

Constitutional Writ

Present:

The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on: August 23, 2010.

W.P.No.11221 (W) of 2010

Haripada Maity

v.

The State of West Bengal & Ors.

Points:

Termination of Contract- Termination of contract whether proper when electricity disconnected by a private person and not by the Licensee in accordance with law – West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2007- Reg 4.6.1

Facts:

The petitioner questioned the order of the Station Manager, Nanda Kumar Gr E/Supply of the West Bengal State Electricity Distribution Company Limited, wherein he informed the petition that his Service Connection has been disconnected as per Regulation 4.6.1 of the WBERC and meter will be removed.

Held:

It is not the case here that power supply to the petitioner remained disconnected continuously for a period of one hundred and eighty days after the disconnection was effected in compliance with any provision of the Electricity Act, 2003 or any Regulations made thereunder. Hence the Station Manager was not competent to issue the order terminating the agreement between the parties and stating that steps for removal of the meter would be taken. The order is completely without jurisdiction. Para 6

Mr. Arjun Roy Mukherjee and Mr. Jaydeep Acharya, advocates, for the petitioner.

Mr. Subrata Mukherjee, advocate, for the State. Mr. Srijan Nayek, advocate, for WBSEDCL.

The Court: The petitioner in this art. 226 petition dated May 19, 2010 is questioning the order of the Station Manager, Nanda Kumar Gr E/Supply of the West Bengal State Electricity Distribution Company Limited, a licensee under the Electricity Act, 2003, dated April 19, 2010 (at p. 32).

2. Relevant parts of the order are quoted below:

“This is to inform you that your Service Connection bearing Service Connection No:NDK/D/2253, Consumer No: N550232 has been disconnected on 27.9.2007.

Your Service Connection was disconnected more than 180 days. As per Regulation 4.6.1 of the WBERC your service connection has been Deemed.

Our technical staff attend for removing the Meter but they could not remove the meter due to looked your premises.

Further our technical staff shall be attend on 4.6.10 for remove the Meter and you are also requested to open your premises positively.

Your co-operation will be highly satisfied.

Thanking you.”

3. The petitioner’s case is this. His neighbour disconnected supply of electricity to his premises. He requested the licensee to reconnect the supply. Since nothing was done, he initiated proceedings before the District Consumer Disputes Redressal Forum at Purba Medinipur. By an order dated September 12, 2008 the Forum directed the licensee to reconnect his supply

within the time mentioned therein. Since the licensee did not obey the order, he took steps for its execution. At such stage the Station Manager issued the impugned order.

4. Mr. Mukherjee, counsel for the petitioner, submits that the Station Manager has acted without jurisdiction, because the provisions of reg. 4.6.1 of the West Bengal Electricity Regulatory Commission(Electricity Supply Code) Regulations, 2007 have no manner of application to the case. Mr. Nayek, counsel for the licensee, finds little to say. His only submission is that for undisclosed reason the petitioner did not take necessary steps for execution of the order of the Forum. He has said that this Court should direct the petitioner to initiate the execution proceedings within a specified time.

5. Regulation 4.6.1 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2007 is quoted below:

“4.6.1 If the power supply to any consumer remains disconnected continuously for a period of one hundred and eighty days where the disconnection has been effected in compliance with any of the provisions of the Act or Regulations, the agreement of the licensee with the consumer for supply of electricity shall be deemed to have been terminated with consequential effect on expiry of the said period of one hundred and eighty days. This will be without prejudice to such other action or the claim that may arise from the disconnection of supply or related issues therefor. On termination of agreement, the licensee shall have the right to remove the service line and other installations through which electricity is supplied to the consumer.”

6. It is not the case here that power supply to the petitioner remained disconnected continuously for a period of one hundred and eighty days after the disconnection was effected in compliance with any provision of the

Electricity Act, 2003 or any Regulations made thereunder. Hence the Station Manager was not competent to issue the order terminating the agreement between the parties and stating that steps for removal of the meter would be taken. The order is completely without jurisdiction.

7. I do not find any reason to make an order directing the petitioner to take steps for execution of the order of the Forum within a specified time. An order to that effect will amount to compelling the petitioner to execute the order curtailing his right to execute it according to his convenience. Power under art.226 is not to be exercised for curtailing any legal right of a party to the petition.

8. For these reasons, I allow the petition and set aside the impugned order dated April 19, 2010. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)

