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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 7716 of 2013

Transmission & Distribution (India) Ltd.
-vs.-
West Bengal State Electricity Distribution Company Limited & Ors.

Mr. Debnath Ghosh,
Mr. Biswajit Konar,
Ms. Arideeka Pandey,
Mr. Arijit Mahinder
...for the petitioner

Mr. S.K. Panja,
Mr. Sumit Ray
...for the WBSEDCL

Learned counsel for the petitioner contends that when the petitioner, a subsequent purchaser of the property-in-question, sought a new electricity connection in the petitioner's name, the Distribution Licensee claimed alleged outstanding arrears in respect of electricity charges left by the previous consumer, that is, the erstwhile owner of the property, as a condition precedent of giving such new connection to the petitioner.

It is contended that such claim is not tenable in the eye of law. First, in terms of Section 56(2) of the Electricity Act, 2003, it is submitted, the claim of the Distribution Licensee for periods prior to two years from the date when the claim was first made, is barred by limitation.

That apart, in the absence of any "nexus" being established between the erstwhile consumer and the petitioner, vis-à-vis the default in payment of electricity charges, it is contended that the Distribution Licensee acted beyond its authority in claiming such outstanding dues from the present purchaser/petitioner.

Learned counsel appearing for the Distribution Licensee submits that, in terms of Clause 13.9 of the Regulation No. 46 dated May 31, 2010, framed by the West Bengal Electricity Regulatory Commission, in the event there is a nexus with the previous consumer, it is the right of the Distribution Licensee to claim the outstanding dues from the applicant for new connection.

Learned counsel places reliance on a Division Bench judgement of this Court, reported at *2011(5) CHN (CAL) 275 (M.K. & Sons. Vs. C.E.S.C. Ltd.)*, in support of the proposition advanced by him. In the said judgment, particularly in paragraph no. 25, it was observed by the Division Bench, by placing reliance on a judgment of the Supreme Court reported at *2009 (1) SCC 210*, that if any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings.

It is submitted that in the said case, liability was cast on the auction purchaser for previous defaults.

Learned counsel for the Distribution Licensee next cites the judgment of *Isha Marbles vs. Bihar State Electricity Board and another*, reported at *(1995) 2 SCC 648,* where the Supreme Court held *inter alia* that electricity is public property and Law, in its majesty, benignly protects public property and behoves everyone to respect public property. Hence, the courts must be zealous in that regard. It is submitted that, applying the principle laid down therein, the WBSEDCL was justified in claiming the due amounts in lieu of outstanding electricity charges from the subsequent purchaser, that is, the petitioner herein.

It is further submitted that the erstwhile consumer had specifically undertaken to clear off the outstanding dues to the Distribution Licensee. However, thereafter, in order to defraud the Distribution Licensee, the property was sold to the present petitioner. Hence, there was sufficient nexus between the present petitioner, who is the subsequent purchaser, and the erstwhile owner and consumer so as to evade the liability of payment of outstanding dues to the distribution licencee.

Upon a consideration of the materials on record and the judgments cited by the parties, it is evident that the governing provision in this regard is Clause 13.9 of Regulation No. 46 dated May 31, 2010. Clause 13.9 is set out below:

> *"13.9: 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/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."*

It is seen from a plain reading of the said provision that liability of outstanding dues can be shifted on an applicant for new connection only if it is established that he/she has had a 'nexus' with the previous consumer, including the purchaser etc. and/or who has/had benefited from non-payment of the outstanding dues by the previous consumer.

In the present case, there is no scope of construing that the present petitioner benefited in any manner from non-payment of the outstanding dues, as alleged, by the erstwhile consumer. Neither did the present petitioner purchase the outstanding arrears of the vendor along with the property, nor can it be said that such outstanding dues, if any, operates as an encumbrance or charge, which goes with the property.

There is nothing on record to prove that the petitioner had any nexus with the erstwhile consumer in any manner whatsoever, vis-à-vis the outstanding dues of electricity charges.

There arises no question of any benefit having accrued to the petitioner as such, for non-payment of outstanding dues by the previous consumer.

