2026:CHC-AS:1910

Judgment Dated: 12-11-2026
WBCHCA0328752026

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

CORAM: THE HON'BLE JUSTICE OM NARAYAN RAI

WPA 17012 OF 2026

R.P. TECHVISION (INDIA) PRIVATE LIMITED & ANOTHER ...PETITIONERS

-VERSUS-

CESC LIMITED & OTHERS ...RESPONDENTS

Appearance:

For the Petitioners	: Mr. Subhankar Nag, Ld. Adv. Mr. Sambuddha Dutta, Ld. Adv. Mr. Aditya Mondal, Ld. Adv.
For the CESC Limited	: Mr. Subir Sanyal, Ld. Sr. Adv. Mr. Shoham Sanyal, Ld. Adv.
For the Respondent No. 4	: Mr. Soumyadeb Sinha, Ld. Adv. Ms. Vidhi Birmecha, Ld. Adv.
For the State	: Mr. Rivu Dutta, Ld. Adv. Mr. Saikat Karmakar, Ld. Adv.
Hearing Concluded on	: September 01, 2026
Judgment on	: November 12, 2026

OM NARAYAN RAI, J.:-

1. This writ petition under Article 226 of the Constitution of India, has been filed alleging arbitrariness on the part of the respondent nos. 1 and 2 in declining the petitioner no.1's[1] request for grant of electricity connection at the petitioner's office premises.

FACTUAL MATRIX:

2. A summary of the case run by the petitioner is as follows:

a. The petitioner is an existing company under the provisions of the Companies Act, 2013. The petitioner claims to be the owner of Kolkata TV – a Bengali News

[1] **Hereafter "the petitioner"**

Channel. It is the petitioner's case that it came into occupation of an office space having super built-up area of 16,000 sq.ft. on the 6th floor on premises no. 18, Rabindra Sarani, Police Station - Bowbazar, Kolkata-700001, on the strength of an agreement dated December 30, 2016 as a lessee. The petitioner claims that the said space had been leased out to the petitioner for a period of nine years with effect from April 01, 2017. The lease was to expire on March 31, 2026.

b. The petitioner enjoyed electricity at the premises under its occupation upon paying electricity charges to the respondent no. 4. It is the petitioner's case that the respondent no. 4 not only resorted to exorbitant billing but also stopped issuing bills to the petitioner either on account of rent or electricity.

c. On or about June 23, 2026 the respondent no. 4 disconnected the electricity supply of the petitioner. Under such a situation, the petitioner lodged a complaint with the jurisdictional police on July 04, 2026. Thereafter, the petitioner applied for independent electricity supply in its own name to the respondent CESC Limited.

d. Upon the petitioner's application requesting for an independent supply of electricity at the petitioner's premises/office space, an inspection was conducted by the officials of CESC Limited on July 02, 2026. After such inspection, the petitioner's application for supply of electricity was rejected on the ground that the premises was fed by a High-Tension supply and as such, the petitioner's request for a separate Low-Tension supply could not be entertained.

3. Feeling aggrieved by such rejection of its request for supply of electricity, the petitioner has approached this Court by way of the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

4. A summary of the submissions made by Mr. Nag, learned Advocate appearing for the petitioners are as follows:-

a. In terms of Section 43 of the Electricity Act, 2003[2], it is the duty of the electricity licensee to provide electricity supply to a person in occupation of a premise within one month of receipt of an application requesting for supply of electricity.

b. Although, the first limb of Section 43 of the 2003 Act uses the expression *"give supply of electricity to such premises"*, it has been settled by the Hon'ble

[2] **Hereafter "the 2003 Act"**

Supreme Court in the case of ***K.C. Ninan vs. Kerala State Electricity Board & Others***[3] that supply of electricity is to be made to the consumer and not the premises.

c. The reasons given by the CESC authorities for declining the petitioner's request for supply of electricity at the said premises which is- existence of a High-Tension supply at the said premises - is utterly baseless. A judgment of a Co-ordinate Bench of this Court in the case of ***Nabin Agarwal & Another vs. CESC Limited & Others***[4] was cited in support of the contention that Low-Tension supply can be affected to a portion of the premises notwithstanding existence of High-Tension supply in such premises.

d. In any case, the expression premises would mean the specific portion or space or unit in respect whereof supply is requested to be made. It would not mean the entire premises. The petitioner has a right to get electricity supply and such right has been included in the expanded scope of right to life guaranteed by Article 21 of the Constitution of India.

