

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 8777 of 2023

Abhinandan Manna
Vs.
West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Shibaji Kumar Das,
Mr. Ahshan Ahmed,
Ms. Rupsa Sreemani
...for the petitioner

Mr. Srijan Nayak
...for the WBSEDCL

Mr. Tarak Nath Halder
...for the respondent nos. 5, 6 and 7

The bone of contention in the present writ petition is whether the West Bengal State Electricity Distribution Company Limited (WBSEDCL) was justified in insisting upon prior payment of alleged outstanding dues left by a defaulting consumer, Purna Chandra Mal, with regard to the premises where the present petitioner has sought to have a new electricity connection.

Learned counsel for the WBSEDCL, while submitting that there is a patent nexus between the present petitioner and the defaulting consumer, places reliance on certain provisions of different Regulations of the West Bengal Electricity Regulatory Commission. By placing reliance on Clause 13.9 of the Regulation No.

46 dated May 31, 2010, it is submitted that, for getting new connection for supply of electricity, an intending consumer shall be required to pay all outstanding dues in respect of any other service connection held in his/her name located in the area of supply and shall also be responsible for payment of outstanding charges calculated in a pro rated manner in certain cases. It is submitted that the said clause also takes within its purview cases where there are outstanding dues payable by a person, who has/had benefited from non-payment of the said outstanding dues.

It is contended by learned counsel for the WBSEDCL that upon obtaining a reply to a query from the concerned registration office, the WBSEDCL has ascertained that the property-in-question consists of land as well as building.

The valuation of the land along with the building is much more than the consideration paid by the petitioner for purchase of the property as per the purchase deed of the petitioner. It is, thus, argued that the petitioner got the advantage of less consideration due to the outstanding dues left by the said erstwhile consumer and, as such, was a beneficiary of the non-payment, thus, coming within clause 13.9.

Learned counsel appearing for the WBSEDCL next cites Clause 3.4.2 of Regulation No. 55 dated August 07, 2013, which provides that the licensee shall be

eligible to recover from a new and subsequent consumer the dues of previous and defaulting consumers in respect of the same premises if there is a nexus between the previous and the new consumers.

Learned counsel also places reliance on Clause 4.6.4 of Regulation 55 which stipulates that notwithstanding anything contained contrary elsewhere in the Regulation, where deemed termination of agreement has taken place, then on the basis of application for any consumer, new service connection can only be provided in the same premises if the outstanding dues against the deemed terminated consumer is cleared along with the late payment surcharge.

It is pointed out by learned counsel for the WBSDECL, by placing reliance on a report of the WBSDECL annexed to the affidavit-in-opposition of the Distribution Licensee, that the number of the premises which is owned by the petitioner and that where the defaulting meter was situated is the same.

Learned counsel appearing for the petitioner controverts such submissions and places reliance on the purchase deed of the petitioner, which indicates that the petitioner purchased the property from the heirs of one Dipak Mal, who is the son of late Purna Chandra Mal. However, the predecessor-in-interest of the vendors to the petitioner, that is, Dipak Mal, had

purchased the property from a third party and did not inherit the same from his father Purna Chandra Mal.

As such, it is argued that since a specifically demarcated separate portion of the property was sold to the petitioner, the petitioner cannot, in any manner, have any nexus with the defaulting consumer Purna Chandra Mal (since deceased).

A perusal of the valuation query report relied on by the WBSEDCL indicates that the property-in-question has several parts, in one of which a building is situated. However, the purchase deed of the petitioner clearly shows that the subject matter of the said purchase deed pertains purely to land without there being any structure thereon.

Moreover, such purchased portion was clearly a demarcated portion, as delineated in a map annexed to same and evident from the Schedule of the said deed.

The vendors of the petitioner, who are the heirs of Dipak Mal, are still in occupation and ownership of the rest of the parent property.

Since both properties are demarcated, the petitioner has no nexus with the building where the defaulting meter was apparently situated. Since the predecessors-in-interest of the petitioner inherited the property from their father Dipak Mal, who had, in turn, purchased the property from a third party and not inherited from his father, Purna Chandra Mal, there

does not arise any question of any nexus existing between the present petitioner and the said defaulting consumer, Purna Chandra Mal, since deceased.

Moreover, the consideration of a property is the amount settled between the vendor and the purchaser and may differ from the valuation shown by the registration office, on which the requisite stamps are to be paid for the purpose of effecting the transaction. Hence, in several cases, it may be seen that the consideration varies from the valuation as per the registration office.

Hence, under no stretch of imagination can it be assumed automatically that the petitioner was a beneficiary of the default in payment of electricity charges by Purna Chandra Mal merely because the consideration varied from the valuation of the entire parent property. That apart, as indicated earlier, the petitioner purchased only the landed portion of the property and, as such, cannot have any nexus with the other portions containing the building, which are clearly demarcated ones.

Insofar as the reliance placed by the WBSEDCL on the documents annexed to the affidavit-in-opposition is concerned, the mere mention of the same premises in a report of the WBSEDCL, authored by the Assistant Engineer and Station Manager, Contai Customer Care Centre of the WBSDECL itself, cannot be an indicator

of any nexus between the petitioner and the defaulting consumer. Moreover, it is well-settled that nexus has to be established and proved by the licensee who is charging the outstanding dues from an intending consumer.

