

**In The High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.20816 of 2021

**Arun Kumar Debnath
Vs.
West Bengal Electricity Distribution Company Limited
and others**

For the petitioner : Mr. Shayak Chakraborty,
Ms. Sharmistha China

For the WBSEDCL : Mr. Sumit Ray

Hearing concluded on : 22.03.2022

Judgment on : 28.03.2022

Sabyasachi Bhattacharyya, J.:

1. The petitioner has applied for getting a new electricity connection from the West Bengal State Electricity Distribution Company Limited (WBSEDCL) at his newly-purchased plot of land, including shop premises, located at Mouza - Athilagori, Plot No.- 551, J.L. No. – 370, Khatian No. – 4273, Contai Municipality, District- Purba Medinipur, after having purchased the same by a registered sale deed dated August 27, 2021 from one Tapas Neogy.
2. The petitioner paid the entire outstanding dues in respect of electricity charges left by the previous owner in order to obtain a new electricity connection in his own name. Subsequently, the application for new connection was made on September 10, 2021. However, the WBSEDCL sat tight over the matter. Since the petitioner was unable

to commence business operations from his newly-purchased premises and facing mounting losses, the petitioner sent an advocate's notice on November 18, 2021 to respondent no.3, the Station Manager, Contai Divisional Office of the WBSEDCL.

3. On December 1, 2021 a reply was given by the respondent no.2, that is, the Divisional Engineer and Station Manager, Contai Customer Care Centre, WBSEDCL, disclosing that there were unpaid dues amounting to Rs. 1,25,229/- (Rupees One Lakh Twenty Five Thousand Two Hundred and Twenty Nine only) in the name of Haripada Debnath, the deceased father of the petitioner, in respect of the Consumer ID No. 223003779, for which reason no quotation for providing new electricity connection had been issued.
4. Learned counsel for the petitioner argues that there does not arise any question of the petitioner being liable to pay any outstanding amount, since all the outstanding dues in respect of the premises, where the new connection is sought, have already been cleared by the petitioner.
5. Learned counsel for the petitioner contends that the relevant provision in the Regulations framed by the West Bengal Electricity Regulatory Commission (WBERC) is Regulation No. 46/WBERC, dated May 31, 2020. In Clause 13.9 thereof, an applicant for a new electricity connection has 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 also outstanding charges calculated in a prorated manner, if it is established that the intending consumer has/had a nexus with the previous consumer(s) 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 said outstanding dues by the previous consumer.

6. Learned counsel submits that the petitioner does not come within any of the above categories, as stipulated in Clause 13.9 and, as such, is not liable to pay any further outstanding charges than for the premises in which the connection has been sought.
7. It is argued that merely because the defaulting consumer is the father of the petitioner in the present case, such relation, *ipso facto*, does not establish any 'nexus' vis-à-vis the electric supply. It is further argued that, contrary to the allegation made in the affidavit-in-opposition, the defaulting meter is neither situated to the opposite of the petitioner's newly-purchased property nor is in the immediate vicinity of such property but is located in a different area in another District and Mouza. Hence, it is contended that the petitioner is not liable to pay any further outstanding dues but is entitled to get a new electricity connection at his new premises from the WBSEDCL.
8. Learned counsel appearing for the WBSEDCL, also relying on Clause 13.9, contends that the ingredients of the said clause have been squarely satisfied in case of the petitioner. The petitioner's deceased father had left outstanding dues in respect of different premises, situated within the 'area of supply' of the distribution licensee and such non-payment had benefited the petitioner.
9. The petitioner also enjoyed the electricity supply from the defaulting meter which stood in the name of the petitioner's father (since

deceased), which is sufficient to establish a nexus between the petitioner and the previous consumer. Moreover, the petitioner has also inherited at least a share in the other premises, where the defaulting meter stands, and is liable to clear the outstanding dues in terms of the mechanism contemplated in Clause 13.9.

10. Learned counsel for the WBSEDCL cites a judgment reported at (1995) 2 SCC 648 (*Isha Marbles Vs. Bihar State Electricity Board and another*), where the Supreme Court considered the effect of Sections 24 and 22, 3(2)(f), 2(c) and other provisions of the Electricity Act, 1910 and came to the conclusion that courts must be zealous in respecting public property. The law, as it stands, the Supreme Court observed, was inadequate to enforce the liability of the previous contracting party against the auction-purchaser, who is a third party in no way connected with the previous owner/occupier. The Supreme Court further observed that dishonest customers, no doubt, cannot be allowed to play truant with public property but inadequacy of the law can hardly be a substitute for over zealousness. Section 24 of Electricity Act, 1910, it was held, relieves the licensee of its obligation under Section 22 to supply energy if the consumer has not paid to it the charges for electricity supplied or where the consumer neglects to pay the same. However, resort to Section 24 was not the only remedy available and the general remedy to file a suit would always be available to the Board, it was concluded.
11. It is submitted by learned counsel for the WBSEDCL that the subsequent enactment of the WBERC Regulations addressed the

deficiency in legislation as referred in the cited judgment. Thus, after coming into force of Regulation No.46 dated May 31, 2010, Clause 13.9 thereof clearly provides a handle to the distribution licensee to charge all outstanding dues in the event any nexus whatsoever is established between the defaulting previous consumer and the intending consumer and/or even if there is a nexus between the petitioner and a person who has/had benefited from non-payment of the outstanding dues by the previous consumer.

12. Hence, the demand of the WBSEDCL for the previous outstanding dues left by the petitioner's father (since deceased) as a pre-condition for giving a new connection to the petitioner is justified.