e. A judgment of the Hon'ble Division Bench of this Court in the case of ***Bhaskar Paul vs. The Calcutta Electric Supply Corporation Limited & Others***[5] was cited to demonstrate that there cannot be a blanket proposition that once a premises has been catered with a supply line, no separate supply line can be provided thereat. It was submitted that the said judgment was rendered after taking into consideration the Co-ordinate Bench judgment in the case of ***Nabin Agarwal & Another*** (supra).

f. No inspection report has been produced before this Court wherefrom it can be gathered that effecting Low-Tension supply at the relevant premises, which is catered by a High-Tension supply would be dangerous.

g. Since the petitioner has not only got a statutory right under Section 43 of the 2003 Act, but also a fundamental right under Article 21 of the Constitution of India to get electricity supply at the premises under the petitioner's occupation, CESC Limited's stand in the affidavit-in-opposition that the petitioner entered into the premises knowing fully well that the premises was catered by a High-Tension supply and therefore the petitioner has no right to claim Low-Tension supply, cannot be countenanced. It is well settled that there can be no waiver of a statutory or fundamental right.

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[3] **(2023) 14 SCC 431**

[4] **2003 SCC OnLine Cal 485**

[5] **WPA 16560 of 2021, decided on September 07, 2022**

h. The action of the CESC authorities and the respondent no. 4 are in derogation of the provisions of Section 12 of the 2003 Act. In terms of the Section 12 of the 2003 Act, electricity can be transmitted or distributed or traded only by a person authorized to do so by a licensee on the strength of a license issued under Section 14 of the 2003 Act or by a person who is exempt under Section 13 thereof. In the instant case, the respondent no. 4 is in effect trading in electricity and CESC Limited is encouraging the same, which is impermissible.

i. A judgment of the Hon'ble Supreme Court in the case of ***Bharat Singh & Others vs. State of Haryana & Others***[6] was relied on to demonstrate that in a writ petition or in a counter affidavit not only the facts but also the evidence in proof of the facts have to be pleaded and annexed to it.

j. Another judgment in the case of ***Gopal Krishnaji Ketkar vs. Mohamed Haji Latif & Others***[7] was cited in support of the contention that even if the burden of proof does not lie on a party, the Court may draw an adverse inference if such party withholds important documents in his possession which can throw light on the facts at issue. Since it is not a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession, which could throw light upon the issues in controversy.

k. Since the CESC authorities have not placed the inspection report before the Court, they cannot be allowed to bring the same on record subsequently in order to improve their case.

l. The case run by the CESC authorities in their affidavit-in-opposition is that providing electricity through Low-Tension mode would lead to intermingling of supplies. However, since electricity will be supplied to the petitioner through separate wires and separate electricity meter, there can be no chance to intermingling of supply.

m. There is an existing transformer adjacent to the relevant premises wherefrom electricity can be directly supplied to the petitioner, thereby obviating any chance of intermingling of supply.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

5. Mr. Sanyal, learned Senior Advocate appearing for the CESC authorities has made the following submissions:-

[6] **(1988) 4 SCC 534**
[7] **AIR 1968 SC 1413**

a. In paragraph 3(k) of the writ petition, it stands admitted that inspection was conducted and that the petitioner's request for electricity supply was turned down on the ground of existence of a High-Tension supply at the premises upon such inspection.

b. No inspection report was ever asked for by the petitioner and as such, there was no occasion to produce any inspection report, all the more so, since neither the factum of inspection was disputed or denied nor the conclusion based on the inspection.

c. Section 43 of the 2003 Act does not give an absolute right to a person to receive electricity supply at the premises. It is subject to the safety aspects.

d. A Co-ordinate Bench judgment of this Court in the case of ***Akbar Reza vs. CESC Limited & Others***[8] was relied on to contend that in terms of Section 43 of the 2003 Act, an occupier would be entitled to supply of electricity only when such occupier is not in a position to enjoy electricity in the said premises. The petitioner is in a position to enjoy electricity through the exiting High-Tension Supply but he has chosen not to do so owing to disputes between it and the respondent no.4.