Coming to the Regulations relied on by the WBSEDCL, taking first thing first, Clause 13.9 of Regulation No. 46, in its first limb, pertains to new connection for supply of electricity to an intending consumer, where the previous defaulting meter was held in the name of the said intending consumer himself or herself.

As regards the second limb of Clause 13.9, regarding a beneficiary of the outstanding charges, as discussed above, there is no nexus between the petitioner and the defaulting consumer to castigate the petitioner for being a beneficiary of the outstanding charges. Purna Chandra Mal, the father of Dipak Mal, was the defaulting consumer. The son, Dipak Mal, purchased the property-in-question from a third party and did not inherit the same from his deceased father. Dipak's children inherited the property from Dipak and, subsequently, sold a demarcated portion of the same to the petitioner. The entire chain of events clearly shows that there could not have been any nexus between the present petitioner/purchaser and the erstwhile defaulter, Purna Chandra Mal in any manner

whatsoever, let alone the petitioner being a beneficiary of the previous outstanding dues left by Purna Chandra Mal. Even Dipak Mal, through whom the petitioner's vendors claimed title, did not inherit the property from Purna Chandra Mal but had purchased it from a third party.

Insofar as Clause 4.6.4 of Regulation 55 is concerned, the same clearly stipulates that if a consumer applies for a new service connection then the same can be provided in the same premises if the outstanding dues against the deemed terminated consumer is cleared along with late payment surcharge.

However, notably, Clause 3.4.2 is on a different footing, also inasmuch as the language thereof is concerned. Clause 3.4.2 stipulates that the licensee shall be eligible to recover from a "new and subsequent consumer(s)" the dues of the previous and defaulting consumers in respect of the same premises *only if a nexus between the previous and defaulting consumer(s) and the new consumer(s) in respect of the same premises is proved. The onus of providing a nexus, if claimed by a licensee, shall lie on the licensee.*

Thus, a plain and simple reading of the said provision clearly indicates that not only has there to be a nexus between the new and subsequent consumer (such as the petitioner is in the present case) and the

defaulting consumer but the onus of proving a nexus, if claimed by a licensee, shall lie on the licensee. Surprisingly, in the present case, although the WBSEEDCL asked for outstanding dues to be cleared by the petitioner prior to giving the petitioner, a third party to the default, a new connection, in the communication dated November 17, 2022 (annexure P-5 at page 49 of the writ petition), no iota of mention of any such nexus finds place. In a cryptic manner, the Distribution Licensee merely stated in the said communication that there were outstanding dues at the same premises for which connection has been applied. By way of details, the name of the defaulter, Purna Chandra Mal and the outstanding dues to the tune of Rs.2,60,449/- (including LPSC) as on 14.11. 2022 was stipulated. It was further stated in the communication that due to the “above discrepancy”, it may not be possible on the part of the WBSEDCL to provide quotation for new connection at the premises of the petitioner and the petitioner was requested to take necessary action to resolve the issue for which the connection could not be executed.

Hence, it is seen from a clear reading of the communication of the WBSEDCL that, let alone having proved any nexus to discharge its onus, the WBSEDCL did not even mention any nexus between the petitioner

and the erstwhile defaulting consumer in its sole communication to the petitioner in that regard.

Insofar as Clause 4.6.4 of Regulation 55 is concerned, the same, in contra-distinction with Clause 3.4.2, speaks about the same consumer, who, after termination of the previous contract in view of expiry of 180 days after the previous disconnection, applies for a new service connection at the same premises. Such provision has been incorporated in order to prevent such erring consumers from renewing their prayer for electricity by bypassing the outstanding dues payable in view of the previous disconnection.

However, Clause 3.4.2 operates on an entirely independent footing, only covering cases where a new and subsequent third party-consumer applies for electricity connection, precisely for which reason the provision of a nexus between the previous and defaulting consumer and the new consumer for the purpose of charging outstanding charges from the new consumer has been introduced. In fact, rightly so, Clause 3.4.2 also casts the onus of proving a nexus, if claimed by the licensee, on the licensee itself.

Hence, the arguments of the WBSEDCL in a bid to mix up the connotation of Clause 13.9 of Regulation 46 and Clauses 3.4.2 and 4.6.4 of Regulation 55 cannot be tenable in the eye of law.

In view of the above observations, there is no scope for the WBSEDCL to insist upon the petitioner clearing the outstanding dues allegedly left by the erstwhile consumer, late Purna Chandra Mal, in respect of the premises-in-question.

Hence, W.P.A. No. 8777 of 2023 is allowed on contest, thereby directing the WBSDECL to give a new electricity connection to the petitioner upon raising quotation within a week from date, without charging any outstanding dues left by Purna Chandra Mal or in respect of some third party in respect of the same premises from the petitioner for giving such connection. Upon the quotation being raised, the petitioner shall deposit the requisite amount and comply with all due formalities in law.

Within a fortnight after compliance of all formalities by the petitioner, the WBSEDCL shall give a new service connection to the petitioner at the premises in question, without insisting upon the petitioner paying any outstanding charges left by the said Purna Chandra Mal.

All parties shall act on the server copy of this order for compliance.

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.

Further personal appearance of the officers of the
WBSEDCL is dispensed with.

(Sabyasachi Bhattacharyya, J.)