

CALCUTTA ELECTRIC SUPPLY CORPORATION LTD.

A

v.

SH. N.M. BANKA AND ANR.

NOVEMBER 21, 1996

[B.P. JEEVAN REDDY AND S.C. SEN, JJ.]

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*Constitution of India, 1950 :*

*Article 226—Writ petition—Filed without availing statutory remedy—Maintainability—Partnership firm being defaulter in payment of electricity charges—Supply of electricity disconnected—One of the partner individually applying for separate meter for the same premises—Corporation on coming to know the mischief informed the individual member that supply of electricity to him has been kept in abeyance—Partnership firm and the member filing writ petition for direction to Corporation not to disconnect supply of electricity as also to refer disputed Bills to arbitrator—Held, this is a case of gross abuse of process of court—Writ petitioners did not avail of statutory remedy provided under sub-sections(4) and (6) of s.26 of Electricity Act but approached the Court for interim relief and by this process managed to continue to get supply of electricity even though there was a huge mounting default—Under writ jurisdiction Court could not have decided about the correctness or otherwise of the bills—If the consumer was aggrieved he should have approached the Electric Inspector—Court should have declined to intervene in the matter and should have directed the consumer to avail of statutory remedy—High Court should not have allowed the question of disputed bills to linger on for more than five years without disposing of the case on merits—It was also not proper for the Court to direct CESC to supply electricity to defaulter firm by interim orders from time to time—Specific statutory remedy to the consumer should not have been allowed to be bypassed:Electricity Act, 1910—S26(4) and (6).*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14421 of 1996.

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From the Judgment and Order dated 11.2.92 of the Calcutta High Court in Appeal No. Nil/91.

P.P. Rao, Raj Kumar Gupta, H.P. Sharma and Rajesh for the Appellant.

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A Dr. Shankar Ghosh and S.B. Sanyal, A.N. Dawn, Tapash Banerjee,  
S. Dutta and B.K. Satija for the Respondents.

The following Order of the Court was delivered :

B The following order in this case was passed by us on 6th November,  
1996:

"While we propose to give reasons for our Order later, the following  
is the operative and final Order in the Special Leave Petition :

C Leave granted.

The appeal is allowed with the following directions:

(1) Within one month from today, Respondent No.1 - consumer  
shall deposit a sum of Rupees thirty lakhs towards the demand of  
arrears by the appellant-company against him.

D (2) On such deposit being made, the dispute between the parties  
involved in the Transferred case No. 42 of 1996 shall stand referred  
to the Chief Electrical Inspector, Calcutta who shall decide the  
same within two months from the date the dispute is referred to  
him.

E (3) If the amount specified in Direction No.1 is not deposited, it  
shall be open to the appellant-company to recover the arrears due  
to it according to law.

F (4) Pending further orders in the matter, all the properties of the  
respondent are attached herewith.

(5) Respondent No. 1 shall pay the costs of the appellant which  
are estimated at Rupees fifty thousand only.

G The reasons for passing the aforesaid order are as under :

This is a case of gross abuse of process of court. One N.M. Banka  
had applied to CESC Limited which carries on business of generation,  
supply and distribution of electricity in Calcutta and its suburbs for a  
connection of electricity to premises No.11, U.N. Mukherjee Road, Calcut-  
H ta. After completion of inspection, the CESC agreed to supply electricity

to N.M. Banka by letter dated 5th February, 1988 subject to compliance of usual conditions. Some time later, it came to the knowledge of CESC that N.M. Banka was a partner of the firm M/s. Rajkumar Dyeing & Printing Works which was carrying on business at the same premises. The partnership firm was an existing registered consumer from whom a very substantial sum of money was lying due. Moreover, the partnership firm was found drawing electricity far in excess of the sanctioned load 50 H.P. On coming to know that N.M. Banka was a partner of Rajkumar Dyeing & Printing Works, which was a defaulter in payment of electricity charges, the CESC Limited by letter dated 22 September, 1988 informed Banka that supply of electricity to him has been kept in abeyance. Apart from the huge liability of Rajkumar Dyeing & Printing Works, there was also a technical difficulty in giving a separate electric connection to Banka because it was not possible to give two separate electric connections to one particular premises. Existence of two services in the same premises would be hazardous.