e. The respondent no. 4 had earlier made an application for conversion of the existing High-Tension supply to a Low-Tension supply. However, upon conducting inspection at the site, CESC Limited could not accede to the request of the respondent no. 4 as there was paucity of space for installation of four new transformers and twenty-six new service connections which would be required to effect such conversion. A letter dated July 24, 2023 (Annexure - R1, Page-16 of the affidavit-in-opposition) was issued in such context by the private respondent which was replied to by a letter dated September 15, 2023 by the CESC Authorities.

f. Paragraphs 7 and 8 of the affidavit-in-opposition were read out to demonstrate that supplying electricity through Low-Tension mode to the same premises which is catered by a High-Tension supply entailed severe risk of fire and electrical hazards.

g. CESC Limited has given detailed scientific reasons based on technical considerations, to justify the refusal to effect separate electricity supply through Low Tension mode in favour of the petitioner. The same have not been dealt with even in the least by the writ petitioner in its affidavit-in-reply.

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[8] **(2007) 1 CHN 528**

h. The affidavit-in-reply filed by the petitioner has not indicated any reason as to why the grounds cited by CESC Limited for refusing to effect electricity supply through Low-Tension mode in favour of the petitioner are bad.

i. Section 53 of the 2003 Act provides that Rules would be framed by the State Government for protecting the public from dangers arising from generation, transmission or distribution or trading of electricity or use of electricity supplies or installation, maintenance or uses of any electric line or electric plant as well as for eliminating or reducing the risk of personal injury to any person or damage to property of any person.

j. In terms of such provision, the Central Electricity Authority (Measures relating to Safety and Electric supply) Regulations, 2023[9] have been framed. Going by the provisions of the said Regulations, only one mode of supply should exist in a given premises.

k. A judgment of the Hon'ble Supreme Court in the case of ***Jiyajeerao Cotton Mills Limited & Another vs. Madhya Pradesh Electricity Board & Another***[10] was relied on to contend that matters involving complex technical knowledge should be left to be decided by the experts in the field.

l. Another judgment of a Co-ordinate Bench of this Court in the case of ***Ranjit Mall Kothari & Others vs. CESC Limited & Others***[11] was relied on to demonstrate that in a similar circumstance, this Court refused to exercise its writ jurisdiction and adhered to the decision taken by the experts.

m. Another judgment of a Co-ordinate Bench of this Court in the case of ***Analysts Management Private Limited & Others vs. CESC Limited & Others***[12] was cited in support of the proposition that Low-Tension supply cannot be affected to a premises which is already catered by a High-Tension supply.

n. An unreported judgment of a coordinate Bench of this Court in the case of ***Smt. Kamala Arya vs CESC Limited***[13] was cited to contend that the coordinate Bench had refused similar relief to an applicant in a similar set of facts.

REJOINDER OF THE PETITIONERS:

6. Mr. Nag, learned Advocate appearing for the petitioners rejoined by making the following submissions:-

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[9] **Hereafter "the said Regulations"**
[10] **AIR 1989 SC 788**
[11] **(2002) 1 CHN 24**
[12] **(2000) 2 CHN 637**
[13] **WPA 20396 of 2021 decided on 24.12.2021**

a. He briefly reiterated the submission made by him earlier. It is the duty of the CESC Limited to affect supply on request and not to give excuses. Section 43(2) of the 2003 Act envisaged a duty on CESC Limited to provide electrical line, electrical plant etc. therefore it would be incumbent for CESC Limited to provide electricity to the petitioner by restoring to appropriate majors.

b. In terms of Section 45 of the 2003 Act, CESC Limited is entitled to recover charges from the consumer in terms of the tariff fixed from time to time. However, by allowing the private respondent no. 4 to affect supply of electricity to the petitioner and the other inmates of the building, CESC Limited has encouraged the respondent no. 4 to take more charges than required from *de hors* the tariff.

c. In terms of the Section 2(15) read with Section 2(19) of the 2003 Act, the petitioner is also a consumer of CESC Limited and as such, the petitioner's interest as a consumer must be safe-guarded in terms of Section 61(d) of the 2003 Act.

