

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.O. No. 1954 of 2022

**Mishra Bhawan Tenants' Welfare Association and another
Vs.
CESC Limited and others
With**

**W.P.O. No.1103 of 2021
With
GA 3 of 2022
+
GA 3 of 2022**

For the petitioner	:	Mr. Mainak Bose, Mr. Amitav Ray, Mr. Navneet Misra,
For the State	:	Mr. Debasish Ghosh, Mr. Anirban Ray
Hearing concluded on	:	07.06.2022
Judgment on	:	12.07.2022

Sabyasachi Bhattacharyya, J:-

1. The present two writ petitions have been filed for similar reliefs. W.P.O. No. 1103 of 2021 has been preferred by certain individuals allegedly having interest in the disconnection of electricity in the building situated at Premises No. 156, Rabindra Sarani, Police Station- Jorasanko, Kolkata-700 007.

2. W.P.O. No.1954 of 2022 has been filed by an Association of the Tenants of the said building and its Secretary.
3. Insofar as W.P.O. No.1103 of 2021 is concerned, the *locus standi* of the petitioners to file the writ petition is under challenge by the respondents. At the interlocutory stage, while deciding GA 2 of 2022 on February 14, 2022, it was held *prima facie* by this Court that the petitioners do not have *locus standi* to file the writ petition. However, the question of *locus standi* was kept open to be agitated at the final hearing of the writ petition.
4. The order dated February 14, 2022 reveals that sufficient documents had not been produced by the petitioners to substantiate their *locus standi* to refer the instant writ petition.
5. As per the ratio laid down in *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and others*, reported at (2013) 4 SCC 465 and cited by respondent no.7-landlord, a stranger cannot be permitted to meddle in any proceeding unless he satisfies the authority/court that he falls within the category of 'aggrieved person'. Only a person who has suffered or suffers from legal injury can challenge the act/action/order, etc., in a court of law. It was held that a writ petition under Article 226 of the Constitution of India is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authority and that there must be a judicially enforceable right available for enforcement, on the basis of

which the writ jurisdiction is resorted to. The existence of such right is the foundation of the exercise of the said jurisdiction by the Court.

6. In the present case, the writ petitioners have filed certain documents with their supplementary affidavit.
7. The photocopy of an electricity bill in the name of the petitioner no. 2, for the month of November 2021, annexed to the petitioners' supplementary affidavit, shows zero consumption for the previous six months whereas the disconnection took place after the fire allegedly on October 9, 2021, casting a shadow on the allegation that the petitioners have been residing at the building-in-question.
8. The photocopy of another electricity bill of the month of October, 2021, allegedly in the name of the deceased father of the petitioner no. 1, also shows negligible electricity consumption for the previous six months. Moreover, admittedly, the consumer in whose name the bill has been produced has died. Although a certificate of enlistment issued by the Kolkata Municipal Corporation in the name of the petitioner no. 1 "and others" has also been produced in respect of the disputed property, the same *ipso facto* cannot be held to be proof of the petitioners' settled occupation in respect of such premises, particularly in view of the meagre electricity consumption reflected in the electricity bill.
9. That apart, an electricity bill has also been produced in the name of one Nagindas M Zavery, who is allegedly the grandfather of the petitioner no. 3. However, the bill being in the name of a third party to the writ petition, it cannot be said that the petitioner no. 3 is a

consumer of electricity at the premises or is in settled occupation of the building.

10. Nothing substantial has come on record to vindicate the petitioners' claim of having *locus standi* to invoke the writ jurisdiction of this Court for the disconnection of electricity at the building-in-question.
11. **As such, in view of the petitioners having no *locus standi*, W.P.O. No.1103 of 2021 is dismissed, without going into the merits of the respective cases of the parties.**
12. **Accordingly, all other connected pending applications are hereby disposed of.**
13. Insofar as W.P.O. No.1954 of 2022 is concerned, the Tenants' Association might be arguably interested in the welfare of its members, that is, the tenants residing at the building.
14. However, neither specific particulars of the members of the said Association nor any document to substantiate the claim that the said members or a major portion of them are *bona fide* consumers of electricity in respect of the premises has been furnished.
15. The Association has not been filed the writ petition in representative capacity, nor does it have any authorization to represent the interests of all the *bona fide* consumers and/or a majority of them, who have been enjoying electricity connection at the disputed premises.
16. However, since the writ court, being a court of equity, ought not to be obsessed with technicalities, the matter is taken up on merits to explore whether the consumers at the premises are entitled to a writ of mandamus as sought in the writ petition.

- 17.** The petitioner argues that the disconnection-in-question of electricity, which is an essential service, is contrary to Section 43 of the Electricity Act, 2003 and, thus, illegal and void.
- 18.** It is further contended that the dangerous portion of the building has already been demolished by the agent of the KMC and there cannot be any further embargo to restoring the electricity supply to the building. Moreover, Section 411 of the Kolkata Municipal Corporation Act, 1980, it is submitted is a provision in an independent statute having no manner of connection with the Electricity Act, 2003.
- 19.** The KMC and the CESC operate in different spheres, it is argued, and one of such authorities acting under a particular statute cannot travel beyond such statute and discontinue electricity supply on the perceived violation of a different statute.
- 20.** In the present case, the CESC Limited has clarified its stand that the electricity to the building-in-question was disconnected on intimation by the Kolkata Municipal Corporation, which is the municipal authority having jurisdiction over the building, and that the building was in a dangerous condition and had to be demolished.
- 21.** The CESC Limited has taken a fair stand that in the event the KMC and other authorities are satisfied that the dangerous portion of the building has been removed/demolished and/or the building is now in a proper habitable condition, there is no objection on the part of the CESC Limited to restore the electricity connection thereto.
- 22.** After repeated coaxing, a proper report could be elicited from the KMC in respect of the present condition of the premises. However, the

KMC report does not inspire confidence insofar as the habitability of the building is concerned. Both the landlord-respondent no.7 and the KMC have, rather, taken a stand that the building is still in a dilapidated condition. Although the Tenants' Association has sought to project that the dilapidated portion has been demolished and the building is now fit to be reconnected with electricity, it is the consistent stand of the KMC and the landlord that the building is still in a dangerous condition and it might be unsafe to give electricity connection to the premises.