On 22nd July, 1988, a writ petition was moved by Rajkumar Dyeing & Printing Works, the partnership firm and also Shri Banka, the partner for a direction in the nature of mandamus commanding CESC and their officers from disconnecting the electricity line of the factory situated at No. 11, U.N. Mukherjee Road, Calcutta. A prayer was also made to refer the disputed bills to the arbitrator as provided in the Indian Electricity Act for adjudication. The allegation was that CESC had issued an inflated bill for the month of June, 1988 and were threatening disconnection of electricity to the appellants if they failed to pay the said bill by 20th July, 1988. It was further prayed that if the electricity line was disconnected, the factory will have to be closed down and about 90 workers will have to be laid off without any fault of the appellants. The writ petition was moved *ex-parte* and a direction was given that the electricity supply will not be disconnected 'till Wednesday next'. On 28th July, 1988, the matter was once again heard *ex-parte* and the interim order not to disconnect the supply was further continued. The matter, thereafter, has come up for hearing from time to time and the interim order has been continued with occasional directions to deposit some money. By this process, this writ petition was kept pending for more than five years. The appellant who was a defaulter when the writ petition was filed continued to get supply of electricity by making occasional payments pursuant to the direction of the Court. The Writ petitioner did not pay the bills submitted in usual course, the arrears kept mounting up and the CESC ultimately disconnected the line. By an

**A** order dated 16th February, 1993, the Court directed the line to be restored and the writ petition was directed to remain heard in part.

**B** It is difficult to understand how this writ petition was allowed to linger on for five years. The court did not and could not possibly come to a finding on the disputed questions of fact. According to CESC, the bills were prepared properly. The appellants did not pay the bills. The total amount of arrears due to the CESC had mounted up to Rs.67,40,948.10 after giving due credit to the payments made by the appellants pursuant to the interim orders passed by the Court from time to time. On behalf of the CESC, very serious allegations have been made about theft of electricity and overloading as a result of which the meter was burnt out several times and non-payment of bills. Section 24 of the Electricity Act gives the right to the supplier to disconnect any electric supply line after giving seven days' notice, if a consumer neglects to pay the charge for energy due from him in respect of supply of energy. In case of dispute or difference about the meter or the correctness of the bill, the consumer may apply to the **D** Electrical Inspector. The Inspector in such a case shall estimate the amount of energy supplied to the consumer. The supplier shall not be at liberty to take off or remove any meter until the dispute has been determined by Electrical Inspector. The writ petitioners did not avail of the statutory remedy provided by sub-sections (4) and (6) of Section 26 but approached **E** the Court for interim relief and by this process, managed to continue to get supply of electricity even though there was a huge mounting default. It is difficult to understand how the Court allowed the question of these disputed bills to linger on for more than five years without disposing of the case on merits. It was also not proper for the Court to direct CESC to supply electricity to a defaulter indefinitely by interim orders passed from **F** time to time. Specific statutory remedy provided by the Indian Electricity Act to the Consumer should not have been allowed to be bypassed.

**G** It has been contended on behalf of the consumer that the second prayer in the writ petition was for referring the matter for arbitration. We fail to see the sense of this prayer. If the consumer was aggrieved by the bills, he should have approached the Electric Inspector straight away. When the Consumer approached the Court, the court should have declined to intervene in the matter and should have directed the consumer to avail of the statutory remedy. In any event, under the writ jurisdiction, the Court **H** could not have decided about the correctness or otherwise of the bills.

Serious allegations were made by CESC about the consumption of electricity beyond the sanctioned load and also of non-payment of valid bills. The allegation is also that when the electricity supply to Rajkumar Dyeing & Printing Works was stopped, a partner, Banka, wanted to get a service line in his own name at the same place to run the printing works. This was obviously a fraudulent move and the CESC rightly refused to grant the second line.

R.P.

Appeal disposed of.