

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 10671 of 2022

B K Commotrade Private Limited
Vs.
The West Bengal State Electricity
Distribution Company Limited & Anr.

Mr. Sanjay Mukherjee,
Mr. Dhananjay Nayak
...for the petitioner

Mr. Srijan Nayak,
Ms. Rituparna Maitra
...for the WBSEDCL

Learned counsel for the petitioner contends that the petitioner, a purchaser by way of auction sale of the property-in-question, sought for a new electricity connection. However, the West Bengal State Electricity Distribution Company Limited (WBSEDCL) refused to give such connection unless the petitioner paid the alleged outstanding dues left by the erstwhile consumer/previous owner, M/s Amrit Bio-Energy & Industries Limited.

The plinth of the submissions of the WBSEDCL is that, it is clear from auction notice itself that the property was sold on 'as is where is' basis. It is further submitted that the property was admittedly purchased at a reduced price by the petitioner. In such context, learned counsel for the WBSEDCL places reliance on

the total market value of the property mentioned at page 59 of the writ petition, as compared to the actual price paid by the petitioner.

That apart, learned counsel for the WBSEDCL places reliance on Clause 3 of the terms and conditions of the e-auction, which, *inter alia*, clearly mentions that the property is being sold with all existing and future encumbrances, whether known or unknown to the bank.

It was further stipulated there that the Authorised Officer/Secured Creditor shall not be responsible in any way for any third party claims/rights/dues. No claim of whatsoever nature would be entertained after submission of the online bid regarding the property put up for sale.

On the other hand, the petitioner relies on certain other portions of the documents-in-question. It is seen from the sale certificate issued upon the auction purchase by the petitioner that, in internal page 5 of the same, it is stipulated that the sale of the schedule property was made free from all encumbrances “known to the secured creditor” listed thereinbelow on deposit of money demanded by the undersigned. Such list given therein, however, does not include the electricity dues.

Moreover, at internal page 7 of the sale certificate, under the head “List of Encumbrances”, the

encumbrances were shown to be “Nil”, except the charge of the bank and State Bank of India (Consortium Member Bank).

That apart, although it is mentioned in the first page of the e-auction sale notice that the property was being sold on “as is where is whatever there is and without recourse basis”, in the details of encumbrances over the property, known to the bank, as disclosed in item no. 9 of the table contained in the said sale notice, the encumbrances were again shown to be "nil", except charge of the bank and the State Bank of India (Consortium Member Bank). Over and above the said provisions, Clause 3 of the terms and conditions of the e-auction, the initial part of which has been relied on by the WBSEDCL, also indicates that, to the best of knowledge and information of the Authorised Officer, there are no known encumbrances on the property. However, the intending bidders were to make their own independent enquiries regarding the encumbrances, title of the property put on auction and claims/rights/dues/affecting the property, prior to submitting their bid. As such, it was the duty of the petitioner, prior to purchase of the property, to enquire into the dues in lieu of electricity charges.

However, such contention cannot be accepted, since admittedly, as revealed on the query of court by learned counsel for the WBSEDCL, the previous

electricity supply to the erstwhile consumer had been disconnected much earlier, thereby attracting the provision of automatic termination of the contract between the WBSEDCL and the erstwhile consumer after expiry of 180 days of the disconnection.

Hence, even if the petitioner did enquire into the claims/dues with regard to the property, befitting a prudent person, it could not have been possible in any manner to ascertain the previous dues of the erstwhile consumer with regard to the same premises.

Hence, it cannot be said that the petitioner was liable as the e-auction purchaser, by default, to pay the outstanding charges allegedly left due by the erstwhile consumer.

Another component of the matter which has to be considered in the present case is Clause 13.9 of Regulation 46 of the West Bengal Electricity Regulatory Commission of 2010. The said provision indicates that, for getting new connection for supply of electricity from a licensee, an intending consumer shall be required to pay all outstanding dues to the licensee in respect of any other service connection held in his/her name located in the area of supply of the same licensee and he/she shall also be responsible for payment of outstanding charges calculated in a prorated manner, if it is established that he/she has had a nexus with the previous consumer(s), including the purchaser/the new

lessee/the new tenant of a property or a portion thereof in respect of which there are outstanding charges and/or who has/had benefited from non-payment of the aforesaid outstanding dues by the previous consumer to the licensee.

One of the limbs of the arguments of the WBSEDCL is that since the petitioner admittedly paid much less than the market value of the property as consideration for purchase, it should be deemed that such concession was provided on the premise that the petitioner shall be liable to pay the previous dues and claims in respect of the property, including the arrear dues of electricity charges payable to the WBSEDCL.

However, as is prevalent in commercial transactions, the consideration for an auction purchase need not necessarily be at par with the market value of the property. The determinant in that regard is the minimum fixed price. As such, the market value itself cannot be an indicator of the actual price payable by the purchaser in an auction sale, provided the minimum fixed price is covered by the purchaser. The peculiar feature of any sale, in particular an auction sale, as opposed to a direct sale, is that the market value need not be paid by the auction purchaser as consideration. Merely being the highest successful bidder would entitle a third party to purchase the property by way of auction purchase. As such, it

cannot be said that the petitioner, as an auction purchaser, had the default liability to pay electricity charges left due by the erstwhile consumer, simply because the price paid by the petitioner was less than the market value.

Inasmuch as “nexus” is concerned, which is a mandatory requirement of clause 13.9 of Regulation 46 of the WBERC for the purpose of fixing liability to pay outstanding dues by a subsequent purchaser, no such nexus between the erstwhile defaulting consumer and the auction purchaser/petitioner has been established in the present case. There is nothing on record to show that the petitioner benefited from or enjoyed in any manner the electricity connection of the erstwhile consumer. That apart, since the property was purchased by way of auction sale, it cannot also be said that the petitioner had any nexus with the erstwhile consumer, who was the borrower.

It was the bank who sold the property in auction sale, as per law, to recover the amounts due from the erstwhile consumer/borrower. Hence, since the burden of proof of nexus is on the licensee, even as per Clause 13.9 of the Regulation 46, there is no scope for the WBSEDCL to fix such liability on the petitioner without proving an iota of nexus.

In the absence of any proof of nexus in the present case, as evident from the above discussions, there is no

scope for the WBSEDCL to of refuse a new electricity connection to the petitioner, subject to compliance of all formalities by the petitioner.

Accordingly, W.P.A. No. 21428 of 2022 is allowed by directing the WBSEDCL to give a new electricity connection to the petitioner at the property-in-question, subject to compliance of all other formalities by the petitioner; however, the WBSEDCL shall not claim any outstanding dues allegedly left by the erstwhile consumer from the petitioner as a pre-condition for giving such electricity connection.

It is expected that the connection shall be given to the petitioner by the WBSEDCL as expeditiously as possible, preferably within three weeks from the date of compliance of all formalities by the petitioner.

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.

(Sabyasachi Bhattacharyya, J.)