

21,22
24.11.2022

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 23240 of 2022

Arsil Alam Khan
Vs.
Director of West Bengal State Electricity
Distribution Company Limited & Anr.

with

W.P.A. No. 22876 of 2022

West Bengal State Electricity
Distribution Company Limited.
Vs.
Arsil Alam Khan & Ors.

Mr. Rabiul Islam,
Mr. Raju Mondal,
Ms. Pramita Banerjee

...for the petitioner in
WPA No. 23240 of 2022 and
for the respondent in
W.P.A. No. 22876 of 2022

Mr. Srijan Nayak,
Mr. Rituparna Maitra,
Mr. Debjit Mukherjee

...for the petitioner in
W.P.A. No. 22876 of 2022 and
for the respondent in
WPA No. 23240 of 2022

The two writ petitions have been filed on
different perspectives from the same set of facts.

W.P.A. No. 22876 of 2022 has been preferred by
the West Bengal State Electricity Distribution Company
Limited (WBSEDCL) against an order passed by the
Ombudsman, whereby the order passed by the
Grievance Redressal Officer was reversed and the

WBSEDCL was directed to give electricity connection to the petitioner in W.P.A. No. 23240 of 2022.

The petitioner in W.P.A. No. 23240 of 2022 has contended that despite such direction by the Ombudsman, the WBSEDCL has failed to give the electricity connection to the petitioner.

The background of the case, in short, is that the petitioner in W.P.A. No. 23240 of 2022 purchased the property-in-question from his vendor. There were, apparently, certain outstanding dues from the vendor to the WBSEDCL in regard to the same property.

However, subsequently, when the matter came up before the Ombudsman, it was clearly observed that the burden of proving nexus, as contemplated in the WBERC Regulations, for the purpose of claiming outstanding dues from a subsequent purchaser, lies on the person who alleges such nexus. Hence, since the WBSEDCL had failed to discharge such burden, the petitioner had a right to get new electricity connection in the petitioner's name after purchase without being saddled with the outstanding dues of his vendor.

Learned counsel appearing for the petitioner contends, by placing reliance on the order of the Ombudsman, that there is no scope of challenge to the same as the same was in consonance with law and facts.

At the outset, learned counsel appearing for the WBSEDCL submits, upon query of court as regards the grounds of challenge, that no copy of the Draft Settlement Order passed by the Ombudsman was initially handed over to the WBSEDCL in order to enable the WBSEDCL to use a written objection thereto for the purpose of coming to a final order.

However, such contention is palpably belied by the averments made in the writ petition of the WBSEDCL itself. It is clearly mentioned in paragraph 12 of the writ petition filed by the WBSEDCL, that is, W.P.A. No. 22876 of 2022 that in the Draft Settlement Order the parties were directed to file their respective views against the Draft Settlement Order within 20 days and the matter would be heard again.

In paragraph 13 of the said writ petition, it is averred by the WBSEDCL that the petitioner-company filed an objection against the appeal of the intending consumer “in the form of a response to the Draft Settlement Order” stating inter alia that under the provisions of law, WBSEDCL is entitled to recover the outstanding amount against the premises-in-question from the intending consumer before providing connection.

Moreover, it is palpably evident from the final order of assessment itself that both sides had been heard before passing the same.

Hence, there cannot be any iota of doubt that the Draft Settlement Order was duly served on the WBSEDCL, only upon which the WBSEDCL was able to file a response thereto.

The next submission made by learned counsel appearing for the WBSEDCL is that it is well-settled that, more particularly as held by the Supreme Court in the case of *Paschimanchal Vidyut Vitran Nigam Limited & Ors. Vs. DVS Steels and Alloys Private Limited & Ors.*, reported at (2009) 1 SCC 210 (in paragraph 14 thereof), it is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises.

It is further observed by the Supreme Court that they can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable.

However, such observation of the Supreme Court was followed by a short sentence "Be that as it may". The said final sentence, coupled with the rest of the judgment of the Supreme Court, indicates that the Supreme Court proceeded on the facts of the said case and finally came to its conclusion.

It is observed by the Supreme Court that in the said case, when the first respondent, who was the purchaser of a sub-divided plot, wanted a new electricity connection for its premises, the appellant informed the first respondent that such connection will be provided only if the electricity dues are paid *pro rata*. It was observed that they were justified in making the demand.

However, in the present context, there is no scope of applying the said ratio, since, even as per the WBERC Regulations, which was not considered in the said judgment by the Supreme Court, the burden of proving nexus is on the person alleging such nexus.

In view of such specific clause in the WBERC Regulations, it is the bounden duty of the WBSEDCL to prove the allegation of nexus. In the present case, although it has been alleged by the WBSEDCL that the petitioner did not produce a copy of his purchase deed, there is nothing to substantiate why the WBSEDCL did not seek for a direction on the petitioner before the Ombudsman for production for such document and/or why the WBSEDCL did not take any effort to produce a certified copy of the said registered deed from the appropriate authority to discharge its burden of proving nexus.

In the absence of such proof, it does not lie in the mouth of the WBSEDCL to say that the ratio laid

down in *Paschimanchal Vidyut Vitran Nigam Limited* (supra) ought to be followed in the present case as well.

Hence, I find from the observations of the Ombudsman that it elaborately discussed various facets of the case and came to the conclusion that the WBSEDCL had failed to prove the nexus between the previous and the present owner of the property.

In such view of the matter, there is no scope of interfering with the order of the Ombudsman.

As such, W.P.A. No. 22876 of 2022 is dismissed on contest without, however, any order as to costs.

W.P.A. No. 23240 of 2022, filed by the purchaser/intending consumer, is allowed, thereby directing the WBSEDCL to comply with the direction of the Ombudsman and to give new electricity connection to the petitioner, subject to compliance of all due formalities by the petitioner, but without insisting upon any payment of outstanding dues, allegedly due from the erstwhile vendor. Such connection shall be given as expeditiously as possible, positively within December 09, 2022.

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.)