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28.11.2023
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 11810 of 2023
with
C.A.N. 2 of 2023

Syed Tamijul Islam & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Arun Naskar
...for the petitioners

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee
...for the WBSEDCL

Mr. Md. Sarwar Jahan,
Mr. Mridul Sasmal,
Mr. Kaustav Roy
...for the respondent no. 8

1. On consent of parties, the main writ petition is taken up for hearing.
2. The petitioners contend that electricity connection has been sought to be given by the West Bengal State Electricity Distribution Company Limited (WBSEDCL) to the private respondent by taking undue advantage of an order of this Court, in contravention of the provisions of Sections 53, 54 and 68 of the Electricity Act, 2003.
3. It is submitted that the safety and security of the public are being endangered by the connection, as proposed to be given to the private respondent.

That apart, under Section 54(1)(b)(i) of the 2003 Act, a licensee shall not transmit or use electricity at a rate exceeding 250 Watts and 100 Volts in any place in which 100 or more persons are ordinarily likely to be assembled. In the present case, it is submitted that a mosque is situated in the locality, where more than 100 people congregate daily to offer prayers. As such, Section 54(1)(b)(i) of the 2003 Act shall be squarely violated if the connection is given to the private respondent.

4. That apart, Section 68 of the 2003 Act provides that overhead lines have to be installed with prior approval of the appropriate government, which has not been done in the present case.

5. Learned counsel appearing for the WBSEDCL submits that the WBSEDCL merely sought to give electricity connection to the private respondent pursuant to the direction of this Court in a previous writ petition at the behest of the private respondent.

6. Learned counsel for the private respondent submits that the said respondent seeks electricity supply not exceeding 11 KVs and, as such, comes within the exception under Section 68(2)(a) of the 2003 Act.

7. Hence, no prior permission from the appropriate government is required.

8. Insofar as Section 54 of the 2003 Act is concerned, it is contended that already existing electricity lines go over the mosque and, as such, the electricity connection sought to be given to the petitioners shall not create any precedent. It is submitted that since the existing infrastructure is already there as others are being supplied over the same area, an exception cannot be made against the private respondent unduly.

9. Insofar as Section 53 of the 2003 Act is concerned, learned counsel for the private respondent submits that the Office Memorandum on safety, annexed at page 15 of C.A.N. 1 of 2003 filed by the private respondent in connection with the writ petition, sufficiently provides for the safety stipulations in that regard, which may be complied with by the WBSedCL.

10. Upon a consideration of the submissions of the parties, it transpires that since the private respondent seeks to limit the electricity supply to 11 KVs, the exception under Section 68(2)(a) of the 2003 Act applies and no prior approval of the appropriate government is required to be taken by the WBSedCL. Hence, the objection taken by the petitioners on such score is ruled out.

11. Insofar as Section 53 of the 2003 Act is concerned, it is the duty of the Distribution

Licensee to ensure that the public is protected from dangers arising from the generation, transmission or distribution of electricity or use of electricity supplied or installation, maintenance or use of any electric line.

12. It is upon the WBSEDCL to eliminate or reduce risks of personal injury in that regard, which definitely shall be complied with by the WBSEDCL in respect of any connection which is given by it. Hence, no special exception will be made if electricity connection is given to the private respondent in that regard.

13. The WBSEDCL, in any event, has to comply with the safety and precautionary measures with regard to supply of electricity.

14. The sticking point boils down to Section 54 of the 2003 Act, which provides in sub-section(1)(b)(i) that electricity cannot be transmitted or given in any place in which 100 or more persons are ordinarily likely to be assembled. Although the private respondent challenges the legality of the possession of the mosque in the area, the legality or illegality of such possession *ipso facto* does not dilute the said provision.

15. However, the said fetter is not an absolute bar in giving electricity connection to any person. Section 54(1)(b) of the 2003 Act provides that

electricity connection cannot be given over 250 Watts or 100 KVs in places where 100 or more persons are ordinarily likely to be assembled, without giving, before commencement of transmission or use of electricity, not less than seven days' notice in writing of the said intention to the Electrical Inspector and to the District Magistrate or the Commissioner of Police, as the case may be, containing particulars of the electrical installations, the nature and the purpose of supply and complying with such provisions of Part XVII of the Act, as may be applicable.

16. Sub-section (2) of the said Section provides that where any difference or dispute arises as to whether the place is or is not one in which 100 or more persons are ordinarily likely to be assembled, the matter is to be referred to the State Government, the decision of which thereon is final.

17. Thus, the issue at hand can be resolved if the Distribution Licensee is directed to comply with Section 54 of the 2003 Act before giving electric connection to the private respondent.

18. However, the argument of the private respondent that other connections have been given over the same area does not hold good ground, since in the event such connections are also illegal, two wrongs do not make a right.

19. Be that as it may, W.P.A. No. 11810 of 2023 along with the connected application, being C.A.N. 2 of 2023, are disposed of by directing the WBSEDCL to comply with the provisions of Section 54(1)(b) of the 2003 Act prior to giving electricity connection to the private respondent and to ensure that the provisions of Section 53 and the extant regulations and guidelines regarding safety and precaution are adhered to by the WBSEDCL.

20. In the event there is any difference or dispute while giving such connection to the private respondent with regard to the fact whether 100 or more persons are ordinarily likely to be assembled in the place, the same shall be referred to the State Government in consonance with Section 54(2) of the 2003 Act.

21. Such exercise shall be concluded by the WBSEDCL at the earliest, preferably within four weeks from date.

22. There will be no order as to costs.

23. 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.