

AD-10
Ct No.09
08.06.2023
TN

WPA No. 12186 of 2023

Alok Kedia
Vs.
West Bengal State Electricity Distribution
Company Limited and others

Mr. Ganesh Srivastava,
Mr. Sukanta Das

.... for the petitioner

Mr. Sumit Ray

.... for the WBSEDCL

Mr. Sourav Sengupta,
Mr. A. Baid

.... for the respondent nos. 5 & 6

Learned counsel for the petitioner contends that despite a previous order dated March 30, 2023 passed in WPA 7519 of 2023 directing the West Bengal State Electricity Distribution Company Limited (WBSEDCL) to give electricity supply to the petitioner, if necessary with police help, such connection has not yet been given. Subsequent to the order, it is contended, several correspondences were exchanged between the WBSEDCL and the petitioner. The ultimate stand which has been taken by the WBSEDCL is that the petitioner is to construct a cable trench from the entry gate to the present metering position or to opt for the initial metering position as decided previously on March 31, 2023. The WBSEDCL further required the

petitioner, after confirmation of the previous point, to ensure that Bus-bar and three phase main switch was installed from the end of the petitioner.

It is contended that the said trench is to be dug up in a common passage at the property. The private respondents, who are the alleged lessors of the petitioner, are already enjoying electricity through cables laid under the said passage itself, but are objecting when the petitioner is seeking to undertake the necessary work required to have the connection.

Learned counsel for the WBSEDCL submits that the WBSEDCL has no objection, in principle, to comply with its communication dated May 10, 2023, where the aforesaid options were given to the petitioner.

Learned counsel for the private respondents submits that a licence in respect of the premises was granted previously in favour of the petitioner by the private respondent nos. 5 and 6. Subsequently the said licence expired.

Even thereafter, the petitioner has been carrying on in occupation of the property unlawfully, without having any legal right to do so. It is, thus, submitted that the petitioner has no *locus standi* to have an electricity connection at the premises.

Learned counsel for the respondent nos. 5 and 6 further submits that the order dated March 30, 2023 was passed in WPA 7519 of 2023 in the absence of the respondent nos. 5 and 6. It is contended that although the court was given the impression that service had been duly effected, the private respondent nos. 5 and 6 were not served prior to the said order being passed. Accordingly, the private respondent nos. 5 and 6 intend to file an application for review of the said order, for which a week's adjournment is sought by learned counsel for the private respondent nos. 5 and 6.

Upon query of court, however, it is submitted by learned counsel for the private respondent nos. 5 and 6 that a copy of the present writ petition was duly served on the private respondent nos. 5 and 6 prior to the closure of this court for the last Summer Vacation.

The court closed after May 19, 2023. As such, since we are on June 08, 2023 today, sufficient time was available for the private respondent nos. 5 and 6 to file any review application if they so intended.

Having not done so, such prayer for adjournment of the private respondent nos. 5 and 6 is deemed to be an effort merely to stall the petitioner from getting electricity connection.

Although learned counsel for the private respondent nos. 5 and 6 seeks to contend that there are several judgments of coordinate Benches of this court indicating that only a lawful occupant of a premises is entitled to get electricity connection, such position is not acceptable in law in view of a three Judge Bench judgment of this court reported at (2011) 2 CHN 768 [*Abhimanyu Mazumdar Vs. Superintending Engineer*] has already held, while resolving the issue, that any person in “settled possession” of a property, irrespective of the lawfulness of his/her possession, is entitled to get electricity connection in his/her name under Section 43 of the Electricity Act, 2003.

In the present case, the petitioner has filed a suit for declaration of the petitioner’s right in respect of the property and has obtained an injunction restraining the private respondent nos. 5 and 6 from disturbing the petitioner’s enjoyment of the suit property. Hence, it cannot be said that the petitioner is not in settled occupation of the property. The private respondent nos. 5 and 6 submit that they have preferred a challenge against the said injunction order which is now pending. However, mere pendency of a challenge, in whatever form, does not operate automatically as a stay of an order of injunction.

That apart, in view of the order dated March 30, 2023 passed in WPA 7519 of 2023, the presumption is that the possession of the petitioner in respect of the property has not been challenged. Even if the legality or lawfulness of such occupation has been challenged by the private respondent nos. 5 and 6, the same does not invalidate in any manner the factum of actual physical occupation of the petitioner, that is, settled possession of the petitioner in respect of the property. In view of the position taken by the WBSEDCL that the works required to be done by the petitioner, if done, would pave the way for the WBSEDCL to give the electricity connection as intended, there cannot be any further impediment, particularly at the behest of the private respondent nos. 5 and 6, who are parties to the suit and bound by the injunction order passed by the civil court, by way of any objection to the same.

In view of the above reasons, WPA No. 12186 of 2023 is allowed on contest, thereby directing the petitioner to complete the work, as indicated by the WBSEDCL in its communication dated May 10, 2023 (Annexure P-15 at page-58 of the writ petition). The petitioner will be at liberty to approach the local police station for adequate police assistance in the event the private respondents obstruct, in any manner, such endeavour on the part of the petitioner to have a cable

trench dug up under the common pathway from the entry gate to the present metering position and to ensure that the required Bus-bar and three phase main switch are installed from the end of the petitioner. Such entire work shall be undertaken and concluded by the petitioner latest within three weeks from date.

The parties shall act on the server copy of this order.

It is made clear, however, that the aforesaid works, if done by the petitioner at the property-in-dispute, shall not create any special right or equity in favour of the petitioner and shall be entirely without prejudice to the rights and contentions of the parties in the pending civil suit between the petitioner and the private respondent nos. 5 and 6.

Upon the conclusion of the work to be so undertaken, the petitioner shall intimate about such completion to the WBSEDCL in writing. Upon getting such communication, the WBSEDCL shall, within a fortnight thereafter, upon being satisfied with the completion of the work in proper manner, give the electricity connection to the petitioner.

Such electricity connection shall, of course, be given upon compliance of due formalities by the petitioner.

In the event the WBSEDCL finds that the work has not been completed to their satisfaction, the WBSEDCL shall immediately inform the same to the petitioner, upon which it will be open to the petitioner to complete the work satisfactorily.

Be that as it may, whenever the work is satisfactorily completed by the petitioner, the WBSEDCL shall be duty-bound to give the new electricity connection to the petitioner within a fortnight thereafter, upon compliance of due formalities by the petitioner.

In the event the WBSEDCL personnel are obstructed at the time of giving such connection or the writ petitioner is obstructed by the private respondents from undertaking any of the above works, it will be open to the petitioner and/or the WBSEDCL personnel to approach respondent no.4, the Inspector-in-Charge, Bidhannagar (South) Police Station for adequate police assistance, which will be given by respondent no.4, by acting on such written communication, at the cost of the petitioner.

It is further made clear that while undertaking the work as permitted above, the petitioner shall ensure that sufficient space is left for user of the common passage over the rest of the portion than that which is essentially required for the purpose of laying

such underground cable. In any event, the petitioner shall not disrupt the ingress and egress over the said common passage during the period of the work and/or otherwise.

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.)