

40
26.04.2022.
mb

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 5216 of 2022

Rabindra Nath Saha

-vs.-

CESC Limited & Ors.

Mr. Bidyut Kumar Halder,
Mr. Indranil Halder
...for the petitioner

Mr. Debanjan Mukherjee
...for the CESC Limited

Learned counsel appearing for the petitioner contends that the Distribution Licensee, that is, the CESC Limited, pursuant to a direction dated January 22, 2022 in W.P.A No. 15364 of 2021, decided the dispute raised by the petitioner in respect of the CESC Limited having charged alleged outstanding recoverable dues to the tune of Rs.29,72,098/- on the ground of alleged nexus of the petitioner with the defaulter, thereby coming to the conclusion that there was a nexus for the purpose of demanding outstanding dues between the defaulter consumer and the writ petitioner.

Learned counsel appearing for the petitioner places reliance on a judgment of a coordinate Bench of this Court in *John Earnest Edward & Anr. vs. Rai Jogendra Chandra Ghose Bahadur*, reported at A.I.R.

1935 Calcutta 298, for the proposition that the supply should be discontinued as a last resort after all the formalities laid down in the Act have been complied with. Learned counsel submits that as per the proposition laid down therein, the charges levied on the petitioner for consumption in respect of a different meter could not have been levied in law.

Learned counsel appearing for the CESC Limited, however, contends that the present dues, as calculated by the District Engineer, CESC Limited in the impugned order, comes to Rs.29,72,098/-- as outstanding dues and metered consumption charge of Rs.32,928/-.

Learned counsel appearing for the CESC Limited further contends that the CESC Limited acted well within its jurisdiction to claim such outstanding dues in terms of Regulation 13.9 of the West Bengal Electricity Regulatory Commission (Standards of Performance of Licensees Relating to Consumer Services) Regulations, 2010.

Upon hearing learned counsel for the parties, it is seen that Regulation 13.9 of the 2010 Regulations clearly stipulates that, for getting new connection for supply of electricity from a licensee, an intending consumer shall be required to pay all outstanding dues to the licensee in respect of any other service connection held in his/her name located in the area of supply of the

same licensee and he/she shall also be responsible for payment of outstanding charges calculated in a prorated manner, if it is established that he/she has had a nexus with the previous consumer(s) including the purchaser/the new lessee/the new tenant of a property or a portion thereof in respect of which there are outstanding charges and/or who has/had benefited from non-payment of the aforesaid outstanding dues by the previous consumer(s) to the licensee.

The judgment cited by learned counsel for the petitioner cannot be a binding precedent for the issue-in-question in view of the introduction of the 2010 Regulations much subsequently.

The said Regulations, being framed under existing law, that is, the Electricity Act, 2003, have the force of law and, as such, create a major difference between the situation which existed in 1935, when the reported judgment was rendered, and the present juncture when the impugned decision was taken.

That apart, there is a clear dispute between the petitioner and the CESC Limited insofar as the identity of the two premises, where the new connection has been sought and where the defaulting meter is situated, is concerned. Although it is alleged by the writ petitioner that the two are different premises, learned counsel appearing for the CESC Limited submits that they are part and parcel of the same premises.

In any event, the two premises are in the close vicinity of each other and, as such, come within the purview of Regulation 13.9 of the 2010 Regulations, as indicated above, since the two premises are located in the area of supply of the same licensee, as per the mandate of the said Regulations.

In such view of the matter and in view of the District Engineer (NSD), CESC Limited, having passed a reasoned and detailed order, which has been impugned in the present writ petition, which was well within his jurisdiction and authority, there is no scope for interference under Article 226 of the Constitution of India.

Accordingly, W.P.A. No. 5216 of 2022 is dismissed 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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)