ANALYSIS & DECISION:

7. Section 43 of the 2003 Act prescribes the duty of the electricity licensee to supply electricity on request. The same reads thus:-

> *"**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:*
>
> *Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:*
>
> *Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.*
>
> *[Explanation.- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]*
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> *(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :*
>
> *Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.*
>
> *(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default."*

8. The said provision had fallen for consideration of the Hon'ble Supreme Court in the case of ***K.C. Ninan*** (supra) where the Hon'ble Supreme Court held that duty to supply electricity under Section 43 of the 2003 Act is only with respect to the owner or occupier of the premises and not the premises as it is the owner or occupier who has the statutory right to demand electricity for the premises under their use or occupation. The following paragraphs of the said judgment are relevant for the present purpose:-

> *"**52.** The definition of "supply" specifically states that supply means the sale of electricity to a consumer. The said definition does not indicate that supply of electricity is vis-à-vis the premises of the consumer. Considering the overall scheme of the 2003 Act, the supply of electricity is to the consumer and not the premises.*
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> ***53.** Section 43 of the 2003 Act obligates a distribution licensee to supply electricity "on an application by the owner or occupier of any premises". Under the provision, the right to obtain a supply of electricity is vested with the owner or occupier of the premises. Invariably, such owner or occupier means the consumer under Section 2(15). As held in Brihanmumbai Electric Supply & Transport Undertaking [Brihanmumbai Electric Supply & Transport Undertaking v. Maharashtra ERC, (2015) 2 SCC 438], the duty to supply electricity comes into play only on an application made by the owner or occupier of the premises. Hence, the term "premises" has to be contextualised and understood with respect to the preceding portion, that is, the owner or occupier of the premises.*
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> ***54.** The duty to supply electricity under Section 43 is only with respect to the owner or occupier of the premises, and not the premises, as it is the owner or occupier who has the statutory right to "demand" electricity for the premises under their use or occupation. Further, it is the applicant who has to fulfil all the statutory conditions laid down under the 2003 Act to become entitled to get supply of electricity to their premises. The applicant has to pay the necessary charges and comply with all terms and conditions as determined by the appropriate Commission for the supply of electricity.*
>
> ***55.** It is true that Sections 43 and 44 of the 2003 Act talk about supply of electricity to premises. <u>However, the use of such phrases is borne out of the practical consideration of supply of electricity. Unlike other goods, a distribution licensee cannot insist that the consumer come to their factory or warehouse to receive the supply of electricity. The distribution licensee necessarily has to lay down special infrastructure such as electricity lines and transformers to transmit electricity and supply it directly to the consumer, at their premises. On an application, the distribution licensee is statutorily obliged to supply electricity to the consumer. Consequently, the place where the supply of electricity is to be made has to be necessarily identified. Thus, Sections 43 and 44 refer to the consumer's premises to fix the situs for the purpose of supplying electricity.</u>"*

9. Thus, the Hon'ble Supreme Court has, in paragraph 55 of the said judgment, found that use of the expression "*supply of electricity to such premises*" is borne out of the practical consideration of supply of electricity. Thus while an applicant has a right to request or demand electricity in respect of a premises under their use or occupation, supply of electricity in favour of such applicant would necessarily depend upon the physical condition and technical receptivity of the premises to

such supply of electricity. This would necessarily include safety and security of the premises and its occupants.

10. The Hon'ble Supreme Court has in the aforesaid judgment, noted that "*the distribution licensee necessarily has to lay down special infrastructure such as electricity lines and transformers to transmit electricity and supply it directly to the consumer at their premises*". Therefore, the laying down of such infrastructure and the energization of the connection must be demonstrably safe and secure for both the premises and the persons residing or working therein. To wit, the premises whereat supply of electricity is to be affected, must be in a condition to receive such supply without any threat of life or property.

11. CESC Limited has in its affidavit-in-opposition pleaded several reasons why the petitioner cannot be supplied electricity through Low-Tension mode. All of such the reasons indicate that effecting such supply would lead to serious safety issues. In such context, the reasons given in several sub-paragraphs of paragraph 8g of the affidavit-in-opposition filed by CESC Limited may be noted:-

