

AD-06
Ct No.09
15.05.2023
TN

WPA No. 10081 of 2023

Kanailal Nayak
Vs.
The West Bengal State Electricity Distribution
Company Limited and others

Mr. Jagabandhu Mondal,
Ms. Kalpana Khan Mondal

.... for the petitioner

Mr. Raj Kumar Basu

.... for the WBSEDCL

Ms. Reshmi Khatun,
Mr. Swakshar Kumar Mondal

....for the respondent no.6

Learned counsel for the petitioner contends that vide order dated September 05, 2011 passed in W.P. No. 13606(W) of 2011, the present private respondent had obtained an order from a coordinate Bench of this court where it was recorded by the court that the distribution company shall decide the application for supply of the petitioner therein (present private respondent) and after making enquiry, recording proceedings and hearing parties, the company shall give a reasoned decision that shall be communicated

to all at once. If it was found that supply could be given without using any disputed property and particularly any part of the private respondent's property, then supply shall be effected without any delay.

It is submitted that, in violation of the said order of the coordinate Bench, supply has been given subsequently to the present private respondent over the property of the petitioner.

Learned counsel for the private respondent contends that subsequently, a suit claiming easement rights of the private respondent over the disputed passage has been initiated, which is now pending.

Learned counsel for the West Bengal State Electricity Distribution Company Limited (WBSEDCL) submits that in the meantime, a proceeding has been initiated before the concerned Sub-Divisional Executive Magistrate, where an order was passed directing the B.L. & L.R.O to submit a report.

In the meantime, electricity connection has been directed to be given to the present private respondent. Pursuant thereto, connection has been given to the private respondent.

It is clear from the order of the coordinate Bench dated September 05, 2011 that the said direction stipulated that if it was found that supply can be

given without using any disputed property and particularly any part of the property of the present petitioner, then supply shall be effected without any delay.

However, there is a still-subsisting dispute as to whether the supply has been given over the exclusive property of the petitioner or whether the property is a common passage, which is the subject-matter of dispute in the civil suit pending between the parties. That apart, although the judgment of the coordinate Bench contemplated a situation where supply can be given without using any disputed property or any part of the present petitioner's property, if it was not so found, or if it was found impossible to give supply without using any disputed property or the present petitioner's property, the solution has not been provided in the said order. Hence, at this juncture, it cannot be said conclusively that the coordinate Bench restrained the Distribution Licensee from giving connection to the present private respondent altogether if it was found that supply could not be given without traversing any disputed property or a part of the private respondent's property.

Particularly, since a proceeding is pending before the concerned Sub-Divisional Executive Magistrate between the parties with regard to the

same issue where already a direction for filing of report by the concerned B.L. & L.R.O. has been given, it would be premature for the writ court to interdict the supply of electricity given to the present private respondent within the limited scope of the writ petition.

Hence, WPA No. 10081 of 2023 is disposed of by granting liberty to the petitioner as well as the private respondent to canvass their respective disputes with regard to the property through which the connection has been given to the present private respondent before the court of the Sub-Divisional Executive Magistrate, where the matter is now *sub judice*.

Inasmuch as the civil rights of the parties are concerned, the same shall be subject to the outcome of the civil suit pending between the parties.

It is made clear that nothing in this order shall preclude the Magistrate and/or the civil court from passing appropriate orders in accordance with the decision arrived at by the said authorities. The electricity connection to the present private respondent shall not *per se* confer any special right or equity in favour of the private respondent which the private respondent otherwise does not have in law or equity and shall be subject to the decision of the

proceeding before the Magistrate and the suit before the civil court.

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.)