

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 23004 of 2022

Monika Hardware, represented
By Dhiraj Ali Khan & Anr.
Vs.
The West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Pradip Kumar Chatterjee,
Mr. Masud Mallik
...for the petitioner

Mr. Amitabh Shukla
...for the WBSEDCL

Mr. Soumen Kumar Dutta,
Mr. Sabyasachi Bhattacharjee
...for the private respondent

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

The grievance of the petitioners is that, despite the
petitioners' landlord, that is, the private respondent no.
3, having had the latter's electricity supply to the
tenanted premises of the petitioners (shop room)
disconnected and the petitioners having applied for a
fresh electricity connection in the petitioners' own
name subsequently, the West Bengal State Electricity
Distribution Company Limited (WBSEDCL) is not
giving such connection to the petitioners, although the
petitioners had deposited the quotation amount.

Learned counsel appearing for the WBSEDCL submits that the WBSEDCL, as per law, requires a valid Way-Leave Certificate from the petitioners, signed by the landlord, and that the certificate of enlistment produced for getting the commercial connection has already expired.

Learned counsel appearing for the private respondent no. 3 submits, by placing reliance on a Division Bench judgment reported at *2004(3) CHN 565* (paragraph No. 3), that without the consent of the land-owner, no electricity connection can be given.

Learned counsel appearing for the petitioners, in reply, submits that the petitioners are ready and willing to furnish the necessary documents to show that the petitioners have already applied for renewal of the certificate of enlistment and is running business from the said property.

On perusal of the cited judgment, it appears that the same was not rendered in the context of a landlord-tenant dispute. In the said case, the general proposition was laid down, which is settled in law, that the consent of the owner is required for taking electricity connection over or through a particular land.

However, in the present case, the landlord/respondent no. 3 specifically had his electricity connection disconnected, from which the petitioner no. 2 was enjoying electricity for the purpose

of running his business. That apart, an eviction suit is pending at present at the behest of the respondent no. 3 against the petitioner, which *ipso facto* cannot be a ground for prior eviction of the petitioner from the suit premises before the suit is decreed, if at all. The policy to adopt a dog in the manger method in depriving the tenant from electricity, thereby compelling the tenant to leave the property prematurely, is strongly deprecated.

The ratio of the cited Division Bench judgment is not applicable at all in the facts of the present case.

Rather, Section 43 of the Electricity Act, 2003, in conjunction with the Constitution of India, guarantees that an occupier has a right to get electricity connection to the premises which he is occupying.

The objection raised by the landlord, in writing or otherwise, has no sound footing and, as such, cannot be a necessary pre-requisite in giving new electricity connection to the petitioner; more so, in view of the fact that the landlord himself has had his electricity connection disconnected at the premises.

W.P.A. No. 23004 of 2022 is, accordingly, disposed of by directing the petitioners to produce necessary documents before the WBSEDCL within a week from date to show that the petitioners are at present occupying the property-in-question and that the petitioner no. 2 has already applied for renewal of

the certificate of enlistment for running the shop room at the premises.

Upon such documents being produced, the WBSEDCL, subject to compliance of all other formalities by the petitioners, shall give a new electricity connection to the petitioners at the premises in terms of the petitioners' application, irrespective of any objection that may be raised by the private respondent no. 3. If any obstruction is raised by the private respondent no. to for the WBSEDCL personnel in doing so, it will be open to the WBSEDCL personnel to approach the local police station for police assistance.

If so approached, the Inspector-in-Charge or the Officer-in-Charge, as applicable, of the local police station shall grant such assistance to the WBSEDCL personnel, at the cost of the petitioners, on the written communication of the leaned Advocates for the parties, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof.

It is, however, made clear that the electricity connection, when given, shall not create any special right or equity in favour of the petitioners and it will be open to the parties to the eviction suit pending between the parties, to canvas their respective grievances in the said eviction suit.

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.)