of this Court, upon which a report has been submitted by the CESC Limited. Upon such joint inspection, several aspects of the matter were discovered, which have all been highlighted in the report, including the measures to be taken. It is submitted that, as such, there is no further role for the Licensee to play in the matter.

It is also contended that, pursuant to clause 7.2 of Regulation 55 framed by the West Bengal Regulatory Commission, the consumer is responsible for the wiring and other apparatus, which lie beyond the service connection given by the licensee.

Upon considering the submissions of learned counsel for the parties, it is evident that the provisions stipulated in Section 53 of the 2003 Act pertain to safety and electricity supply. The Central Electricity Authority, under the said provision, has been conferred with the power, in consultation with the State Government, to “specify suitable measures” for several purposes, including protecting the public from dangers arising from the generation, transmission or distribution of electricity and for several like purposes.

However, the domain of the Central Electricity Authority cannot be deemed to be extended by virtue of Section 153 to individual electricity connections of consumers, since such a blanket power would negate the authority of the Distribution Licensee and responsibility of the consumers themselves.

The domain of the Central Electricity Authority is, as stipulated, to specify suitable measures of a general nature in respect of the cases mentioned in the said section, and not to take responsibility for each and every individual electricity connection given to all consumers.

Section 163 of the 2003 Act is captioned as “Power for licensee to enter premises and to remove fittings or other apparatus of licensee”. However, as rightly pointed out by learned counsel for the petitioners, sub section (2)(b) thereof clearly empowers the licensee or any person authorised by the licensee so to do, in pursuance of a

special order in this behalf made by an Executive Magistrate and after giving not less than twenty-four hours' notice in writing to the occupier, inter alia, to enter any premises to which electricity is to be supplied by him, for the purpose of examining and testing the electric wires, fittings, works and apparatus for the use of electricity belonging to the consumer.

However, Section 163 of the 2003 Act confers such power and prerogative on the Distribution Licensee to decide as to whether such entry to the premises for the purpose of checking the consumer's portion of the apparatus, is at all necessary. The said section envisages that a licensee or an authorised person may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which electricity is or has been supplied by him.

However, sub section (2) merely provides a rider to the said power of entry by the licensee, that is, by virtue of a special order obtained from the Executive Magistrate and after giving not less than twenty-four hours' notice in writing to the occupier. Hence, it is clear from the language used in Section 163 of the 2003 Act that the said power is vested on, and is the prerogative of, the licensee and the licensee cannot be directed, by issuance of a writ of mandamus at the behest of the consumers or the occupiers of the premises-in-question, to take inspection and/or measures in respect of wires, fittings, works and

apparatus for the use of electricity belonging to the consumer.

As such, in view of the existence of Clause 7.2 of Regulation 55, framed by the West Bengal Electricity Regulatory Commission under the 2003 Act, it cannot be said, on a conjoint reading of Sections 163, 53 and 70 of the 2003 Act, that it is the incumbent duty of the licensee, on the application or request of a customer, to take appropriate measures even in respect of the apparatus for the use of electricity belonging tot the consumer. Since there is no legal right of the consumer/occupier to compel the licensee to take appropriate measures in respect of the apparatus belonging to the consumers, no writ of mandamus can be issued by the writ court under Article 226 of the Constitution of India to that effect.

Moreover, in the present case, an inspection report was filed by the CESC Limited on July 18, 2019 pursuant to a direction by a coordinate Bench of this Court upon joint inspection with the Authorities of the West Bengal Fire and Emergency Services, Kolkata Police and KMC under notice dated June 17, 2019, issued by the Officer-in-Charge, Lalbazar Fire Station, North Kolkata Division, WBF&ES. The said report, although comprised of only one page, is succinct and to-the-point in respect of the repair required to be affected and the nature of danger of the wiring within the portions of the consumer at the relevant premises, that is, 16, Rabindra Sarani, Kolkata 700 001.

Hence, there cannot be any further occasion to direct the CESC Limited and/or the Central Electricity Authority to hold individual inspection/audit in respect of the safety and security and apprehend the imminent hazards in the said premises further.

In such view of the matter, the owners/occupiers, in whatever capacity, cannot shift their own liabilities to the Distribution Licensee on such score.

Hence, W.P.A. No. 12267 of 2019 along with C.A.N. 1 of 2022 are disposed of by granting liberty to the petitioners to approach the competent civil court and/or any other competent authority, in the event the petitioners have a grievance in respect of neglect in duty by the occupants in replacing/shifting the wiring and other electrical installations at the premises.

Further liberty is granted to the petitioners and/or other occupiers, if any, to take appropriate measures in consonance with the indications of the inspection report dated July 18, 2019, which was the result of a joint inspection by several authorities, including the CESC Limited.

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.)