

ML-96
Ct No.09
03.05.2023
TN

WPA No. 7862 of 2023

Haroon Abubacker Dhalech
Vs.
CESC Limited and others

Mr. Asif Hussain,
Ms. Labani Pan

.... for the petitioner

Mr. Debanjan Mukherji

.... for the CESC Limited

Mr. Adil Rushid,
Mr. Vivek Paswan

....for the private respondent no.3

Learned counsel for the petitioner argues that the impugned notice dated March 23, 2023 issued by the CESC Limited is *de hors* the law and illegal in several respects.

First, it is submitted that a third party cannot apply for restoration of an electricity connection standing in the name of a different consumer. In the present case, it is submitted, the original consumer Nandlal Khuntela has expired and thereafter, the private respondent no.3 is seeking a restoration of such electricity connection which he is not entitled to under the law and/or the Regulations.

It is next argued that the contract with the deceased erstwhile consumer was submitted to have expired on the last occasion, when a different writ petition bearing WPA No. 4983 of 2023 had been filed by the present petitioner and was recorded in the order passed in the said writ petition.

By placing reliance on the said order dated March 14, 2023, learned counsel for the petitioner points out that it was recorded in the said order specifically by the court that the CESC Limited had contended that after expiry of 180 days from the date of disconnection for non-payment of outstanding dues by the erstwhile consumer Nandlal Khuntela, the contract between the said consumer and the CESC Limited had expired. It was also recorded in the said order that the contract between the erstwhile consumer (since deceased) and the CESC Limited had already expired as per the statute upon expiry of 180 days from the date of disconnection on the ground of non-payment of outstanding dues. On such premise, it is argued, the present petitioner's prayer in the said writ petition, for disallowing the reconnection sought by the private respondent, was turned down.

However, at present, it is evident from the impugned notice that the CESC Limited is admittedly

trying to reconnect the meter of the deceased erstwhile consumer, which is not permissible under the law.

Next, it is submitted that the notice-in-question was issued against several persons, including the deceased erstwhile consumer Nandlal Khuntela, which is also bad in law.

That apart, on merits also, it is submitted that the purported notice under Section 163 of the Electricity Act, 2003 (for short “the 2003 Act”) is bad in law since there was no prior resistance on the part of the petitioner to instigate the CESC Limited to invoke the provision of Section 163 read with Clause 8.4 of the WBERC (Electricity Supply Code) Regulations, 2013 and issue threat to disconnect the petitioner’s electricity supply at the premises. It is submitted that since the petitioner is a landlord of the premises, there was no occasion for the CESC Limited to threaten such disconnection.

Learned counsel appearing for the CESC Limited reiterates the contention of the CESC Limited, which was made at the outset in the present writ petition, to the effect that under a *bona fide* mistake, the CESC Limited had submitted in WPA No. 4983 of 2023 that the contract between the erstwhile consumer Nandlal Khuntela (grandfather of the

present respondent no.3) had expired after efflux of 180 days from the date of disconnection.

It has subsequently been ascertained that the time period of 180 days had not actually expired and the said contract was otherwise live.

It is submitted by learned counsel for the CESC Limited as well as the private respondent no.3 that there is no bar to the private respondent, who is in occupation of the premises-in-question, to apply for a fresh electricity connection in respect of the premises.

Moreover, since the CESC Limited is now of the opinion that the contract between the erstwhile consumer and the CESC Limited never expired by efflux of time, the application of the petitioner for restoration of such connection, along with transfer of name, is maintainable in law.

As regards the notice being bad due to absence of previous resistance, learned counsel for the CESC Limited disputes the same and submits that, as mentioned in the affidavit-in-opposition of the CESC Limited, resistance was faced by the CESC Limited when the CESC personnel went to give such connection to the private respondent, which occasioned the issuance of the notice under Section 163.

Upon a perusal of the order dated March 14, 2023 passed in WPA No. 4983 of 2023, it is seen that learned counsel for the petitioner is justified in arguing that in view of the recordings in the said order, where it was *inter alia* observed that the contract between the erstwhile consumer Nandlal and CESC Limited had expired, there could not be any further occasion to seek reconnection, that too, by a third party.

Moreover, if the contract had actually expired, there cannot be any occasion for transfer of the meter of the deceased erstwhile consumer in the name of the present applicant, that is, the respondent no.3 and/or his father, since in such event, the said respondent and/or his father do not step into the shoes of an 'existing' consumer in view of the previous contract having already expired.

Although it is now submitted by the CESC Limited that the submission regarding the contract between Nandlal (since deceased) and the CESC Limited having expired was the result of a *bona fide* communication gap, in the absence of any application for rectification or correction of the order dated March 14, 2023 passed in WPA No. 4983 of 2023, the said order cannot be deviated from, having attained finality.

Within the limited scope of the present writ petition, the court is to consider the legality and/or validity of the impugned notice dated March 23, 2023. The petitioner is legally correct in arguing that the notice could not be given in the name of a deceased person. However, it is seen from the said notice that the same pertains not only to the deceased Nandlal Khuntela but also the other inmates at the said premises, none of whom have come up in challenge against the said notice.

Although the notice is bad with regard to Nandlal Khuntela, in view of the insistence of the petitioner on the observations of the order dated March 14, 2023 made in WPA No. 4983 of 2023, such issuance of notice in the name of a deceased person, whose contract has already expired, cannot have a direct bearing on the validity of the notice otherwise. The petitioner is the landlord/occupier of the premises and insofar as the landlord/petitioner is concerned, the notice is not vitiated for being issued in the name of a deceased person.

Insofar as the argument made by the petitioner that the respondent no.3 and/or his father are not entitled to seek a reconnection or transfer of name, there is substance in such contention in the light of the order dated March 14, 2023 passed in the

previous writ petition, which still stands intact in the absence of any application for rectification of the same. However, even proceeding on such premise, nothing in the statute or regulation can prevent a different occupant of the premises, including the present respondent no.3 and/or his father, that is, the son of late Nandlal Khuntela, if they can show their occupation *prima facie* before the licensee, to apply for a new connection of electricity at the same premises.

Since, in the present case, no specific averment was made by the CESC Limited with regard to any previous resistance having been offered by any of the noticees to invoke Section 163 of the 2003 Act, and in view of the CESC Limited having pleaded reconnection of meter of the deceased Nandlal Khuntela, which is not permissible in law, the impugned notice is otherwise defective and cannot be acted upon by the CESC Limited.

In view of the above discussions, WPA No. 7862 of 2023 is disposed of by setting aside the notice dated March 23, 2023 on the grounds as indicated above. The CESC Limited shall be restrained from further acting on such notice.

However, nothing in this order shall preclude the respondent no.3 and/or the father of the respondent no.3, if in occupation, and/or any other

occupier of the premises-in-dispute from applying for a fresh electricity connection in respect of the premises. If such an application made, subject to satisfaction of the CESC Limited with regard to occupation of the applicant and upon compliance of all formalities under due process of law by the applicant, the CESC Limited shall give such connection to such applicant.

However, since the respondent no.3, on an erroneous notion, has already deposited substantial amounts of money in pursuance of his applications for reconnection/transfer, the CESC Limited shall refund such amounts to the respondent no.3 within a fortnight from date.

If an application for electricity connection is made, in accordance with law, subject to compliance of all formalities, the CESC Limited shall give such connection, preferably within a fortnight from the date of such compliance, at the existing service position.

The CESC Limited will also be at liberty to remove the electricity meter standing at the same premises in the name of the deceased Nandlal Khuntela expeditiously.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)