

CONSTITUTIONAL WRIT**Present: The Hon'ble Mr. Justice Syamal Kanti Chakrabarti**

Judgement on : 18.06.2010

W. P. No. 5844(W) of 2008

M/s. Alfa Industries & Anr.

Vs

The C.E.S.C. Limited & Ors.

POINTS

NEW CONNECTION – Petitioners applied for a new electricity connection in the nature of Low Tension Line – Surrender of existing HT line in one big holding whether be treated as a condition precedent to the supply of electricity through LT line in adjoining split up sub-holding- Electricity Act, 2003, S 43

FACTS

The petitioners claim that in June, 2006 they applied for a new electricity connection in the nature of Low Tension Industrial Line to the respondent CESC Limited for their factory premises. On receipt of their application the respondent offered a quotation of Rs. 1,25,791/- which was paid on 12.08.2006 under bill no. MA 06/02460/06/0/1. Since no action was taken thereafter on 12th April, 2007 the petitioners made a representation followed by a demand notice on 14th January, 2008. Moreover, CESC is not absolutely reluctant to extend the supply of electricity through LT line after surrender of the HT line taken by previous owner of holding no. 250/A but they are unable to offer any plausible explanation why and how they have already installed the LT line at different premises to the other small plot holders who purchased portions of the holding no. 250/A, G. T. Road (North) in fragments from the original owner Shree Hanuman Industries. Nevertheless the

respondent authorities did not take any effective step for supply of such electricity for which they have approached this Writ Court seeking necessary remedies.

HELD

Discretionary power of CESC has been exercised in an oblique and discriminatory manner in entertaining the application of other smaller plot holders who purchased small plots from Shree Hanuman Industries in granting LT line to them under different categories like domestic, commercial and industrial. Therefore, it is the legitimate expectation of the present writ petitioner who is on the same footing with all those 5 persons to get supply of electricity through LT line from the supplier in a different holding pending settlement of the claim of Shree Hanuman Industries who is not a party to this writ petition. Para 11

Surrender of existing HT line in one big holding cannot be treated as a condition precedent to the supply of electricity through LT line in adjoining split up sub-holding on the factual matrix of conceding to the demand of some of the adjoining sub-plot holders on grounds of fire protection, black floor etc. It is further held that refusal of CESC in entertaining their prayer even after observance of formalities and deposit of security amount leads to miscarriage of justice. Para 12

Therefore, to prevent such arbitrary action of the CESC authorities the Writ Court should interfere and, therefore, this writ application is disposed of with a direction to the respondents CESC authorities to extend LT supply line to the premises of the writ petitioners. Para 13

For the Petitioners : Mr. P. Ghabbar,
Mr. A. Gupta.

For the C.E.S.C. Ltd. : Mr. Subir Sanyal,
Mr. G. S. Asopa.

CASES CITED

2003(4) CHN 541 (paragraph 52 and 53)
2002(1) CHN 24 (paragraph 15, 17 and 19)
2000(2) CHN 67
AIR 1989 SC 722 (Paragraph 29)

Syamal Kanti Chakrabarti, J.:

1. In the instant writ petition the writ petitioner no. 1 M/s. Alfa Industries has contended that it is a proprietorship concern having its office at 250/A/80, G. T. Road (North) under Malipanchghora P.S. of District Howrah acting through the petitioner no. 2 Mr. Pankaj Sharma as authorised signatory. The petitioners claim that in June, 2006 they applied for a new electricity connection in the nature of Low Tension Industrial Line to the respondent CESC Limited for their factory premises. On receipt of their application the respondent offered a quotation of Rs. 1,25,791/- which was paid on 12.08.2006 under bill no. MA 06/02460/06/0/1. Since no action was taken thereafter on 12th April, 2007 the petitioners made a representation followed by a demand notice on 14th January, 2008. Nevertheless the respondent authorities did not take any effective step for supply of such electricity for which they have approached this Writ Court seeking necessary remedies.

2. The respondent nos. 1 to 5 in their affidavit-in-opposition on the contrary has claimed that the premises no. 250/A/80, G. T. Road (North), Howrah 711 107 is catered from existing high tension supply wherefrom all the occupants of the said premises are getting supply of electricity. The present writ petitioner no. 1 has applied to CESC for 30 KW industrial load

suppressing this fact. Therefore, though the respondents forwarded a provisional estimate and received the same they are unable to supply any low tension electricity in the same premises. In their letter dated 20.02.2008 the respondents have already explained to the petitioners that in view of existing HT supply line no new MVSC supply can be effected within the same premises for technical reasons and as such the petitioner no. 1 was requested to take back the quotation amounts. They have further claimed that at present there are 30 applications from intending consumers for supply of low tension line though they are enjoying electricity supply from existing HT supply line. It is their further claim that CESC has received a letter dated 19.03.2007 from Shree Hanuman Industries, the consumer of HT supply at the said premises to convert the entire mode of supply in the said premises from HT to Lt but till date CESC has not been able to go ahead with the conversion, as it is not made clear to them as to who will take responsibility and who will bear the necessary charges out of so many applicants for such conversion of mode of supply. However, onus is now on these applicants including the petitioner no. 1 to take up the matter further and to see that existing HT supply is surrendered after due compliance of all formalities and new LT supply is introduced in the said premises upon compliance of all further requisite formalities. In fact CESC is willing to take appropriate step after receipt of further information from the said Shree Hanuman Industries and other applicants.

