

28th November,
2022
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W.P.A 19617 of 2018

Smt. Anajna Samaddar
Vs.
Calcutta Electric Supply Corporation and others

Mr. Souurav Banerjee
...for the petitioner.

Mr. Om Narayan Rai
Mr. Debanjan Mukherjee
...for the CESC Limited.

Learned counsel for the petitioner argues that the CESC Limited has discriminated against the petitioner without any reasonable basis inasmuch as the petitioner's request for a new individual electricity connection for running the petitioner's shop has been denied on the ground that other shop owners at the same housing complex are enjoying electricity from two block meters.

Learned counsel contends that such enjoyment of electricity from a sub-meter, connected to a common block meter, exposes the petitioner to the peril of disruption of electricity supply due to non-payment by other consumers.

Moreover, the petitioner seeks to increase the load for the purpose of extending his business conducted from the shop room, which is not possible if he enjoys electricity from a sub-meter along with others from a common block meter.

Learned counsel argues that Article 14 of the Constitution of India is patently violated by the CESC Limited inasmuch as the shop owners in a similarly-placed adjacent building are enjoying independent and individual electricity connections, whereas the petitioner is being refused the same.

More importantly, it is argued by the petitioner, the appellate tribunal of the West Bengal Housing Board has been allotted the first floor of the same complex where the petitioner is running his shop.

However, as opposed to the petitioner and the other shop owners, the said appellate tribunal has been allotted an individual and independent electricity connection in the name of its executive engineer.

Learned counsel submits that the distinction sought to be made out by the CESC Limited on the tariff being different for public bodies is not sanctioned by law, inasmuch as Section 2(15) of the Electricity Act, 2003 does not make any such distinction between private individuals and public bodies and/or Government organizations.

Learned counsel appearing for the CESC Limited cites a coordinate Bench judgment of this court in *CESC Limited and another vs. Ombudsman and another* reported at 2022 SCC Online Cal 354.

It is submitted that, under similar circumstances, on the writ petition of the CESC Limited, another shop

owner of the same complex as the present petitioner was refused individual connection on the ground that block meter was the applicable mode of granting electricity in the said premises.

Learned counsel places reliance on the facts narrated by the learned single Judge for strengthening his argument that the factual scenario of the said case was similar to the present.

It is further submitted, by placing reliance on the affidavit-in-opposition, that the adjacent market complex with which the petitioner claims parity, stands on a different footing than the market complex where the petitioner is running his shop.

First, the said adjacent building houses much less number of shop rooms than the complex where the petitioner is running his shop.

Secondly, it is submitted that the shop owners' association of the present complex, where the petitioner's shop is situated, had entered into an agreement with the CESC Limited for providing electricity connection by block meters, whereas, from the inception, the shop owners of the other adjacent building have been enjoying individual connections.

As such, it is submitted that the parity sought to be drawn by the petitioner with the adjacent complex is not available in law.

Learned counsel for the CESC Limited further places reliance on the tariff order of the CESC Limited for the year 2017-2018, a copy of which is handed over in court today.

In serial no. 7 of the same, it has been mentioned that public bodies have a different tariff scheme applicable to them than general consumers.

Since the petitioner falls within the category of a general consumer as opposed to a public body, whereas the tribunal situated on the first floor of the complex is a public body, the distinction made between the two by giving independent electricity connection to the housing board and charging different tariff is justified.

The rate slabs of the two categories of consumers, it is submitted, are entirely different.

Learned counsel for the CESC Limited further contends that the relevant regulation provides that the Distribution Licensee has the discretion of giving electricity supply by way of block meter in case of bustees, market places, etc where several connections are taken in close vicinity.

Hence, the CESC Limited, it is submitted, was justified in insisting upon giving a block meter for technical reasons as well.

A consideration of the submission of the parties indicates that the premise on which the block meter is

being insisted upon by the CESC Limited is Clause 18 of Regulation no. 53 of 2013 of the WBERC.

The said clause provides that in bustees, market places etc., where it may not be possible to segregate one consumer from an adjacent consumer because of existence of a very large number of consumers in a relatively small premises, and where because of multiplicity of the wirings of such a large number of consumers, there may arise fire and safety hazards, the licensee may effect supply of electricity to all the consumers/intending consumers through a suitably located common meter of adequate capacity, to be known as a Block Meter.

In the present case since, in the perception of the CESC Limited, it is not technically feasible, keeping in mind the fire and safety hazards, to give individual electricity connections to each of the shop owners, it cannot be said that there is gross discrimination on the part of the CESC Limited between the petitioner and other equally placed persons.

That apart, as rightly pointed out by learned counsel for the CESC Limited, the parties to the agreement, being the shop owners of the complex where the petitioner is running his shop, are bound by the initial arrangement made between them and the CESC Limited.

Even if the petitioner wants to deviate, it is not feasible to do so, in view of all the other shop owners in

the same complex enjoying electricity from sub-meters, connected to two common block meters.

Inasmuch as the first floor Housing Appellate Tribunal is concerned, the CESC Limited is justified in drawing a distinction between the same and the petitioner on the ground that the former is a public body whereas the petitioner is not.

The same justifies different tariff rates and electricity supply being given by separate arrangements, in the case of the petitioner by a block meter.

Moreover, although under Section 43 of the Electricity Act 2003, the petitioner is entitled as a consumer/intending consumer to get supply of electricity, it is well within the authority of the Distribution Licensee to reasonably distinguish between the petitioner and other consumers on intelligible and reasonable grounds insofar as the mode of giving such connection is concerned.

In the present case, the line of distinction drawn between the petitioner and the adjacent building shop owners as well as the tribunal situated above are sufficiently intelligible and cogent.

Although Section 2 (15) of the 2003 Act does not make any distinction between public bodies and private individuals inasmuch as the expression “consumer” is concerned, the same does not have a bearing in the facts of the present case.

Moreover, this court is bound by the coordinate Bench judgment rendered in *CESC Limited and another Vs. Ombudsman and another* (supra). The facts and circumstances in the said case were similar to the present one.

The respondent no.2 therein was an individual shop owner in the Calcutta Greens Commercial Complex at 1050/2, Survey Park, Kolkata-700075, which is the same complex where the petitioner is running his shop.

The application of the respondent no.2 for individual connection, which had been allowed by the Ombudsman, was set aside by the learned Single Judge.

In the said case, the same argument was made, on which the Court held that the extant regulation, that is, Regulation 18 as mentioned above, does not make a distinction between old and new commercial complexes and applies to both types equally.

In such view of the matter, since the distinction sought to be drawn by the CESC Limited between the petitioner and the others referred to by the petitioner is justified, there is no scope of observing that there has been a violation of Article 14 of the Constitution of India on the party of the CESC Limited.

In any event, since all other shop owners at the premises-in-question are enjoying electricity as per the previous arrangement from sub-meters attached to two block meters, there is no particular reason why the

petitioner, who is situated on a similar footing as the other shop owners vis-à-vis the CESC Limited, should be specially favoured with an individual connection, which will also disrupt the safety and security of the premises inasmuch as fire and electricity hazards are concerned.

As such, there is no scope of interference in the present writ petition.

Accordingly, WPA 19617 of 2018 is dismissed on contest without, however, any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)