

25th April,
2023
(AK)
23

W.P.A 4171 of 2023

Sri Rahul Rungta
Vs.
West Bengal State Electricity Distribution Company
Limited and others

Mr. Nilanjan Bhattacharjee
Mr. Abhilash Chatterjee
Mr. Saikat Dey

...for the petitioner.

Mr. Debjit Mukherjee

...for the WBSEDCL.

The grievance of the petitioner is that the petitioner, being an auction purchaser of the premises-in-question, applied for a new electricity connection.

However, the WBSEDCL declined to give such connection unless the petitioner deposits the alleged outstanding dues with regard to the same premises in respect of a previous defaulting meter.

It is argued that there is no disclosure of any such liability in the sale certificate or any other document executed between the Bank and the petitioner and there is no nexus between the petitioner and the erstwhile defaulter.

Hence, the WBSEDCL, in law, has no authority to insist upon prior payment of such alleged outstanding dues before giving a new connection to the petitioner.

Learned counsel appearing for the WBSEDCL refutes such contentions.

It is argued that in the application made by the petitioner for new electricity connection, in one of the clauses (Clause iv), the petitioner declared that there was no other service connection (live/disconnected) at the same premises having outstanding dues for which the new service connection is being applied for.

It is, however, evident that by a previous letter dated April 26, 2022, also annexed to the affidavit-in-opposition of the respondent no.5, that the petitioner was already aware of the outstanding amount of Rs.8,84,568/- being due and payable in lieu of electricity charges.

By suppressing such knowledge, the petitioner sought to obtain the electricity connection, it is argued.

Moreover, since the sale was on “as is where is and whatever there is” basis, the petitioner is liable to pay all outstanding dues, including the outstanding electricity charges left with regard to the premises.

It is seen from the documents-on-record that the Srimanis were the erstwhile owners of the property and the borrowers, against whom the Bank initiated the SARFAESI proceedings.

Under the said Srimanis, one Prabir Chowdhury was a licensee, who had allegedly left outstanding dues for use of electricity.

Although it is contended by the WBSEDCL that the petitioner is liable to clear such outstanding dues, there is nothing on record to establish any nexus between the petitioner and the said Prabir Chowdhury, that is, the defaulting consumer, at any point of time whatsoever.

Even if it is assumed for argument's sake that the petitioner, after deposit of the consideration amount in the auction sale and commencement of the process of sale but before the issuance of the sale certificate, learnt of such outstanding dues left by a previous consumer, the same, being post-facto knowledge, cannot *per se* indicate any nexus between the petitioner and the erstwhile defaulting consumer at the relevant juncture.

That apart, the "admission" in the communication dated April 26, 2022 made by the Bank to the WBSEDCL cannot, in any manner, bind the petitioner even as regards the knowledge of the petitioner about the outstanding dues.

Since the petitioner never made any communication whatsoever to the effect that the petitioner had prior knowledge of the outstanding dues, before the commencement of the auction sale process and/or issuance of the sale certificate with regard to the purchased property, such liability cannot be fixed on the petitioner to clear the outstanding amounts alleged to be due with regard to a previous defaulting consumer, even

as per the Regulations framed by the WBERC under the electricity Act, 2003, which is binding on the WBSEDCL. It is the burden of the licensee to establish nexus between the new applicant and the defaulting consumer for claiming outstanding dues left by the latter from the former.

Hence, the demand of clearance of the alleged outstanding dues left by a third party, made by the WBSEDCL from the petitioner as a pre-condition for giving new connection, cannot be a valid ground for refusal of electricity to the petitioner.

Hence, WPA 4171 of 2023 is allowed, thereby directing the WBSEDCL to give a new electricity connection to the petitioner as expeditiously as possible, positively within a fortnight from the date of compliance of all due formalities by the petitioner in that regard, without, however, insisting upon or claiming payment of the alleged outstanding dues left in respect of any previous defaulting meter in the same premises from the petitioner.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)