> *"**8. g)** I state that providing low tension/ low voltage supply at premises where high tension/high voltage supply already exists is highly risk fraught and hazardous. The dangers of providing low tension/low voltage supply at premises where high tension/high voltage supply already exists are enumerated herein below:*
>
> ***i.** Normally, one service line/single mode of supply is provided at a premise for either High Tension (HT) or Low Tension (LT) Supply and the same is installed on the ground floor at a suitable, common and accessible point. In case, both low tension/low voltage and high tension/ high voltage supplies co-exist at the same premises, there is a chance of back feed or back flow of electricity which may cause accident and could be catastrophic.*
>
> ***ii.** Co-existence of both HT and LT supplies in the same premises would mean co-existence of two different sources/modes of supplies. Such existence of two different sources/modes would almost inevitably lead to the intermingling of two sources, especially during outage of any one of the two sources either due to load shedding or due to some fault or any other reason. This would be because when one of the sources of the supplies goes off, the source of supply which would be then continuing would have to bear the total load of both modes of supplies. This would inevitably cause undue damage to the distribution system of the licensee (in this case CESC Limited).*
>
> ***iii.** Intermingling of electricity supplies from two different sources/modes of supply could lead to accidental paralleling of the high voltage supply with that of the low voltage supply through the consumer's wiring installation, transformer and switch gear.*
>
> ***iv.** In case of such paralleling of supplies, the consumer's installation will act as bus-bar between the two dis-similar transformers of different sizes and capacities, which will lead to unequal load sharing between the transformers and consequent high current flow through the consumer's installations endangering the life and equipment of the inhabitants of the premises concerned.*
>
> ***v.** During any outage of the high voltage supply, the circuit side fed by high voltage is supposed to remain dead until such time the outage lasts. In case a separate low voltage supply co-exists, the said circuit side, which was supposed to have remained dead, may become alive due to back feed of electricity supply from the transformer through the*

installation of the consumer using low voltage supply. This may spell disaster for any person carrying out any work on/at the supposedly dead circuit side.

vi. *In case of such back flow/ reverse phenomenon, there would be a potential danger of fire hazard inasmuch as such back flow would lead to overloading of CESC Limited's plant and equipment or electrical installation of the consumer, which will in turn result in overheating and fire.*

vii. *Paralleling of two dissimilar transformers having different percentage impedances will result in continuous flow of circulating currents thereby causing undue overheating leading to failure of plant and equipment.*

viii. *The above possibilities can never be ruled out in a large interconnected grid like that of CESC Limited, more so because electrical power system isolations are very dynamic and change regularly to provide better Consumer Service.*

ix. *In terms of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2023, it is the obligation of the Licensee to provide at the point of commencement of supply a suitable isolating device with cut-out or breaker to operate on all phases except neutral in the 3 phase, 4 wire circuit and fixed in a conspicuous position at not more than 1.70 meters above the ground so as to completely isolate the entire supply of the building in case of an emergency.*

x. *If multiple modes of supplies at different voltages are allowed to co-exist in a single premise, then no single operation isolation device can be installed to de-energize the entire premises by one single operation of such device, in the event of an emergency. Hence safety demands that a premises like the instant one already catered through the existing HVAC Supply must not have another supply at a different voltage."*

12. The said paragraphs have been dealt with by the petitioner in paragraph 7 of the affidavit-in-reply. All the averments made in the said paragraphs have been denied by way of a routine, boilerplate denial. While a specific traverse of a factual assertion creates a triable issue, a bare denial of a legal reason or a scientific ground, absent a specific counter-pleading, is barely of any legal consequence.

13. What has been asserted by CESC Limited in the several sub-paragraphs of paragraph 8(g), extracted hereinabove; are reasons given by the expert in this field. This is being observed since the affidavit-in-opposition has been affirmed by the District Engineer, Calcutta Central District, CESC Limited who has been arrayed as the respondent no. 2. Bare denial of such scientific assertions without any reason as to why the grounds urged by CESC Limited are wrong or are not acceptable can neither further the case of the petitioner nor dent the stand of CESC Limited.

14. The petitioner's assertion that "*the petitioner's premises is not electrically connected with the existing of High Tension installation of respondent no.4*" is again without any foundation. It is not in dispute the entire building which houses the office space occupied by the petitioner is catered through High Tension Supply. The petitioner had admittedly been enjoying electricity through the same thus far, prior to its alleged disconnection. Electricity could not have been effected to the

petitioner's office space using the High Tension Supply existing at the building without there being any connecting internal infrastructure.