3. In their affidavit-in-reply to such affidavit-in-opposition the writ petitioners have further claimed that the argument advanced by the respondents is not based on actual state of affairs. In fact the said Shree Hanuman Industries was the principal owner of entire premises no. 250/A, G. T. Road (North), Howrah 711 107 and is the sole consumer of HT connection. In course of time the said Shree Hanuman Industries segregated the entire premises into smaller

plots and sold them to intending purchasers. The mother of the petitioner no. 2 is one of such purchasers who purchased a plot out of the said premises no. 250/A, G. T. Road (North) which was mutated under separate holding number 250/A/80, G. T. Road (North), Howrah 7.

4. It is further clarified that all the subsequent purchasers were consuming electricity from the said HT connection in the name of Shree Hanuman Industries. They formed an association being styled as Howrah Shree Hanuman Complex Owners and are paying the bills through such association but it is expensive for a small unit like them to run their business units using high tension line resulting in closure of some small units at the said premises and so it is going to be difficult for the remaining consumers to enjoy electricity from the said HT Line. They have further claimed that after purchase the other smaller units applied to CESC and they got electricity under different holding numbers as given below and annexed in Annexure 7:

Name of consumer	Holding No.	Consumer No.	Nature of supply
GAR Steel Corp.	250/A/99, G. T. Road, Howrah – 711 107.	62036015056	Domestic
Anil Kumar Jaiswal	250/A/99, G. T. Road (Liluah), Howrah - 711 204	62036015074	Industrial
Ajay Jhunjhunwala	250/A/101, G. T. Road (Liluah), Howrah – 711 204	62036015092	Industrial
Santosh Kumar Agarwal	250/A/31, G. T. Road (Liluah), Howrah – 711	62036015109	Domestic

	202		
Deepak Agarwal	250/A/21, G. T. Road (Liluah), Howrah – 711 204	62036015136	Commercial
Munaka Devi Shaw	250/A/102, G. T. Road (Liluah), Howrah - 711 204	62036015163	Domestic
Sitaram Agarwal	250/A/6, G. T. Road (Liluah), Howrah – 711 107	62036095039	Domestic

5. The petitioners have also filed a copy of their tax receipts paid to Bally Municipality (Annexure P-5) showing that their premises is identified as a separate holding being no. 250/A/80 situating within ward no. 20 on G. T. Road. Therefore, the CESC is discriminating in granting some of the smaller plot holders Low Tension line of various kinds for different purposes like domestic, industrial and commercial and in case of the present writ petitioner they are refusing to extend the same benefit on different pretext though they have complied with all formalities.
6. Learned lawyer for the writ petitioners have also drawn my attention to the principles laid down in 2003(4) CHN 541 (paragraph 52 and 53) in support of their contention. The ratio in the said case is claimed to be in his favour for supply of separate electric connection.
7. Learned lawyer for the respondents on the contrary has contended that they have discharged their legal obligation in extending HT supply line to Shree Hanuman Industries, original owner of holding no. 250/A in terms of Section 43 of the Electricity Act. Since at the time of

first supply the original owner has conceded to the demand of HT line subsequently they cannot move for reduction of the supply to LT line. Citing the rulings reported in 2002(1) CHN 24 (paragraph 15, 17 and 19) learned lawyer for the respondents have further claimed that CESC cannot be compelled to supply LT line in the same premises where HT line is existing because of technical constraints. For the convenience of the present owners of the subplots they may at best apply for submeter to assess their individual consumption instead of paying through their association. He has also relied upon the principle laid down in 2000(2) CHN 67 and further claimed that under Rule 59(2) of the Electricity Rules it is the discretion of the CESC to decide whether any LT line or HT line will be installed. In AIR 1989 SC 722 (Paragraph 29) also it has been set at rest that the manner of supply should be decided by the supplier keeping in view the fire hazards and chance of black floor etc.

