

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 27867 of 2024

Mukul Banerjee
-versus
The State of West Bengal & Ors.

Mr. Bikramjit Dutta
Mr. Dipankar Bhakta
... For the petitioner

Ms. Sulagna Bhattacharya
Ms. Tuhina Parvin
... For the State

Mr. Debanjan Mukherjee
... For CESC Limited

1. The petitioner is an employee of CESC Limited. He is aggrieved by the manner in which his age has been assessed by the medical board of the authority.

2. Learned advocate for the CESC Limited raises an issue with regard to the maintainability of the writ petition.

3. Reliance has been placed on the judgments delivered by the Court in the matter of **I.B. Enterprise & Ors. v. CESC Ltd. & Ors.** reported in **AIR 2007 Calcutta 288** and in the matter of **Pathik Chandra Biswas v. Calcutta Electric Supply Corporation Limited & Ors.** reported in **2001 SCC OnLine Cal 16: (2001) 1 CHN 474.**

4. The Court consistently held that under Article 226 of the Constitution, the writ petitioner must show that any of his legal or fundamental right is infringed by the action or inaction of the 'State'.

5. The Court held that the respondent authority was discharging the duties cast upon it under the Electricity Act, 2003 and, therefore, it cannot be said that there was any public element in the sale of the property.

6. The Court noted the previous judgments relied upon consistently holding that, CESC discharging duty as licensee under the Electricity Act cannot be said to be a 'State' within the meaning of Article 12 of the Constitution. The Court in I.B Enterprise (supra) took into consideration the judgment in the matter of Pathik Chandra Biswas (supra).

7. In Pathik Chandra Biswas (supra), the Court clearly laid down that internal management of CESC Limited is a private affair and the writ Court cannot pass direction with the same.

8. The petitioner controverts the stand of the CESC Limited by relying on the judgment passed by the Hon'ble Supreme Court in the matter of **Andi Mukta Sadguru Sree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust & Ors. v. V.R. Rudani & Ors.** reported in **(1989) 2 SCC 691: 1989 SCC OnLine SC 176** wherein the Court held that

Article 12 is relevant for the purpose of enforcement of fundamental rights. The words 'any person or authority' used in Article 226 are not to be confined to only statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. What is relevant is the nature of the duty imposed on the body.

9. CESC Limited performs public duty by supplying electricity to the public. The dispute of the petitioner is not relating to any public duty. The dispute is absolutely an internal one between the employer and the employee.

10. CESC Limited is a public limited company and is owned by a business conglomerate. The Government does not have any involvement in the said business. It is an absolute private body. Individual service dispute(s) of an employee of CESC Limited cannot be adjudicated by the writ Court in terms of the decisions passed in the matter of I.B. Enterprise (supra) and Pathik Chandra Biswas (supra).

11. In view of the above, the writ petition cannot be entertained.

12. The writ petition fails and is hereby dismissed.

13. It will be open for the petitioner to approach the competent forum for relief in accordance with law, if so advised.

14. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

15. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Amrita Sinha, J.)