

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.10470 of 2023

Saibal Sen and another
Vs.
West Bengal State Electricity Distribution
Company Limited and others

For the petitioners	:	Mr. Prabal Kr. Mukherjee, Ms. Shebatee Datta
For the WBSEDCL	:	Mr. Madhusudan Saha Ray
Hearing concluded on	:	07.06.2023
Judgment on	:	13.06.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioners are partners of a firm which runs a business by the name of M/s. New Senco Bakery.
2. Previously, the petitioners' predecessor-in-interest, one Sri Ashim Kumar Sen, since deceased, used to run the said business. Subsequently, on his demise, the petitioners have been running the same. Sometime in February, 2020, the WBSEDCL (respondent no.1) held an inspection at the petitioners' premises and alleged that there was unauthorized use of electricity by way of extension of load to commercial premises (lodge). An assessment was made under Section 126 of the Electricity Act, 2003 (in short, "the 2003 Act") and the

electricity supply was disconnected on such allegation. A criminal proceeding was also initiated. Ultimately, the petitioners deposited the assessed amount and the criminal offences were compounded.

3. Thereafter, upon clearance of all the due payments, the petitioners sought for restoration of the electricity connection.
4. Despite such payments, the WBSEDCL subsequently refused to give such connection on a new ground that there was a further due of Rs.16,86,023.98p in respect of a different Consumer ID bearing no.941611900 in respect of the same premises and insisted that the petitioners were required to pay such further amount prior to the reconnection being given. It is noteworthy that the petitioners' Consumer ID is different, being No. 163042012.
5. Challenging such demand and seeking restoration of their connection, the petitioners have preferred the instant writ petition.
6. The learned Senior Advocate appearing for the petitioners argues that the petitioners are entitled to restoration of the electricity supply within 48 hours of the deposit in terms of the Third Proviso to sub-section (1-A) of Section 135 of the 2003 Act upon deposit of the entire amount assessed.
7. Hence, such reconnection cannot be resisted by the licensee after such payment is made.
8. It is further argued that the alleged outstanding dues claimed by the WBSEDCL at this juncture pertain to a default allegedly made in an adjacent premises by a different entity and neither the petitioners nor their Bakery was a party to the default. Such alleged default took

place prior to the promulgation of the 2003 Act; hence, obviously prior to the 2012 Regulations of the West Bengal Electricity Regulatory Commission (WBERC). Thus, there was no applicability of Section 56 of the 2003 Act. A prayer for recovery of the amount after so long would in any event be palpably time-barred. It is submitted that even after the commencement of the 2003 Act, Section 56(2) of the said Act debars the claim, since, up to the disconnection of the petitioners' supply in respect of M/s. New Senco Bakery in the year 2020, no claim was made for the default allegedly committed in the period 1997-98. Even after the promulgation of the Act, the dues were never shown, let alone continuously, in any of the bills raised for the petitioners' connection. Hence, it is argued that the claim made by the WBSEDCL is *de hors* the law.

9. Learned counsel for the WBSEDCL contends that under Section 56(2), no sum shall be recoverable after the period of two years from the date when it became first due. However, it is argued that Clause 4.6.4 of the West Bengal Electricity Supply Code, 2012, provides that notwithstanding anything contained contrary elsewhere in the Regulations, where deemed termination of agreement has taken place, then on the basis of application of 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 Late Payment Surcharge.
10. It is argued that the previous connection in respect of the earlier Consumer ID, which was in the same joint premises, was in default

and stood disconnected. Consequentially, under Clause 4.6.1 of the 2012 Supply Code, the agreement between the consumer and the licensee stood automatically terminated after 180 days, in the year 2000. Since the petitioners now seek to reconnect their new connection subsequently, clause 4.6.4 is applicable and the outstanding dues are required to be paid for such new connection to be restored.

- 11.** In view of the termination of the prior contract, the present electricity connection of the petitioners is, for all practical purposes, a new connection as contemplated in Clause 4.6.4, it is argued.
- 12.** Learned counsel appearing for the WBSEDCL further argues that the petitioners suppressed, while taking the new connection, that the previous defaulting connection, although taken in the name of M/s. Senco Biscuits, was circumscribed by the expression "C/o. Ashim Kumar Sen". The new connection was taken in the name of the Bakery, but also "care of" Ashim Kumar Sen. The said Ashim Kumar Sen, thus, is the connecting factor between the two and there is obvious nexus between the two connections. Although Ashim Kumar Sen expired in the year 2001, the new connection was taken in respect of the same joint premises and, as such, Clause 4.6.4 is squarely applicable.
- 13.** Learned counsel submits that the dues now claimed could not be previously asked for since the petitioners had suppressed the nexus between the two Consumer IDs while taking the new connection. Only upon the same being disconnected and a reconnection being sought, it

became clear to the licensee that the two had been applied for in respect of the same premises and were both connected through Ashim Kumar Sen, since deceased, who was the predecessor-in-interest of the petitioners.