13. Clause 13.9 of Regulation 46/WBERC dated May 31, 2010 reads as follows:

“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/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.”*

14. The said provision, thus, provides for a claim of outstanding charges of any other service connection in the 'area of supply' of the licensee in the following cases:-

- (i) if the defaulting meter stood in the name of the intending consumer;
- (ii) (calculated in a pro-rated manner) if there was a nexus between the intending consumer with the previous defaulting consumer including the purchaser/new lessee/new tenant of a property or portion thereof in respect of which there are outstanding charges; and
- (iii) the intending consumer has/had benefited from non-payment of the outstanding dues of the previous consumer to the licensee.

15. Although the distribution licensee has not been able to establish, beyond reasonable doubt, that the defaulting meter is situated in immediate proximity to the new premises, in respect of which the writ petitioner has applied for new connection, the expression used in Clause 13.9 is “area of supply of the same licensee”. Such expression is wide enough to connote the entire territorial area where the distribution licensee is entitled to give electricity connection. In the absence of any adjective linking the area of supply to the new location or the old (defaulting meter) location, the term “area of supply” is wide enough to connote not merely the areas in immediate vicinity but wherever the distribution licensee is entitled to supply electricity. Hence, there is no necessity, for applicability of Clause 13.9, for the new location and the old location, where the defaulting meter is situated, to be in proximity with each other or in the same physical location as each other.

16. In the present case, by making the application for new connection to the same distribution licensee as the one supplying electricity to the defaulting meter, that is, the WBSEDCL, the petitioner has admitted that the new location where the connection is sought falls within the area of supply of WBSEDCL. On the other hand, the WBSEDCL has *prima facie* established that the property at which the defaulting meter of the petitioner's father (since deceased) is located is also located within its area of supply, since the distribution licensee itself had given electricity supply to such defaulting meter.
17. Such facts are sufficient to establish that both the properties are located in the area of supply of the same licensee, namely WBSEDCL.
18. Even if no direct 'nexus' for the purpose of Clause 13.9 is established *per se* merely because of the father-son relationship between the defaulter and the new applicant, the term "nexus" as used in Clause 13.9 is not necessarily restricted to a direct in respect of usage of electricity from the old (defaulting) meter. Since, upon the demise of the petitioner's father, the petitioner is entitled to the estate of the father, at least to the extent of a share in the property of the deceased father, the liability is also cast on the writ petitioner to clear his share of the outstanding charges in respect of the father's meter; thus, the petitioner will obviously benefit from non-payment of the outstanding dues of the deceased father, albeit in respect of a meter standing on a different property.
19. The term 'nexus' is not qualified by any further restriction. Although the father-son relationship, *ipso facto*, does not establish a nexus, in

view of the usage of the expression “area of supply” and the responsibility cast by Clause 13.9 for payment of all outstanding charges calculated in a prorated manner in the event of any “nexus” (without any further qualifier to connect such nexus with the direct personal usage of electricity by the intending consumer from the defaulting meter) between the new consumer and the defaulter, the licensee has been able to establish a ‘nexus’, in the wide connotation as used in Clause 13.9, in the instant case. It can very well be argued that the petitioner has/had a nexus with his deceased father insofar as the petitioner is also liable, as an heir, to pay the outstanding dues commensurate with his share in the property of the deceased father.

- 20.** Although the decision of *Isha Marbles* (supra) pointed out the lacuna in the Electricity Act, 1910, the Electricity Act, 2003, read in conjunction with the WBERC Regulations framed under Section 181(2) read with Section 57(1) and 59(1) of the Electricity Act, 2003 have sufficiently mended such lacuna to ensure that the WBSEDCL, a public entity exercising the power vested in the State, is not deprived of the right to recover the outstanding dues.
- 21.** Clause 13.9 of Regulation 46 is one of the mechanisms provided in the Regulations framed by the WBERC to ensure that whenever a new electric connection is sought by any person having a default in his name and/or having a nexus, of whatever nature, with the previous consumer and/or who has/had benefited in any manner for non-payment of the outstanding dues by the previous defaulting consumer, has to pay the outstanding dues for the defaulting meter to

the licensee as a pre-requisite of getting the new connection. Hence, the petitioner in the present case cannot avoid the liability to clear off the outstanding dues left by his father, although in respect of a different electric meter situated at different premises, but located within the domain/area of supply of the WBSEDCL.

- 22.** However, Clause 13.9 also mandates that such outstanding charges have to be calculated in a prorated manner, which has to be commensurate with the share of the petitioner in his father's estate.
- 23.** Hence, the appropriate modality would be for the WBSEDCL to calculate such pro-rata outstanding charges, in direct proportion to the share of the petitioner in his father's estate, and to charge accordingly as a pre-condition for giving a new electricity connection to the petitioner.
- 24.** Accordingly, W.P.A. No.20816 of 2021 is disposed of by directing the WBSEDCL to ascertain the exact share of the petitioner, if necessary by giving an opportunity of hearing/representation to the petitioner on such score, in the estate of the deceased defaulting consumer – Late Haripada Debnath and accordingly to calculate the prorated amount of outstanding dues payable by the petitioner. The WBSEDCL shall thereafter raise a quotation for giving new electricity connection to the petitioner by taking into account the petitioner's share of the outstanding dues. However, the WBSEDCL, in so charging, shall not insist upon payment of any amount beyond the share of the petitioner in his father's estate as the liability of the petitioner is confined to the pro-rated manner as stipulated in Clause 13.9. Upon payment of the

petitioner's share of such outstanding charges, calculated in a pro-rated manner, and upon compliance of all other requisite formalities, the WBSEDCL shall give a new electricity connection to the petitioner at his newly-purchased premises as expeditiously after compliance of such formalities as possible, preferably within a fortnight from the completion of such compliance on the part of the petitioner.

- 25.** There will be no order as to costs.
- 26.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)