

SUPREME COURT OF INDIA

Sri Chandu Khamaru

Vs.

Nayan Malik & Ors.

C.A.No.7572 of 2011

(R.V. Raveendran and A.K.Patnaik,JJ.,)

02.09.2011

JUDGMENT

A.K.Patnaik,J.,

SLP (Civil)No.15332 of 2008

1. Delay condoned in filing rejoinder affidavit. Leave granted.
2. This is an appeal by way of special leave against the impugned judgment and order dated 09.05.2008 of the Calcutta High Court in MAT No.514 of 2006.
3. The facts briefly are that the appellant owns a house in Dag No.408, Khatiyan No.1212, Mauja Panchpara P.S. Sankrail, District Howrah, West Bengal. The house of the appellant was not being supplied with electricity whereas the house located on Dag No.409, Khatiyan No.1212, was being supplied with electricity by the Calcutta Electricity Board Supply Corporation Ltd. (hereinafter referred to as 'the distribution licensee'). The appellant approached the distribution licensee for supply of electricity but when the distribution licensee did not give an electricity connection for his house, he filed Writ Petition No.18220 of 2004 in the Calcutta High Court and by order dated 23.09.2004, learned Single Judge of the High Court disposed of the Writ Petition by directing the distribution licensee to effect supply of electricity to the house of the appellant within six weeks from the date of compliance of all the formalities by the appellant. Pursuant to the order dated 23.09.2004, the distribution licensee gave an electric connection and started supplying electricity to the house of the appellant.
4. On 10.01.2005, however, the respondent Nos. 1 to 3 filed Writ Petition No.345 of 2005 claiming that they were owners of the house situated on Dag Nos.406, 407 and 409, Khatiyan No.1212, Mouza-Panchpara, P.S. Sankrail, District, Howrah. Respondent Nos. 1 to 3 stated in the Writ Petition that the distribution licensee has provided electricity to the house of the appellant by an electric line taken through a passage located on Dag Nos.406, 407 and 409 which belongs to them and not the appellant. In this Writ Petition, respondent Nos. 1 to 3

prayed inter alia for a writ prohibiting the distribution licensee to give electric connection in favour of the appellant through the passage situated on Dag Nos.406, 407 and 409. By order dated 13.02.2006, the learned Single Judge of the High Court allowed the Writ Petition and directed the distribution licensee to disconnect the supply of electricity given to the appellant for using the land (Dag Nos.406, 407 and 409). The reason given by the learned Single Judge in order dated 13.02.2006 is that the appellant was not entitled to get supply through the land in Dag Nos.406, 407 and 409 until he established his right over the land in the civil court.

5. Aggrieved, the appellant filed an appeal being MAT No.514 of 2006 before the Division Bench of the Calcutta High Court but by the impugned order dated 09.05.2008, the Division Bench dismissed the appeal. The Division Bench took note of the fact that Civil Suit No.83 of 2004 filed by the appellant in the Court of Civil Judge (Junior Division), Howrah, in respect of the land was pending. The Division Bench held in the impugned order that until the private dispute between the appellant and respondent Nos. 1 to 3 was resolved in the civil court, the distribution licensee could not supply electricity to the house of the appellant through the disputed land.

6. Sub-section (1) of Section 42 and sub-section (1) of Section 43 of the Electricity Act, 2003 are quoted hereinbelow:

"42. Duties of distribution licensees and open access-(1) It shall be the duty of a distribution licensee to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act." "43. Duty to supply on request-(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply"

7. It will be clear from sub-section (1) of Section 42 that every distribution licensee has a duty to develop and maintain an efficient co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act. Sub-section (1) of Section 43 provides that every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply. These provisions in the Electricity Act, 2003 make it amply clear that a distribution licensee has a statutory duty to supply electricity to an owner or occupier of any premises located in the area of supply of electricity of the distribution licensee, if such owner or occupier of the premises applies for it, and correspondingly every owner or occupier of any premises has a statutory right to apply for and obtain such electric supply from the distribution licensee.