8. Learned lawyer for the petitioner has, however, refuted such argument advanced and claimed that the aforesaid principles were laid down under the old Act which has now been repealed and CESC now is not able to produce any rule framed after enforcement of the new Act of 2003. Moreover, if they extend the facilities to some of the intending applicants who are on the same footing they cannot refuse to entertain the prayer of the petitioner on grounds of technical constraints which is equally applicable to them.
9. Having heard learned counsels for both the parties and on perusal of their averments and other materials on record I find that CESC is not absolutely reluctant to extend the supply of electricity through LT line after surrender of the HT line taken by previous owner of holding no. 250/A but they are unable to offer any plausible explanation why and how they have already installed the LT line at different premises to the other small plot holders who purchased portions of the holding no. 250/A, G. T. Road (North) in fragments from the

original owner Shree Hanuman Industries. I also fail to understand the import and implication of the respondents with regard to paragraph 3(d) and 3(e) of their affidavit-in-opposition which runs as under:

“3(d) - CESC has received a letter dated 19.03.2007 from Shree Hanuman Industries the consumer of HT supply at the said premises to convert the entire mode of supply in the said premises from HT to LT but till date CESC has not been able to go ahead with the conversion, as it is not made clear to CESC as to who will take responsibility and who will bear the necessary charges out of so may applicants, for such conversion of mode of supply.

*3(e) – CESC till now has not received any positive note in this regard and/or assurance and/or firm decision of conversion either from the existing HT supply holder or from other applications. Although CESC has categorically intimated to all the applicants that so long HT supply is existing in the said premises their application for new LT service will not be entertained. Now onus is on the applicants including the petitioner no. 1 to take up the matter further and see that existing HT supply is surrendered after due compliance of all formalities and new LT supply is introduced in the said premises upon compliance of all further requisite formalities. CESC will take appropriate step after receipt of further information from the said Shree Hanuman Industries and other applications.
.....”*

10. From their own admission it appears that they received a proposal from Shree Hanuamn Industries, the original owner of holding no. 250/A, G. T. Road (North) for conversion of the entire mode of supply in the said premises from HT to LT three years ago. CESC is apprehensive of their loss because they are yet to ascertain who will take the responsibility and who will bear the necessary charges out of so many applicants for such conversion of the mode of supply. But surprisingly the respondents are unable to place on record any such

demand ever made by them either to Shree Hanuman Industries or to 30 applicants for payment of additional expenses for such conversion either by Shree Hanuman Industries or by any other 30 applicants including the present writ petitioner. Therefore, their apprehension is not based on any tangible ground and unless they claim anything from the intending applicants or from the existing consumer of premises no. 150/A, G. T. Road (North) it cannot be accepted as a valid ground of refusal of the claim of the writ petitioner without any valid demand or refusal of such demand. Rather their long silence indicates their reluctance to solve the problem.

11. I also find much substance in the contention of the learned lawyer for the writ petitioners that the discretionary power of CESC has been exercised in an oblique and discriminatory manner in entertaining the application of other smaller plot holders who purchased small plots from Shree Hanuman Industries in granting LT line to them under different categories like domestic, commercial and industrial as indicated in paragraph 4 above. Therefore, it is the legitimate expectation of the present writ petitioner who is on the same footing with all those 5 persons to get supply of electricity through LT line from the supplier in a different holding pending settlement of the claim of Shree Hanuman Industries who is not a party to this writ petition. Their presence is not necessary because the prayer has been made in respect of holding no. 250/A/80, G. T. Road (North) and not at holding no. 250/A, G. T. Road (North).
12. Therefore, I hold that surrender of existing HT line in one big holding cannot be treated as a condition precedent to the supply of electricity through LT line in adjoining split up sub-holding on the factual matrix of conceding to the demand of some of the adjoining sub-plot holders on grounds of fire protection, black floor etc. I further hold that to prevent miscarriage of justice on account of discriminatory treatment to the writ petitioners who are

on the same footing with other sub-plot holders of premises no. 250/A, G. T. Road (North) in the matter of supply of electricity through LT line. It is further held that refusal of CESC in entertaining their prayer even after observance of formalities and deposit of security amount leads to miscarriage of justice.

13. Therefore, to prevent such arbitrary action of the CESC authorities the Writ Court should interfere and, therefore, I dispose of this writ application with direction to the respondents CESC authorities to extend LT supply line to the premises of the writ petitioners, i.e., 250/A/80 G. T. Road (North) Howrah which is a separate holding after mutation following transfer of a portion of holding no. 250/A, G. T. Road (North) where the present HT line is existing within one month from the date of receipt of this order subject to compliance of such other formalities as would be required by them and to be complied with by the writ petitioners in the same manner as was done in the case of all other five sub plot holders mentioned in paragraph 4 above.
14. However, I make no order as to costs.
15. Urgent photostat copy of this order, if applied for, be given to all the parties upon compliance of all necessary formalities.

(Syamal Kanti Chakrabarti, J.)