

3rd May,
2023
(AK)
03

W.P.A 9661 of 2023

Ashis Ghosh
Vs.
The West Bengal State Electricity Distribution Company
Limited and others

Mr. Biswajit De
Ms. Mallika Manna
...for the petitioner.

Dr. Madhusudan Saha Ray
...for the WBSEDCL.

Three objections have been taken by the petitioner to the disconnection of the petitioner's electricity connection, which is still standing in the name of the petitioner's deceased father.

The first objection is that the meter was standing, much after the death of the petitioner's father, the original consumer, in the name of such dead person, despite the petitioner having applied for transfer of name.

Secondly, the meter installed by the WBSEDCL, it is contended, was initially defective. Upon replacement, the replaced meter was also defective, for which exorbitant charges were raised for a particular period during the lifetime of the petitioner's father.

Thirdly, it is argued that the provisions of Section 56 of the Electricity Act, 2003 were violated. Not only was no notice as contemplated in Section 56(1) issued, the claim

of the WBSEDCL is time-barred under Section 56 (2), since the dues alleged are of the period 2018-2019 but the claim was made only in the year 2022.

Learned counsel appearing for the WBSEDCL controverts all the contentions.

It is submitted, by placing reliance on Clause 7.2 of Regulation No. 46 of the West Bengal Electricity Regulatory Commission, that if there are several heirs of a deceased person, for the change of ownership, not only a succession certificate or undertaking through affidavit as legal heir has to be furnished, 'No Objection Certificates' from the other legal heirs are also required to be obtained.

In paragraph no.2 of the writ petition, the petitioner has admitted that there are two other legal heirs, who have not furnished any affidavit and/or 'No Objection Certificate' as per sub-Clause (b) of Clause 7.2.

Insofar as the allegation of defective meter is concerned, it is submitted that no such allegation regarding the replaced meter was made by the petitioner's father or, for that matter, the petitioner at any point of time before the competent authority, that is, the Grievance Redressal Officer.

Hence, such claim is unsubstantiated.

As regards issuance of notice, learned counsel for the WBSEDCL hands over a copy of a notice under Section 56(1), after expiry of fifteen days from which the disconnection was effected.

Learned counsel also submits that the petitioner had sought to take the benefit of a waiver scheme floated by the WBSEDCL by specifically applying for the same, a copy of which is handed over in court today.

It is argued that upon acceptance of such due amount, which was admitted to be payable by the petitioner himself, the provisions of Section 25(3) of the Indian Contract Act are squarely applicable and such contract is a valid contract, which is enforceable in law.

Hence, the bar of Section 56(2) was in effect waived by the petitioner himself.

The authenticity of the documents, copies of which have been handed over in court today by the WBSEDCL, are not controverted by the petitioner.

Learned counsel for the petitioner candidly submits that the petitioner, who is a cultivator by occupation, was not aware of legal niceties and did not hand over the communication made by the WBSEDCL prior to filing of the writ, for which such communication dated December 27, 2022 is being handed over by the petitioner's counsel in court today.

A perusal of the documents handed over by learned counsel for the parties, which are kept on record, indicates that the petitioner undoubtedly sought the benefit of the waiver scheme floated by the WBSEDCL, thereby giving a go-bye to the limitation period under Section 56(2) of the Electricity Act, 2003 by entering into

a fresh contract, which is valid within the contemplation of Section 25(3) of the Indian Contract Act. Hence, the objection as to limitation is not tenable in the eye of law.

Moreover, a notice was duly served on the petitioner, a copy of which has also been handed over in court today under Section 56(1) prior to fifteen clear days before disconnection. The objection of the petitioner on such score, as such, also fails.

As regards the alleged defect in the new meter, learned counsel for the WBSEDCL is justified in arguing that the said point was never raised by the petitioner before any competent forum at any point of time.

As regards the continuance of the meter, till disconnection of supply, in the name of the deceased father of the petitioner, Clause 7.2 of Regulation 46 of the WBERC is also fully applicable, thereby casting the duty on the applicant to produce the documents as envisaged therein.

Although an allegation of suppression of material documents has been raised by the WBSEDCL, not entirely without any basis, in view of the candid submission of learned counsel for the petitioner and keeping in mind that the petitioner is a cultivator and might not be aware of the nuances of law, such suppression is not construed to be fatal for the writ petition.

Since it is submitted by learned counsel for the petitioner that the petitioner is now agreeable to pay the entire dues, to which the petitioner agreed by way of the waiver scheme, there cannot be any further hindrance in the electricity connection being restored.

Accordingly, WPA 9661 of 2023 is disposed of by directing the petitioner to deposit the amount payable by the petitioner under the waiver scheme, as claimed by the WBSEDCL in its communication dated December 27, 2022, a copy of which has been handed over in court today, within May 20, 2023.

Upon such deposit being made by the petitioner and upon compliance of all due formalities, including furnishing documents as envisaged in Clause 7.2 of Regulation 46 of the WBERC Regulations, the WBSEDCL shall transfer the name of the petitioner in respect of the meter from that of the erstwhile deceased consumer and restore the electricity connection at the said premises.

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.)