- 23.** Within the limited scope of the present writ petition, which involves allegations of wrongful disconnection against the CESC Limited and contains a prayer for restoration of electricity connection, it is beyond jurisdiction for the court to scrutinize the action of the KMC in claiming the building to be a dilapidated one.
- 24.** The Court is not equipped with the expertise to override the KMC's stand that, despite partial demolition, the building is still not safe and a proper reconstruction has to be carried out upon a plan being duly sanctioned for such purpose. The CESC Limited is in an equally helpless position insofar as the condition of the building is concerned.
- 25.** The scheme of the Electricity Act, 2003 clearly contemplates and casts a duty on the distribution licensee to look into the safety of giving electricity as well. Keeping such scheme in view, it would be arbitrary to direct the CESC Limited to restore electricity connection to the building, without substantial satisfaction of the concerned

authorities, inasmuch as the present condition of the building is concerned.

26. The relevant provisions with regard to disconnection, in the present context, are provided in the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013 (Regulation No.55/WBERC). In Clause 4.3.1 of the said Regulation, it is provided that the licensee may disconnect the supply of electricity to a consumer if he uses the energy in such a manner as to endanger the licensee's service lines, supply mains, meters and other plants and/or equipments and works of the licensee or uses any appliances or equipments that may similarly endanger the supply line, supply mains, etc., of the licensee.
27. Clause 4.3.4 stipulates that, in emergent circumstances, where any action of a consumer in using the energy supplied may, in the opinion of an officer of the licensee not below the rank of a Sub-Assistant Engineer, cause injury to any person or loss of human life and/or property, the licensee may disconnect supply to that consumer within the notice period as stated in Clause 4.3.2 or *even without any notice*.
28. In the present case, in view of the imminent risk and safety hazards involved due to a portion of the building having already collapsed and in view of a fire hazard having already visited the building, the rigours of prior notice are mitigated by virtue of Clause 4.3.4, read with Clause 4.3.1 of Regulation 55.
29. However, till date, nothing has been brought on record to indicate that the concerned authorities, that is the KMC, the Fire Department,

etc., are satisfied that the causes of hazard have been removed and/or the building has been renovated sufficiently to take care of the fire and safety hazards.

30. In Clause 6.5 of Regulation 55, it is provided that the supply disconnected under Regulations 4.3.1 and 4.3.4 shall be restored by the licensee on receipt of an application from the said consumer confirming the removal of the causes of disconnection with documentary evidence/test report from the authorised licensed electrical contractor, as may be applicable, along with all other approved charges, if any, as has been determined by the Commission. The licensee shall inspect the installation within 48 hours from the date and time of application and restore the connection within next 48 hours if, on inspection, the licensee is satisfied with the action taken by the consumer.
31. The Tenants' Association, however, is a body of people and not a "consumer of electricity" at the dilapidated building.
32. However, in terms of the Clause 6.5 of Regulation 55, there cannot be any impediment to restore the connection subject to the satisfaction of the authorities mentioned therein in respect of the cause of disconnection having been removed.
33. Hence, the purpose of justice would be sub-served if liberty is given to the *bona fide* consumers at the building to take resort to such provision.

34. Thus, instead of prejudging issues and complicating matters unnecessarily, it would only be appropriate if the writ petition is disposed of on such terms.
35. Accordingly, **W.P.O. No.1954 of 2022 is disposed of by granting liberty to the *bona fide* consumers of electricity at premises no. 156, Rabindra Sarani, Kolkata-700 007 to apply before the CESC Authority within the contemplation of Clause 6.5 of Regulation 55, that is, the WBERC (Electricity Supply Code) Regulation, 2013, confirming the removal of the causes of disconnection with documentary evidence/test report from the authorised licensed electrical contractor, as may be applicable, along with all other approved charges, if any, as determined by the Commission.**
36. If such application is made by any, several or all of the consumers at the said building, the CESC Limited shall inspect the installation within 48 hours from the date and time of such application(s) and restore the concerned connection(s) within the next 48 hours if, on inspection, the licensee is satisfied with the action taken by the consumer. It is made clear that, while doing so, the CESC shall also taken into consideration Clause 6.6 of Regulation 55 which stipulates that, if after effecting the disconnection under Regulation 4.0 it is detected subsequently that the occupier or owner of such premise does not have the service in the premises in his name then the CESC Limited shall reconnect the service only after due transfer of the name

as consumer against the service without any prejudice to any provision of the Regulation.

37. It is expected that the CESC Limited keeps proper records of disconnections and reconnections of supply in the above context, within the contemplation of Clause 6.7 of Regulation 55 of 2013. The restoration of connection, if given, shall be subject to the formalities contemplated in law and in Clause 6.0 of Regulation 55 dated August 7, 2013 and its sub-clauses, as indicated above.
38. It is made clear that the respective right, title and contentions of the parties in respect of the disputed property have not been entered into by this Court and it will be open to appropriate authorities/forums/courts of law, if such a question arises, to decide on such right, title and interest independently on its own merits without being influenced in any manner by any of the observations made herein.
39. There will be no order as to costs.
40. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)