

AD. 16.
May 17, 2022.
MNS.

WPA No. 7727 of 2022

Maswood Zahedi
Vs.
The State of West Bengal and others

Mr. Debasish Saha,
Md. moniruzzaman

...for the petitioner.

Ms. Sonal Sinha

...for the WBSEDCL.

Affidavit-of-service filed in Court today be kept
on record.

Learned counsel for the petitioner contends that an allegation of pilferage was levelled in respect of a previous connection, originally belonging to the father of the petitioner and subsequently devolving, in respect of a share, to the petitioner. The electricity connection in respect of such commercial line was severed by the West Bengal State Electricity Distribution Company Limited (in short WBSEDCL). However, subsequently, when the petitioner sought a new domestic connection in the petitioner's own name in respect of different premises, the WBSEDCL has demanded the entire amount, which was assessed in respect of the previous defaulting meter.

It is further contended that, in the meantime, the criminal case against the petitioner and others

was dropped on the finding that the petitioner and the other accused were not found guilty for the offences punishable under Section 135(1)(a) of the Electricity Act and that they were acquitted from the charge framed against them under the provision of Section 235(1), Criminal Procedure Code.

As such, it is argued that the WBSEDCL can no longer insist upon payment of the said dues on the charge of pilferage itself, on which the petitioner has been acquitted by the competent criminal court.

Learned counsel appearing for the WBSEDCL submits that, in view of there being obvious nexus between the petitioner, who has an undivided share in the property where the defaulting commercial connection was situated, and his father, who was the original owner of the other premises, the WBSEDCL was justified in insisting upon prior payment of the entire dues, as assessed in respect of the said defaulting meter, as a condition precedent for giving a new electricity connection, although in respect of a different premises but within the same distribution area of the WBSEDCL.

It is further contended that in view of the respective scopes of Sections 126 and 135 of the Electricity Act, 2003 (2003 Act) being different, the petitioner's argument regarding the acquittal in the criminal case being a relevant factor, cannot be accepted.

Upon hearing learned counsel for the parties, it appears that the petitioner's nexus with the previous commercial meter, which suffered a charge of pilferage, cannot be denied. The petitioner is not only a co-owner of the said other premises, within the same service area of the WBSEDCL, the petitioner also has a nexus in the matter with the previous consumer, being the son of the original consumer in respect of the defaulting commercial connection. Be it domestic or commercial, a new electricity connection sought by the petitioner is subject, as per the Regulations framed by the West Bengal Electricity Regulatory Commission (WBERC), to clearance of the previous dues prior to taking such new connection, in view of such nexus.

Moreover, as rightly argued by the WBSEDCL, it is well-settled that Sections 126 and 135 of the 2003 Act, being a civil and a criminal liability respectively, operate in separate spheres.

As such, the acquittal of the petitioner in the criminal case, *ipso facto*, cannot be a determinant for waiving the final assessment made by the WBSEDCL in respect of the previous defaulting meter.

As such, this Court finds no illegality in the impugned actions of the WBSEDCL in insisting upon prior payment of the dues in respect of the previous defaulting meter before giving a new electricity

connection to the petitioner within the same service area but at different premises.

Hence, WPA 7727 of 2022 is dismissed without any order as to costs.

However, the respective contentions of the petitioner and the respondents/WBSEDCL in the criminal matter and before the electricity authority, which arrived at the final assessment, have not been entered into by this Court. It will be open to the petitioner to challenge the final order of assessment before the appropriate appellate authority, subject to compliance of all formalities stipulated in law and, if so preferred, the appellate authority shall decide the same independently without being influenced in any manner by any of the observations made herein, subject to prior compliance of formalities and the law of limitation, in accordance with law.

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.)