

AD. 6.
March 4, 2022.
MNS.

(Through Video Conference)

WPA No. 2732 of 2022

Sabita Paul
Vs.
West Bengal State Electricity Distribution
Company Limited and others

Mr. Manoj Kumar Roy,
Mr. Soujanya Bandyopadhyay

...for the petitioner.

Mr. A. Shukla

...for the WBSEDCL.

Learned counsel for the petitioner urges before this Court that, without appropriate notice to the petitioner, who is the legitimate owner of the premises, electricity supply line has been drawn by installing electricity poles immediately on the front side of the petitioner's land.

When an objection was taken by the petitioner by way of an application for shifting the said electricity supply line, the West Bengal State Electricity Distribution Company Limited (in short 'WBSEDCL') did not act on the same.

It is contended that Article 300A of the Constitution of India specifically stipulates that the petitioner, being the owner of the land-in-question,

ought to have been notified beforehand with regard to such installation.

It is contended that the connection ought to be shifted immediately at least to the opposite side of the concrete passage which runs in front of the petitioner's property, which has not been considered by the WBSEDCL.

Learned counsel for the petitioner places reliance on a Division Bench judgment of this court rendered in *Sukdeb Das & Ors. Vs. Kumari Samanta & Ors.*, reported at 2004 (3) CHN 565, wherein it was, *inter alia*, held that the respondent/writ petitioner no.1 did not give her consent for drawing the power line, in which case power line could not be drawn over the land of the said respondent/writ petitioner no.1. However, it was incumbent upon by the WBSEDCL to draw transmission line from the plot of others with their consent and in accordance with law.

Learned counsel further places reliance on an unreported coordinate Bench judgment of this court dated June 12, 2017, passed in *W.P. 4205(W) of 2017 [Smt. Ujjwala Chakraborty vs. WBSEDCL & Ors.]*, in support of the proposition that the WBSEDCL ensures that while carrying supply line to a private respondent, the land of a third party should not be used except on production of Way Leave permission.

Learned counsel for the petitioner also places reliance on Section 3 of the Works of Licensee Rules, 2006 (in short “the 2006 Rules”), which stipulates that a licensee may carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land.

Learned counsel appearing for the WBSEDCL, by placing reliance on a report in the form of ‘statement of facts’ filed by the WBSEDCL, which is kept on record, submits that the land-in-question is a vacant one and two electric poles-in-question are located at the extreme two corners of that vacant land adjacent to a concrete lane and all the poles of the existing distribution network were oriented in same alignment of that pole as the opposite side of the concrete road is totally water-logged and encroached by the canal.

It is further submitted, in terms of point no.8 of the said report, that the space between the vacant land and canal is a narrow lane made with concrete and the space beside the canal is water logged and thus not feasible to erect any pole from the safety point of view. The removal/relocation of electric

poles, it is further stated, may lead to unavoidable accident at any time.

Upon hearing learned counsel for the parties and considering the judgments cited, it is clear that neither of the cited judgments lay down any proposition of law which is contrary to the case of the WBSEDCL. In fact, the Division Bench judgment referred to by learned counsel for the writ petitioner does not lay down any particular proposition at all. In that case, the respondent/ petitioner no.1, it was recorded, did not give her consent for drawing electric power line, as a result of which it was observed that power line cannot be drawn over such land, keeping it open to the Distribution Company to draw transmission line from the plot of the others with their consent and in accordance with law.

In the present case, the report filed by the WBSEDCL upon a joint inspection having been taken indicates clearly that no such alternative route is possible.

The coordinate Bench judgment, cited by the petitioner, places reliance on the works of the 2006 Rules and speaks about the Distribution Company approaching the District Magistrate in the event the supply cannot be effected through the alternative route.

However, in the present case, the first electric pole was installed in the year 2003, as contended by

the WBSEDCL, and the second in the year 2019, whereas the petitioner purchased the property in 2002. Although the petitioner states that the petitioner sought the shifting of the more recently-installed pole in the month of February, 2020, the principle as discussed in the judgments, as regards the prior permission of the petitioner being taken, is not applicable, since the objection taken by the petitioner was much subsequent to the first installation and about certain months after the second installation.

It is too late in the day for the petitioner to take any objection regarding prior consent not having been taken by the WBSEDCL; in any case, such objection has not been taken by the petitioner in the present case, since the petitioner admittedly approached the WBSEDCL for shifting of the pole *post facto*.

That apart, since it is crystal clear from the report filed by the WBSEDCL, who have the technical know-how in such matters, that all the poles of that existing distribution network in the locality are oriented in same alignment of the pole-in-question. The opposite side of the concrete road, it is revealed from the report, is totally waterlogged and encroached by the canal.

The parameters of Article 300A of the Constitution of India, which are broadly applicable

subject to the specific provisions as to safety and security which has to be ensured by the WBSEDCL within the purview of the Electricity Act, 2003 and the Regulations framed thereunder and also subject to Section 43 of the 2003 Act, confers the right on an applicant to have electricity connection to his or her property. Although the supply line-in-question in the present case is not a transmission line but a distribution line, since there is no alternative even as per the WBSEDCL to shift the same, the relief sought in the writ petition cannot be granted.

It may be added here that the objection taken by the writ petitioner to the effect that in the Sundarban area and other marshy areas, electricity poles are installed without any difficulty, the said analogy is not applicable to the present case, since the electric poles-in-question are installed at the extreme border of the petitioner's land and, even in the opinion of the WBSEDCL, there is no alternative route for taking such connection, in view of the unavailability of suitable solid land for such purpose on the opposite side of the concrete road and in view of the entire alignment of all the existing electric connections in the area being put to jeopardy in the event such shifting occurs. The growth of an isolated tree beside the canal cannot be equated with consciously choosing such infirm canal-bank for

installing electric poles carrying energy, which will obviously pose a safety hazard.

In such view of the matter, WPA No.2732 of 2022 is dismissed on contest without, however, any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)