14. Learned counsel cites an unreported judgment passed in *K.C. Ninan vs. Kerala State Electricity Board and others*, where a three-Judge Bench of the Supreme Court, *inter alia*, observed that the power to initiate recovery proceedings against a defaulting consumer is independent of the power to disconnect electricity supply as a means of recovery under Section 56 of the 2003 Act.
15. Thus, it is argued that the WBSEDCL was justified in insisting upon the payments of the outstanding dues in respect of the previous Consumer ID being made for restoring the electricity connection of the petitioners.
16. At the outset, it is evident that the reliance placed by the parties on Section 56 of the 2003 Act is misplaced, since the default admittedly occurred prior to the enunciation of the 2003 Act and the Regulations framed thereunder, including the Supply Code of 2012.
17. Secondly, the disconnection of the petitioners' electricity supply in respect of the Consumer ID No.163042012 was effected not for non-payment of electricity charges as contemplated in Section 56(1) of the 2003 Act but under Section 135(1-A) of the said Act for the unauthorized use of electricity. Both under the Third proviso to the said sub-section and under Section 126(4) of the 2003 Act, the accused person/consumer is at liberty to deposit the assessed

amount. Upon such deposit, the electricity supply is required to be restored under the Third proviso to Section 135(1-A) within 48 hours of such deposit or payment. There is nothing in the Electricity Supply Code of 2012, framed under the 2003 Act, to mandate payment of outstanding dues at the juncture of restoration of electricity connection under Section 135(1-A), in its Third proviso.

- 18.** Clause 4.6.4, in no uncertain terms, stipulates that if a consumer applies for a new service connection in the same premises where there was a deemed termination due to disconnection of electricity for over 180 days, such new service connection can be provided only if the outstanding dues against the deemed terminated consumer is cleared along with late payment surcharge.
- 19.** However, in the present case, there are several mitigating circumstances in favour of the petitioners.
- 20.** The relevant juncture when the outstanding dues in respect of the previous consumer was to be claimed, even as per Clause 4.6.4 of the Supply code, is when the new connection was applied for by the petitioners in respect of the same premises.
- 21.** Admittedly, the petitioners have been appointed as receivers by a Civil Court in respect of a partition suit pending between the co-owners.
- 22.** Hence, even if it is presumed that the property is joint, in view of the pendency of the partition suit, the juncture when the outstanding dues were to be paid was in 1997, when the petitioners took a new connection in respect of M/s. New Senco Bakery, having Consumer ID No.163042012.

- 23.** Having not claimed such amount at the said juncture, the licensee is precluded from claiming the same after 23 years from the connection being given in the year 2020.
- 24.** Even when the petitioners sought new electricity connection and obtained the same in or around the year 1997, such dues had not been claimed. After the termination of the agreement with the defaulting consumer by operation of the Regulations in the year 2000, the cause of action for claiming the outstanding dues could arguably have arisen for the licensee. Yet, such dues were neither claimed nor shown continuously to be due in the current bills for the petitioners' new connection. Only at the juncture of reconnection on a different cause of action of unauthorised use of electricity in 2020, the WBSEDCL grew wiser and have asked for such dues. Even under Section 56(2) of the 2003 Act, the same would be barred, let alone under the general law of limitation under the Limitation Act, 1963.
- 25.** Moreover, the reconnection now sought by the petitioners is under Section 135(1-A), Third Proviso of the 2003 Act, in view of the charges having been compounded.
- 26.** Section 154(6) of the 2003 provides that in case the civil liability determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited shall be refunded by the Board or licensee within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime

lending rate for the period from the date of such deposit till the date of payment.