15. The petitioner's contention that the respondent no.4 had been charging electricity charges in excess of the normal tariff is a factual dispute. If, indeed the respondent no. 4 had charged anything in excess of the rates at which the consumption of the electricity was to be charged in accordance with the tariff, it was open to the petitioner to approach, the licensee i.e. CESC Limited with appropriate complaint and CESC Limited being the licensee, would such circumstances would have remained obliged to take appropriate action against the Registered Consumer, i.e. the respondent no. 4, in accordance with law including appropriate invocation of the provisions of Section 126 of the 2003 Act as well. Such action by the licensee would safeguard the interest of a person drawing electricity through sub meter from the High Tension supply of a registered consumer, in case of exorbitant billing by such registered consumer, which in turn will be in consonance with the object of Section 61(d) of the 2003 Act.

16. As regards the writ petitioner's contention that allowing the respondent no. 4 to distribute electricity to the petitioner's and other tenants in the building would amount to unauthorised distribution of electricity under Section 12 of the 2003 Act is concerned, this Court is not impressed by such an argument. As has already been indicated hereinabove, supply of electricity to a consumer is tied to the premises whereat the consumer seeks electricity. Since the building in question is such that Low-Tension electricity supply to one of the inhabitants of the said building is heavily risk-ridden, the electricity licensee would have no other option but to continue with a single point High Tension supply.

17. CESC Limited has brought on record a letter dated July 24, 2023 written by the respondent no. 4 where from it appears that the said respondent had requested for conversion of the High-Tension bulk supply to Low-Tension mode for the said premises but having regard to the load requirement, such request was declined by a letter dated September 15, 2023.

18. The affidavit-in-opposition filed by the CESC Limited indicates that in order to cater to the electrical load requirement of the relevant building of the respondent no. 4 through Low-Tension supply, four new transformers and twenty-six new service connections would be required. As already indicated hereinabove, the Hon'ble Supreme Court has interpreted the expression "*supply of electricity to such premises*" as one driven by practical considerations of supply of electricity. When the technical experts in the field have, upon taking into the consideration the load

and other infrastructural requirements of the relevant building, decided that supply of electricity to such building, should only be through the High-Tension bulk mode, it would not be proper for this Court to second guess such decision, unless a better decision of a better technical expert is placed before the Court. Nothing to the contrary has been brought on record by the writ petitioner.

19. In such context the following observations of the Hon'ble Supreme Court in the case of ***Jiyajeerao Cotton Mills Ltd.*** (supra) deserve notice:-

> *"**29.** We have heard the learned counsel at considerable length on this aspect and we think that the question as to what should be considered the correct feasible capacity of the appellant's sets is one involving complex technical knowledge and the High Court (or for that matter this Court) was well advised not to have attempted to determine it. We must reiterate the circumstances which appear to be highly relevant, namely, (i) that the Divisional Engineer who has been rightly considered by the Generation Order to have sufficient expert knowledge in this regard reached the conclusion which is under challenge in the present case after personally considering the matter thoroughly along with the officers of the Company as is apparent by many of the letters; (ii) the figures collected by the members of the Committee are not challenged as incorrect or inaccurate; (iii) it is not suggested that any of the members of the Committee or the Divisional Engineer or for that matter any officer of the respondent Board or of the State Government had any prejudice or bias against the appellant Company; (iv) the appellant did not get an independent assessment of its generating sets made by any person having expert knowledge; (v) the appellant avoided to get the correctness of the assessment verified by the parallel running test as suggested by the Board; and (vi) the conduct of both the appellant and the respondent Board as emerging from the documents placed by the parties on the records of the case furnish valuable circumstantial evidence in support of the respondents' case. The argument of the appellant challenging the assessment as illegal must, therefore, be rejected."*

20. In the case of ***Ranjit Mall Kothari*** (supra) this Court had held as follows:-

> *"**15.** With regard to supply of electricity, through separate meters to each occupier, on behalf of C.E.S.C. Ltd. inspection was held and the report of the District Engineer, Calcutta Central District of C.E.S.C. Ltd. was obtained. The said inspection was held under the order of the Court and in presence of the representatives of the concerned parties. The report has categorically recorded that the premises in question comprises of three blocks in premises Nos. 16A and 16B, Shakespeare Sarani, and high voltage bulk supply at commercial rate 'B' has been provided by C.E.S.C. Ltd. in the name of B.K. Associates to cater the entire load. Individual sub-meters have been installed by the occupants for recording consumption at their different establishments for quite a long time. Considering the requirements as regards number of meters in case of separate connection and the spaces shown as available in the said premises were considered and it is reported that the arrangement suggested is not possible as it will involve fire hazards leading to loss of life and property. It is also reported that in the facts and circumstances involved it will be extremely hazardous and not possible to provide separate meters to such a number of occupants in the two blocks of buildings.*
>
> ********** ********** **********
>
> ***17.** Though on behalf of the petitioners, affidavit has been filed disputing the findings in the report, on consideration of the contentions of the respective parties and the report itself it does not appear that such technical matter can be decided by the writ court particularly when*

the report of the District Engineer of the C.E.S.C. Ltd. has expressed apprehension about fire hazards involving loss of life and property. On consideration of the contentions of the respective parties, I do not find any ground to reject the report so obtained on inspection."