8. The Electricity Act, 2003 has also made provisions to enable the distribution licensee to carry out works for the purpose of supplying electricity to the owners or the occupiers of premises in his area of supply. Section 67 of the Electricity Act, 2003 is quoted hereinbelow:

"67. Provision as to opening up of streets, railways, etc.- (1) A licensee may, from time-to-time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as-

- (a) to open and break up the soil and pavement of any street, railway or tram- way;
 - (b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
 - (c) to alter the position of any line or works or pipes, other than a main sewer pipe;
 - (d) to lay down and place electric lines, electrical plant and other works;
 - (e) to repair, alter or remove the same;
 - (f) to do all other acts necessary for transmission or supply of electricity.
- (2) The Appropriate Government may, by rules made by it in this behalf, specify,-
- (a) the cases and circumstances in which the consent in writing of the appropriate Government, local authority owner or occupier, as the case may be, shall be required for carrying out works;
 - (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;
 - (c) the nature and period of notice to be given by the licensee before carrying out works;
 - (d) the procedure and manner of consideration of objections and suggestions received in accordance with the notice referred to in clause (c);
 - (e) the determination and payment of compensation or rent to the persons affected by works under this section;
 - (f) the repairs and works to be carried out when emergency exists;
 - (g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;
 - (h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;

(i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;

(j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;

(k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;

(l) the procedure for undertaking works which are not reparable by the Appropriate Government, licensee or local authority;

(m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc;

(n) the manner of restoration of property affected by such works and maintenance thereof;

(o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and

(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) Where any difference or dispute including amount of compensation under sub-section (3) arises under this section, the matter shall be determined by the Appropriate Commission.

(5) The Appropriate Commission, while determining any difference of dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section."

9. Thus, sub-section(1) of Section 67 of the Electricity Act, 2003 provides that the licensee may, from time to time, but subject always to the terms and conditions of his licensee, within the area of supply carry out the works mentioned in clauses (a) to (f) therein. It is provided in clause (d) of sub-section (1) of Section 67 that the licensee may lay down and place electric lines, electrical plant and other works. Sub-section (2) of Section 67 of the Electricity Act, 2003 further provides that the appropriate Government may, by rules made by it in that behalf, specify the various matters mentioned in clauses (a) to (p) thereof. Under clause (a)

of sub-section (2) of Section 67, the appropriate Government may, by rules, specify the cases and circumstances in which the consent in writing of the appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works. Under clause (b) of sub-section (2) of Section 67, the appropriate Government may, by rules, specify the authority which may grant permission in the circumstances where the owner or the occupier objects to the carrying out of works.

10. We may now apply the aforesaid provisions of Electricity Act, 2003 to the facts of the present case. The appellant has a statutory right to apply for and obtain supply of electricity from the distribution licensee and the distribution licensee has a corresponding statutory obligation to supply electricity to the appellant. Respondent Nos. 1 to 3 also do not object to the supply of electricity by the distribution licensee to the appellant as it will be clear from the averments made in writ petition No.345 of 2005 filed by them before the High Court but they object to the line for supply of electricity being drawn through the passage in Dag Nos.406, 407 and 409 which they claim to be theirs. The further grievance of the respondent Nos.1, 2 and 3 is that they were not made parties in the earlier Writ Petition No.18220 of 2004 filed by the appellant in which the High Court directed the distribution licensee to effect supply of electricity to the house of the appellant. The case of the appellant, on the other hand, is that this passage is not a private passage of respondent Nos. 1 to 3 but is a common passage and therefore an electric line can be drawn through this common passage. This dispute will have to be resolved in Civil Suit No.83 of 2004 pending in the Court of Civil Judge (Junior Division), Howrah, or in any other suit, but pending resolution of this dispute between the parties, the appellant cannot be denied supply of electricity to his house.

11. We, therefore, set aside the order of the learned Single Judge as well as the impugned order of the Division Bench and dispose of the Writ Petition of respondent nos.1 to 3 with the direction that the distribution licensee will find out whether there is any other way in which electric line can be drawn for supply of electricity to the house of the appellant, other than the disputed passage in Dag Nos.406, 407 and 409. If there is no other way to supply electricity to the house of the appellant, the distribution licensee will follow the provisions of sub-section (2) of Section 67 of the Electricity Act, 2003 for carrying out the work for supply of electricity to the house of the appellant. This exercise will be completed within a period of six months from today and till the supply of electricity to the house of the appellant is effected through some other way, supply of electricity to the house of the appellant will not be disconnected. The appeal is allowed to the extent indicated in this judgment. No costs.