- 27.** Hence, it is clear that the restoration sought by the petitioners in respect of Consumer ID No.163042012 does not pertain to any disconnection under Section 56(1), on non-payment of outstanding dues, but is covered by Sections 126, 135 and 154 of the 2003 Act.
- 28.** Section 56(1) envisages that where a person neglects to pay any charge for electricity or any sum than a charge due from him to a licensee, after giving not less than fifteen clear days' notice in writing, the licensee may cut off the supply of electricity and may discontinue the supply until such sum, together with expenses incurred by the licensee in cutting off and reconnecting the supply are paid. No such occasion arose in respect of the Consumer ID No.163042012, the connection of M/s. New Senco Bakery. Hence, the provisions of the Section 56(2) are not be applicable at all, since there was no reconnection of the said meter under Section 56 (1) of the 2003 Act.
- 29.** Even if Section 56(1) of the 2003 Act were to be applicable, sub-section (2) of Section 56 clearly debars the recovery and penal action by cutting off electricity after two years from the date when the charges became first due. It is nobody's case that the dues from the deemed termination of contract in respect of the previous Consumer ID No.91611900 in 2000, was reflected in the electricity bills of the petitioners in respect of Consumer ID No.163042012, till 2020. Hence, let alone two years, no such dues were shown to be recoverable, continuously or otherwise, for the exceptionally long

period of 23 years. That, coupled with the fact that Clause 4.6.4 of the Supply Code of 2012 has spent its force as the petitioners have already been enjoying their new electricity connection since 1997 and the application by the petitioners for such connection was made even prior to the alleged default or automatic termination of contract in respect of the other Consumer ID, clearly establishes that the claim would, in any event, be time-barred .

- 30.** Hence, the licensee's claim would be barred both under Section 56(2), if applicable, and within the contemplation of Clause 4.6.4 of the 2012 Supply Code.
- 31.** Insofar as *K.C. Ninan's case* is concerned, the Supreme Court has clearly observed in paragraph 328, Clause (c) that for an application to be considered as a 'reconnection', the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection. Hence, either way, if the petitioners were taken to be applying for a new connection, Clause 4.6.4 would not be applicable at this belated juncture while restoring the electricity connection under Section 135 of the 2003 Act, and in the event the premises are taken to be the same and the prayer is taken to be one for reconnection, such 'reconnection' is not in respect of the defaulting Consumer ID, which stood terminated in the year 2000, but in respect of the new Consumer ID, which has been continuing from the year 1997.

- 32.** Clause (h) of paragraph 328 of the cited judgment merely stipulates that the power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act.
- 33.** However, it cannot be automatically deduced from such finding that the bar of Section 56(2) is not applicable with regard to recovery as well.
- 34.** Even if the observation of the Supreme Court in Clause (h) of paragraph 328 is taken to mean that the bar of Section 56 (2) is not applicable to a proceeding for recovery, the power to initiate recovery proceedings, even as per the Supreme Court, is by way of filing a suit against the defaulting consumer, which would, in any event, be barred by the general law of limitation.
- 35.** In the present case, however, the writ petitioners are not the defaulting consumers. Secondly, even if a nexus is established through the deceased Ashim Kumar Sen between the two, the power to initiate recovery proceedings by filing a suit emanates from the general law and is governed by the Limitation Act, 1963. In fact, even if Section 56(2) is not applicable, the power to recover the money would be in the nature of a money claim, which is also long barred by limitation as per the relevant provisions of the Limitation Act. Thus, such palpably time-barred claim cannot be the basis of the WBSEDCL's insistence that the petitioners pay such amount prior to getting the reconnection, that too in respect of a different Consumer

ID No. and in view of the reconnection being sought under Section 135(1-A) of the 2003 Act.

- 36.** In fact, insofar as a suit for recovery in terms of the Supreme Court's observation is concerned, the short window available to the licensee, after the expiry of two years from the date of the first due, is of a further period of one year thereafter, as the money claim itself would be time-barred after the expiry of three years subsequent to the cause of action having arisen.
- 37.** In any event, in view of the above discussions, the claim made by the WBSEDCL for restoring the electricity connection to the petitioners' is palpably *de hors* the law and not sanctioned by any legal provision. Such unjust and non-maintainable claim, thus, cannot be sustained.
- 38.** Accordingly, WPA No.10470 of 2023 is allowed on contest, thereby quashing the claim of the WBSEDCL for the alleged outstanding dues of Rs.16,86,023.98p in respect of the deemed disconnected bulk service connection *vide* Consumer ID No.941611900. The WBSEDCL is hereby directed to restore the electricity connection of the petitioners in respect of the Consumer ID No.163042012 as expeditiously as possible, preferably within a fortnight from date, without insisting upon any further payment by the petitioners for the purpose of restoring such connection. It is made clear that the WBSEDCL shall henceforth not make any claim of such alleged outstanding dues in respect of the Consumer ID No.941611900 against the petitioners in any manner whatsoever.
- 39.** There will be no order as to costs.

- 40.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)