21. It is noticed that in ***Ranjit Mall Kothari*** (supra) the report of the District Engineer of CESC Limited was there on record. However, it makes little difference in the present case where the District Engineer has himself affirmed the affidavit in opposition expressing the same apprehension.

22. Where technical, safety and security requirements permit no mode of supply other than High Tension to a building, permitting the registered consumer to step down that High Tension supply to Low Tension and apportion electricity among the occupants on a proportionate cost-recovery basis does not amount to either reselling or distributing or trading in electricity. In such a situation internal sub-metering and proportionate recovery of actual energy and maintenance dues within a building catered by High Tension Supply constitutes a lawful apportionment of bulk supply rather than unlicensed distribution or trading under Section 12 of the 2003 Act.

23. The registered consumer is, in effect, acting as inter-mediatory or a conduit through whom electricity is being supplied to the inmates of the building. The registered consumer of a High-Tension bulk supply of electricity is not supposed to make profit out of the process of passing on electricity to the other inmates of the building. He may, however, be entitled to reimbursement of transformer maintenance costs etc. Any attempt by the registered consumer to make profit out of such passing on process or enforcing any arbitrary rate unrelated to the approved tariff structure should and must be viewed seriously and appropriate steps against such registered consumer must be taken by the distribution licensee in the terms of the relevant provisions of the 2003 Act, including Section 126 thereof.

24. Indeed, the petitioner has a legal right to get an electricity connection in its own name, and the right to receive electricity has been recognized within the expanded scope of Article 21 of the Constitution of India. However, such a right is hedged by imperative safety and security concerns affecting the building and adjoining premises, as no person can claim a right to live or enjoy an amenity at the peril of another's life. Article 21 cannot be given such an absurd interpretation.

25. In the wake of the reasons given by CESC Limited which the petitioner has not been able to appropriately deal with, far less demolish, this Court is unable to issue

a direction to CESC Limited to effect separate metered supply in favour of the petitioner through Low Tension mode.

26. The Co-ordinate Bench judgment of this Court in the case of ***Nabin Agarwal*** (supra) is clearly distinguishable on fact. It is well settled that a judgment is an authority for what is actually decides and not what logically follows therefrom and that a little difference in facts may lead to a different conclusion[14].

27. Paragraph 33 of ***Nabin Agarwal*** (supra) reveals that the premises in question were sub divided by *"independent structures or industrial shades"*. In the present case, the petitioner's unit is an inseparable part of the same building. It is a structure within a structure. Its independence is dependent on the walls that define its boundaries within the building. The petitioner's unit is not stand-alone, while the building is.

28. The Hon'ble Division Bench judgment in the case of ***Bhaskar Paul*** (supra) is again distinguishable inasmuch as the question that fell for consideration of the Hon'ble Division Bench in the said judgment was "*whether it is legally plausible for CESC Limited. to give separate domestic connection from separate electric meter board in respect of the same premises, which is co-owned by the different parties and not partitioned by metes and bounds as per law, either any registered partition deed or by a competent Courts decree".* The question, therefore, was whether two separate domestic connections can be provided in the same premises or not. In the said case the mode of supplies were clearly the same, which is not the case here. What the petitioner requires here is a Low Tension supply to a portion of building that is catered through a High Tension bulk supply. It is this aspect which poses the peril. Furthermore, in the said judgment too, the Hon'ble Division Bench noted as follows:-

"*We, thus, answer the reference as follows: There is no fetter on the part of the distribution company i.e., CESC Ltd. to give a domestic service connection through a separate electric meter boards in respect of a joint property provided the safety and security of the life and the property is ensured in terms of the regulations as indicated above*".

29. Thus, the Hon'ble Division Bench also, made it clear that the safety and security of the life and property cannot be compromised for the purpose of affecting separate metered supply.

