

Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
In the Circuit Bench at Jalpaiguri
Civil Appellate Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Siddhartha Roy Chowdhury

C.O. 8 of 2023

JALPAIGURI DUARS TEA COMPANY LIMITED
Vs.
THE WEST BENGAL STATE ELECTRICITY DISTRIBUTION
COMPANY LIMITED & OTHERS

For the Petitioner	:	Mr. Bikramaditya Ghosh Ms. Supriya Singh
For the W.B.S.E.D.C.L.		Mr. Sudipta Kanta Bhowmick Ms. Dipti Bhowmick
Heard on	:	28.8.2023, 29.8.2023 & 31.8.2023
Judgment on :	:	31.8.2023

The Court:

1. This application under Article 227 of the Constitution of India impeaches the order dated 15.12.2022 passed by learned District Judge, Darjeeling in Misc. Appeal No. 1 of 2022. By the impugned order, learned District Judge, Darjeeling was pleased not to accept the appeal preferred by Jalpaiguri Duars Tea Company Limited challenging the Order No. 1 dated 08.2.2022 passed by the learned Civil Judge, Junior Division, Siliguri in Title (Declaration) Suit No. 50 of 2022.
2. Briefly stated, in order to discharge its obligation to provide electricity to the downtrodden people under the '*Dindayal Upadhyay Gram Jyoti Yojona Scheme*', W.B.S.E.D.C.L. prepared a road map to install poles to take the distribution line over the land of the petitioner / plaintiff to cater electricity to those persons.

3. The plaintiff company voiced objection to W.B.S.E.D.C.L. and approached the learned Trial Court for an order of injunction, restraining the W.B.S.E.D.C.L. to carry out the work ignoring the objection of the plaintiff company. Learned Trial Court refused to grant any *ex parte* order of injunction. Aggrieved plaintiff assailed the order in Misc. Appeal No. 1 of 2022, learned District Judge, after considering the submission of learned advocates representing the respective parties and placing reliance upon judgement of Hon'ble Supreme Court in the case of the *Power Grid Corporation of India Limited vs. Century Textiles and Industries Limited* reported in (2017) 5 SCC 143 was pleased to dismiss the appeal.

4. Mr. Ghosh, learned counsel appearing on behalf of the petitioner / plaintiff makes me go through the judgement of Hon'ble Apex Court in *Power Grid (supra)* that inspired the learned District Judge to dismiss the appeal and submits that the exemption under Section 164 of the West Bengal Electricity Act is extended to licensee who is entrusted to transmit the electricity. W.B.S.E.D.C.L. being the distribution licensee cannot get the benefit of Section 164 of the Indian Electricity Act which is available to W.B.S.E.T.C.L. Learned District Judge, according to Mr. Ghosh, failed to appreciate this point of law and dismissed the appeal.

5. Refuting such contention of Mr. Ghosh, Mr. Bhowmick, learned counsel representing the W.B.S.E.D.C.L. supporting the impugned judgement submits that citizens do have the right to have electricity, it pertains to their constitutional right and the plaintiff company, even not being the owner of the land cannot be allowed to stand in the way and thereby to deny such right.

6. It is submitted by Mr. Bhowmick that W.B.S.E.D.C.L. and W.B.S.E.T.C.L. both are licensees under the Indian Electricity Act and being the distribution licensee W.B.S.E.D.C.L. has the obligation to transmit the electricity to the

consumers. Therefore, there is no reason to hold that exemption given under Section 164 of the Indian Electricity Act should be restricted to W.B.S.E.T.C.L. and cannot be extended to W.B.S.E.D.C.L.

7. Plain reading of Section 164 of the Indian Electricity Act, however, makes it clear that the exemption can be enjoyed by the licensee that is authorized for transmission of Electricity.

Section 164 of Electricity Act enunciates:

“Section 164 - Exercise of powers of Telegraph Authority in certain cases

The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”

8. In support of his contention Mr. Bhowmik relies upon a judgement pronounced by the Hon'ble Division Bench in *M.A.T. 807 of 2023 Pradipta Mukherjee vs. State of West Bengal and Ors.* and makes me go through the same.

9. In my humble opinion, the judgement as relied upon by Mr. Bhowmik does not answer the issue involved in this revisional application.

10. Rule 3 of the Works of Licensees Rules, 2006 enunciates that ;

“3. Licensee to carry out works.- (1) A licensee may –

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix , after considering the representations of the concerned persons ,if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule

(1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.”

11. The rule is eloquent enough to indicate that in case of any objection, the licensee, here in this case, W.B.S.E.D.C.L. is required to approach the District Magistrate to address the issue.

12. Learned District Judge while passing the impugned order did not take into consideration the provision as laid down under the Works of Licensees Rules, 2006 and also failed to appreciate the object and purpose of Section 164 of the Indian Electricity Act and its applicability and thereby committed jurisdictional error while passing the order impugned.

13. Learned District Judge ought to have restrained W.B.S.E.D.C.L. till the time the licensee adopt the proper course of action as laid down under the law and rule made thereunder. W.B.S.E.D.C.L. the licensee is at liberty to take appropriate action according to law as indicated hereinbefore. Till then W.B.S.E.D.C.L. is restrained to draw the electric line or to erect electric poles over the suit property.

14. Therefore, in my humble opinion the order impugned should be set aside which I accordingly do.

15. The revisional application, is thus, disposed of.

(Siddhartha Roy Chowdhury,J)