

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 05.03.2025

DELIVERED ON: 05.03.2025

**CORAM:
THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

**M.A.T. 144 of 2023
With
I.A. No. CAN 1 of 2024
With
I.A. No. CAN 2 of 2024**

**Smt. Anjana Samaddar
Versus
Calcutta Electric Supply Corporation & Ors.**

Appearance:-

Mr. Sourav Banerjee

..... For the Appellant

Mr. Om Narayan Rai, Sr. Adv.

Mr. Debanjan Mukherjee

Mr. Aniruddha Ganguly

.....For the CESC Limited

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

In Re.: I.A. No. CAN 1 of 2024

1. We have heard the learned advocates for the parties.
2. There is delay of 18 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation.
3. Accordingly, I.A. No. CAN 1 of 2024 is allowed and the delay in filing the appeal is condoned.

In Re.: M.A.T. 144 of 2023

4. This intra-Court appeal by the writ petitioner is directed against the order dated 28th November, 2022 in W.P.A. 19617 of 2018. The appellant had filed the writ petition praying for issuance of a writ of mandamus to direct the respondents/CESC Limited to provide new metered electricity connection to the shop room of the appellant being, A-8, Calcutta Greens Commercial Complex (North Wing), 1050/2, Survey Park, Kolkata - 700075. The petitioner also challenged a communication sent to him by the respondents dated 5th December, 2017. The learned writ court after elaborately hearing the parties had dismissed the writ petition. The appellant is aggrieved by the said order and is before us by way of this appeal.

5. Two grounds raised by the appellant are that there is infringement of Article 14 of the Constitution of India inasmuch as the respondents/CESC Limited has acted arbitrarily and discriminatorily by not providing individual electricity connection to the appellant's shop room though such individual connection has been provided to the shop owners in the adjacent market. Thus, it is submitted that the stand taken by the CESC Limited is clearly discriminatory and offends Article 14 of the Constitution of India. To support such contention, reliance has been placed on the decision of the Hon'ble Supreme Court in ***D. K. Yadav Vs. J.M.A. Industries Ltd.*** reported in **(1993) 3 SCC 259**. By referring to the relevant paragraphs of the said decision, it is submitted that the CESC Limited has not acted in a fair or a reasonable manner and the procedure, which has to be adopted by

CESC Limited must satisfy the test of justness, fairness and reasonableness and the stand is clearly unfair, unreasonable and unjust.

6. The second contention, which was raised is that the market complex, where the appellant's shop room is situated is a modern market complex, which has been constructed by the West Bengal Housing Board providing state of the art facilities and the reason given by the CESC Limited for not providing individual metered connection to the appellant's shop room is wholly arbitrary and, therefore, the same is liable to be interfered with.
7. Further, it is submitted that in terms of Section 43 of the Electricity Act, 2003, the appellant is entitled to individual electricity connection to her shop room, which is situated in the market complex. To support such an argument, reliance was placed in the decision of the Hon'ble Supreme Court in the case of **Brihanmumbai Electric Supply and Transport Undertaking Vs. Maharashtra Electricity Regulatory Commission (MERC) & Ors.** reported in **(2015) 2 SCC 438** and it is submitted that in the said case, it was held that the appellant therein was entitled to obtain electricity service connection from Tata Power and that the consumer cannot be called upon to seek for permission from the Brihanmumbai Electric Supply and Transport Undertaking (for brevity, "BEST"), who were having the distribution network in the concerned area.
8. Learned senior counsel appearing for the respondents/CESC Limited submitted that in the affidavit-in-opposition, facts were pointed out and it was submitted that the market complex enjoys the block meter connection and from the block meter, the supply is effected and the manner in which

the supply has been effected has been clearly spelt out in the affidavit in opposition filed in connection with the writ petition.

9. Further, it is submitted that the manner of supply of electricity is at the discretion and decision of the licensee and the consumer has no say in the matter and this is the correct manner in which Section 43 of the Act has to be interpreted.
10. Elaborate reference was made to the affidavit-in-opposition filed to the writ petition as well as the affidavit-in-opposition filed to the supplementary affidavit filed by the appellant/writ petitioner. Further, it is submitted that at the earliest point of time, the respondents had taken a stand that the writ petition is bad for non-joinder of a proper and necessary party, more particularly, the association in whose name, the block meter supply has been effected.
11. Reference was also made to Regulation 18 of West Bengal Electricity Regulatory Commission (Recovery of Expenditure for Providing New Connections) Regulations, 2013 (for brevity, "the said Regulations").
12. Furthermore, it is submitted that the opinion of the expert i.e. CESC Limited/the licensee is always paramount and Courts will not sit in an appeal over such a decision, if it has been pointed out that such decision was taken to ensure safety and security of the residents of any building or complex. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagarik Samity & Ors.** reported in **(2010) 3 SCC 732**.