30. It need not be over emphasised that the decision as regards the mode of supply of electricity that would prevent electrical hazard or would ensure safety can best be

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[14] Union of India vs. Chajju Ram; (2003) 5 SCC 568

decided by persons who have the technical expertise in the field. It is also noteworthy that upon the reference being answered by the Hon'ble Division Bench in the case of ***Bhaskar Paul*** (supra) the Co-ordinate Bench of this Court disposed of the writ petition filed by Bhaskar Paul without granting him the specific relief of separate metered supply upon considering the stand of the electricity licensee. The following paragraphs of the said paragraph of the said judgment are relevant. The same are quoted herein below:-

> *"Upon the consideration the submissions of the parties, it is evident that CESE Ltd., being the technical authority of the subject, has taken a specific stand that due to the narrow available space and apprehended intermingling of wires if a separate service connection is given to the petitioner, it shall give rise of pose of fire hazards. However, there is no technical difficulty in continuing the present position, i.e., if the petitioner can be enjoying electricity connection from the existing metered board position, all though the same situation within the portion of the building belonging to the private respondent".*
>
> *Since there is no alternative available, technically or otherwise, to the said arrangement, the right of the petitioner to enjoy electricity, as guaranteed under Section 43 of the Electricity Act, 2003, cannot be curtailed merely because of the inconvenience of the private respondent."*

31. ***Bharat Singh & Others*** (supra) is an authority for the proposition that while in a pleading in civil suits i.e., in plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or the counter affidavit not only the fact but also the evidence in proof of such have to be pleaded and annexed with. The said judgment also does not help the petitioner in the facts of the present case. In the case at hand, the writ petitioner has sought to contend that no inspection report has been annexed to the affidavit-in-opposition and as such there is no proof of the finding that electricity supply cannot be affected to the premises due to the apprehended danger on the ground that the premises is catered through a High Tension supply. Such assertion is misplaced. The writ petitioner has admitted in the writ petition that an inspection was conducted. It is not in dispute that the building is catered by High Tension supply. It is also not in dispute that the writ petitioner was informed that a separate Low Tension supply cannot be affected in favour of the writ petitioner since High Tension supply exists at the premises. The reasons behind the conclusion have already been provided in the affidavit-in-opposition. Scientific reasons are not equivalent to evidence. The lack of inspection report in cases, like the present one, which are dependent on purely scientific reasons, would not affect the validity of the pleading. Evidence is required to prove a fact and not a principle - whether legal or scientific. All the foundational facts which could be supported by the reasons stand admitted here.

32. The judgment of the Hon'ble Supreme Court in the case of ***Gopal Krishnaji Ketkar*** (supra) was relied on to assert that the best evidence which could throw light upon the issues in controversy could not have been withheld. Here again, as already indicated hereinabove reasons which are scientific in nature are by no means evidence, the inspection report could have based have and evidence of inspection being done and the conclusion being taken both of which stand admitted, the reasons behind such conclusions can always be provided by way of an affidavit which have been done. It is noteworthy that in the instant case the affidavit has also been affirmed by the District Engineer, Calcutta Central District who is a technical person.

33. ***Akbar Reja*** (supra) is another Co-ordinate Bench judgment where it was held that an occupier who is already in a position to enjoy electricity supplied to the premises is not entitled to seek an enforcement of the obligation of the licensee, simply because he wishes to get an independent supply. The Court held that duty cast upon the licensee should not get an unreasonable interpretation.

34. In ***Smt. Kamala Arya*** (supra) a Co-ordinate Bench of this Court rejected the petitioner's request to grant Low Tension supply in favour of the petitioner therein on the basis of the specific stand taken by CESC Limited that in terms under Section 53(b) of the 2003 Act, Low Tension supply ought not to be given wit in a High-Tension area to eliminate and reduce risk of personal injury and damage to the property. ***Analysts Management Private Limited & Others*** (supra) has also refused Low Tension Supply to an applicant in respect of a premises having High Tension Supply.

CONCLUSION:

35. For all the reasons aforesaid this Court is not inclined to grant the relief of a separate Low Tension supply in favour of the petitioner. WPA 17012 of 2026 stands dismissed. No costs.

36. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on urgent basis after completion of necessary formalities.

(OM NARAYAN RAI, J.)