Upon a plain consideration of the title deed of the present petitioner, a copy of which is handed over to court by learned counsel for the parties, it is evident that, by a resolution adopted by the Board of Directors of the C.D. Steel Pvt. Ltd., which was the erstwhile tenant, that the said tenant would surrender its tenancy right in whatsoever manner in respect of the property-in-question in favour of the owner of the land, Biswanath Beriwal, who is the vendor of the present petitioner. *Khas* possession, it is mentioned in the deed, was delivered to the said Biswanath Beriwal and it was also resolved by the Board of Directors of the tenant-company that the owner, Biswanath Beriwal may sell the said property to Transmission and Distribution (India) Limited (the present petitioner) at its sole will.

However, mere mention of the above facts does not and cannot attribute any knowledge or nexus on the present petitioner-purchaser in respect of the outstanding dues, if any, left by the erstwhile consumer.

From a complete reading of the judgment of *Isha Marbles* (supra) cited by learned counsel for the Distribution Licensee, it is evident that the Supreme Court went further and observed that the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction purchaser, who is a third party and is in no way connected with the previous owner/occupier.

Although certain other observations were made by the Supreme Court in the said judgment, there is nothing to indicate that the proposition advanced by learned counsel for the Distribution Licensee was iterated in any manner.

Moreover, in paragraph nos. 56, 57 and 58 of the said judgment, the Supreme Court specifically observed that where the premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electric energy, he cannot be called upon to clear the past arrears as a condition precedent to supply. There is no charge over the property. What matters is the contract entered into by the erstwhile consumer with the Board in the said case. In the absence of any mention of transfer of liability in the contract, there was no scope of attributing the outstanding dues on the subsequent purchaser.

Even considering the ratio laid down in the judgment of the Division Bench in *M.K. & Sons.* (supra), it is clear from the said judgment that the consideration in the said case was an auction purchase.

There is a subtle line of distinction between an auction purchase and an outright sale inasmuch as an auction sale is not merely governed by the provisions of the Transfer of Property Act but also by the specific terms of the tender document.

In the event there was a specific stipulation in the terms of the tender as regards the purchaser getting the property-in-question on “as is where is” basis, it might have been argued that the purchaser also had a liability of payment of outstanding arrears of the erstwhile owner. However, in case of an outright sale, as in the present case, the terms of the sale deed are the only yardsticks which define the contract between the purchaser and the vendor. If the sale deed, as in the present case, does not disclose that the purchaser also undertook to take over the outstanding dues and other liabilities of the vendor, the outstanding arrears, as alleged by the Distribution Licensee in the present case, cannot automatically go with the property as an encumbrance or charge on the property, as also held by the Supreme Court in *Isha Marbles* (supra).

Insofar as the expression “nexus” is concerned, as discussed above, it has not been established in any manner that the petitioner/ purchaser had any nexus with the erstwhile consumer inasmuch as the outstanding arrears are concerned and/or that the petitioner benefited in any manner from such non-payment of the outstanding dues by the previous consumer to the Distribution Licensee. Since Clause 13.9 of Regulation 46 clearly adds ‘nexus’ as a condition precedent of casting the liability of previous outstanding dues on a new applicant, in the absence of satisfaction on such score, there is no scope of attributing such liability on the petitioner in the present case.

Hence, the WBSEDCL acted patently *de hors* the law and without authority in insisting upon clearance of prior outstanding dues of the erstwhile consumer in respect of the property-in-question as a condition precedent of giving a new electricity connection to the petitioner, who is the subsequent purchaser.

Hence, WPA No.7716 of 2013 is allowed, thereby directing the WBSEDCL to give a new electricity connection to the petitioner without insisting upon clearance by the petitioner of outstanding dues, if any, of the previous consumer, subject to compliance of all other formalities in accordance with law by the petitioner.

It is expected that such connection shall be given by the WBSEDCL to the petitioner as expeditiously as possible, positively within a fortnight from the compliance of all due formalities by the petitioner, as indicated above.

All parties shall act on the server copy of this order, without insisting upon prior production of a certified copy thereof for the limited purpose of implementing the direction incorporated herein.

There will be no 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.)