

i.B. Enterprise and ors. Vs. Cesc Ltd. and ors.

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Court : Kolkata

Decided On : Aug-17-2007

Reported in : AIR2007Cal288

Judge : Bhaskar Bhattacharya and ;Rudrendra Nath Banerjee, JJ.

Acts : [Electricity Act, 2003](#); ;[Constitution of India](#) - Articles 12, 14 and 226

Appeal No. : G.A. No. 1969 of 2007, A.P.O.T. No. 361 of 2007 and W.P. No. 692 of 2007

Appellant : i.B. Enterprise and ors.

Respondent : Cesc Ltd. and ors.

Advocate for Def. : S. Pal, ;V. Meharia, ;S. Bhattacharya, ;A. Mitra, ;J. Banerjee, ;S. Talukdar, ;H. Chakraborty, ;D. Manna and ;A. Chakraborty, Advs.

Advocate for Pet/Ap. : Jishnu Chowdhury, ;S.S. Bose and ;A. Sarkar, Advs.

Disposition : Appeal dismissed

Judgement :

Bhaskar Bhattacharya, J.

1. This-mandamus-appeal is at the instance of an unsuccessful writ-petitioner and is directed against the order dated June 28, 2007 passed by a learned Single

Judge of this Court by which His Lordship dismissed the writ-application filed by the appellant on the ground that the same was not maintainable.

2. In the writ-application, the writ-petitioner, a bidder participating in the process of tender issued by the CESC Ltd., a licensee under the [Electricity Act, 2003](#), challenged the same on the ground of alleged irregularity and consequent violation of the Article 14 of the [Constitution of India](#). In the writ-application, the appellant further prayed for direction upon the CESC Ltd. to consider the offer of the appellant as mentioned in annexure P-5 and P-9 of the writ-application. The appellant has prayed for injunction restraining the respondents from giving any effect or further effect or acting in terms of or in furtherance to any decision taken by them in connection with the award of the order for the sale and disposal of the used plant and equipment at Mulajore site to any third party which was the subject-matter of auction.

3. A preliminary objection was taken by the CESC Ltd. contending that for the purpose of conducting the sale or the disposal of the used plant, for which the tender was issued, the CESC cannot be said to be a 'State' within the meaning of Article 12 of the [Constitution of India](#) and, therefore, the writ-application challenging the alleged irregularity in the process of tender was not maintainable under Article 226 of the [Constitution of India](#). The learned Single Judge on consideration of the materials on record accepted the preliminary objection taken by the CESC authority and, thus, dismissed the writ-application.

4. Being dissatisfied, the writ-petitioners have come up with the present mandamus-appeal.

5. The learned advocate appearing on behalf of the appellants strenuously contended before us that the CESC authority being a licensee under the Electricity Act and the tender having been issued for the purpose of disposal of their used plant, they are functioning in furtherance of their duty enjoined upon them under the provision of the [Electricity Act, 2003](#) and, therefore, the learned Single Judge erred in law in holding that the writ-application was not maintainable.

6. It was further contended that the CESC authority by its illegal act was going to sell the used plant at a higher cost by not considering the offer of the writ-petitioner of lower amount and as such, if the offer of the appellant was accepted, ultimately, lakhs of consumers could have been benefited, inasmuch as, for the purpose of fixing the tariff of consumption of the electricity, the cost of production is also taken into consideration. The learned advocate for the appellants, therefore, contends that there is a 'public element' in this process of tender and, therefore, the writ-application was very much maintainable.

7. After hearing the learned Counsel for the parties and after going through the materials on record we agree with the learned Single Judge that for the purpose of sale of the disposed of plant by a licensee under the [Electricity Act, 2003](#), through a tender called by such licensee, it is not acting as a 'State' within the meaning of Article 12 of the [Constitution of India](#) although when the same CESC authority is discharging its statutory function under the provision of the Electricity Act, its action or inaction definitely comes within the scrutiny of a writ jurisdiction exercisable by the High Court. No duty is cast upon a licensee under the Electricity Act or any other Statute to follow any guideline for selling its old plants and machineries and therefore, it has no public duty to follow in the process of tender for sale of such articles.

8. It is now a settled law that in order to maintain a writ-application under Article 226 of the [Constitution of India](#), the writ-petitioner must show that any of his legal or fundamental rights is infringed by the action or inaction of a 'State' within the meaning of Article 12 of the [Constitution of India](#). While disposing of its used plant, however, such a licensee is not discharging any of its 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 such property.

9. In this connection, it may be profitable to refer to the following decisions of this Court where it has been repeatedly held that the CESC authority when not discharging its duty as a licensee under the Electricity Act cannot be said to be a 'State' within the meaning of Article 12 of the [Constitution of India](#):

1) Raghuraj Singh & Company (Contractors) Pvt. Ltd. v. CESC Ltd. and Ors. reported in 1998 (2) CHN 325;

2) Pathik Chandra Biswas v. CESC Ltd. reported in 2001 (1) CHN 474;

3) Mithai Lal Passi v. CESC Ltd. reported in 2003 (3) CHN 357.

10. We, thus, find that the learned Single Judge rightly dismissed the writ-application as not maintainable. We, therefore, dismiss this mandamus-appeal In the facts and circumstances, there will be, however, no order as to- costs.

Rudrendra Nath Banerjee, J.

11. I agree.

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