13. To explain the effect of any Regulation, reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Swedish Match AB & Anr. Vs. Securities & Exchange Board of India & Anr.*** reported in ***(2004) 11 SCC 641.***
14. We have elaborately heard the learned advocates for the parties and carefully considered the materials placed on record. The first issue, which needs to be thrashed out is as to whether the appellant/writ petitioner can plead that there is violation of Article 14 of the Constitution of India; that there was discrimination meted out to the appellant/writ petitioner and, therefore, the decision of the respondent/CESC Limited not to provide individual meter to the appellant's shop room calls for interference.
15. Firstly, it is to be noted that the applicability of Article 14 of the Constitution of India would arise, if it is established that two people, who are equally and similarly placed have been treated in an unequal manner. To examine this aspect, we are required to see the factual position in the instant case, as explained by the CESC Limited.
16. The respondents have explained that the market complex named "Unnayan" cannot be cited as a comparable for claiming individual metered supply. While in the market complex, where the appellant's shop is situated, all consumers except the Executive Engineer, Housing Electrical Division are enjoying electricity through two block meters. Therefore, the general mode of supply was decided to be through block meters in the said market complex.
17. Further, it has been stated that these block meters cater to the needs of 110 beneficiaries through each of these meters. On the other hand, in the

market complex named Unnayan, individual meters have been installed from the inception. Furthermore, the number of shop rooms in the market complex named Calcutta Greens Commercial Complex, where the appellant's shop room is situated consists of more than the number of shop rooms in the market complex named Unnayan and the difference is of at least a 100 shops. Therefore, it is the stand taken by the CESC Limited that the chances of criss-crossing of wiring in Calcutta Greens Commercial Complex is much more than in Unnayan market complex. Therefore, it is clear that both the market complexes are not comparable to each other and the question of application of Article 14 or importing a theory of discrimination would not arise. Consequently, the decision in the case of **D. K. Yadav (supra)** would be of no assistance to the case of the appellant.

18. With regard to the decision in the case of **Brihanmumbai Electric Supply and Transport Undertaking (supra)**, the facts of the case was that the respondent no.3 therein was the consumer, who wanted to switch over from BEST to TPC i.e. from one licensee to another licensee for his electricity requirement. In response to his request, Tata Power Company advised the consumer to approach BEST for its permission to use its distribution network of BEST to enable TPC to supply electricity to the consumer using that network. In the background of these facts, the Hon'ble Supreme Court interpreted Section 43 of the Act and held that the supply cannot be denied. We find the decision to be wholly inapplicable to the facts and circumstances of the instant case.
19. Further, we note from the stand taken by the CESC Limited as to why they have found it not technically feasible to install separate meters in the

market complex, where the appellant's shop room is situated. This has been explained in paragraphs 5(viii)(a) to (j). On going through the relevant paragraphs, we find that a thorough study has been made as regards the technical viability of implementing or complying with the request made by the appellant and it was found that it was technically not feasible and practically impossible and gravely hazardous.

20. At this juncture, it will be relevant to take note of Regulation 18 of the said Regulations, which deals with the Installation of Block Meters in extremely congested places like bustees, markets, etc. The Regulation states that in bustees, markets, 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.
21. Admittedly, the market complex, where the appellant's shop room is situated was assessed in tune with Regulation 18 of the said Regulations and the technical feasibility was assessed and it was found that it was not feasible of providing separate meter connection to each of the shop rooms and, therefore, the connection has to be given as a block meter. In the affidavit-in-opposition filed by CESC Limited to the writ petition as well as to the supplementary affidavit filed by the writ petitioner, the reasons have been set out.

22. The question would be as to how far a Court exercising jurisdiction under Article 226 of the Constitution of India would be able to step into the arena of a technical assessment made by the respondents/CESC Limited. Undoubtedly, the licensee i.e. CESC Limited is a technical body and if in their opinion it is found that it will be hazardous to give individual meter connection to all the shop rooms in the market complex and upon considering all factors, a decision was taken to install a block meter from which not only the writ petitioner but all other owners/occupants of the shop rooms are enjoying electricity connection for all these years, should the Court consider as to whether the decision was a wise decision or otherwise.
23. In ***Secretary and Curator, Victoria Memorial Hall (supra)***, the Hon'ble Supreme Court has referred to the decision of the Constitution Bench of the Hon'ble Supreme Court in ***University of Mysore vs. C. D. Govinda Rao*** reported in ***AIR 1965 SC 491*** and held that normally the Court should be slow to interfere with the opinions expressed by the experts. It would normally be wise and safe for the Courts to leave the decision to the experts, who are more familiar with the problems they face than the Courts generally can be. Therefore, the experts having assessed the situation and taken a decision with regard to the feasibility of installing separate individual meters, the Court will not step into the realm of such technical decision taken by the respondents.
24. Thus, for all the above reasons, we find no ground to interfere with the order impugned passed by the learned Single Bench.

25. In that view of the matter, the appeal fails along with the connected application (I.A. No. CAN 2 of 2024) and the same are dismissed.
26. No costs.
27. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS) J.)

Pallab/KS AR(Ct.)