

D/L. 30.
July 3, 2023.
MNS.

WPA No. 12705 of 2023

Dhulagarh Sabji O Fal Paikari Babsayee
Kalyan Samity
Vs.
West Bengal State Electricity Distribution
Company Limited (WBSEDCL) and others

Mr. Tanmoy Chattopadhyay

... for the petitioner.

Mr. Sujit Sankar Koley

...for the WBSEDCL.

Mr. B. P. Banerjee,
Mr. P. Baidya

...for the respondent no. 9.

Affidavit-of-service filed in Court today be
kept on record.

Learned counsel for the petitioner
contends that despite several previous rounds of
litigation, even after the issue of entitlement of the
applicants to have electricity connection at the
location-in-question having been settled, the
West Bengal State Electricity Distribution
Company Limited (WBSEDCL) is yet to give such
connection to all the 68 applicants, who are
represented by their Society, the present writ
petitioner.

Learned counsel appearing for the respondent no. 9, the present objector, submits that “the picture has altered in the meantime”. It is submitted that the previous dispute arose regarding installation of certain other poles, whereas eleven new poles are being sought to be installed on the property of the respondent no. 9, for which the respondent no. 9 is constrained to raise objection.

Such stand is reiterated by the WBSEDCL.

Learned counsel for the WBSEDCL submits that the current dispute has already been referred to the District Magistrate and has been heard before the said authority. The said matter is on the verge of conclusion, awaiting the order to be passed by the Magistrate.

Upon hearing learned counsel for the parties, it is clear that the matter is undoubtedly chequered in so far as its history is concerned.

At the initial stage, when eight previous poles were installed by the WBSEDCL for giving electricity connection to the members of the petitioner-society, who had applied for electricity connection, the present respondent no. 9 (also respondent no. 9 therein) took an objection. This

court, in its order dated March 4, 2022 passed in WPA No. 2229 of 2022, had decided the said issue. A scrutiny of the said order indicates that it was contended by respondent no. 9 that it is the owner of the property-in-question and has been supplying electricity to the occupiers and vendors thereat.

The Distribution Licensee had taken a stand that the respondent no. 9 is a bulk consumer and it is not within the domain of the WBSEDCL to supervise as to which persons are given connection by the said bulk consumer. At inner page 4 of the said order, it was observed by this Court that due to resistance created by the respondent no. 9, the electricity connection could not be given individually to the petitioner and the other vendors (which covers the present 68 applicants, whose applications are still pending, as well).

It was also recorded that the respondent no. 9 had taken a specific plea as regards the route over which the connection was to be given being owned by the said respondent. It was observed by this Court that if a person is in settled possession of a property he/she is entitled to get electricity connection under Section 43 of

the Electricity Act, 2003 (2003 Act) on his/her occupied premises subject to compliance of all due formalities. Moreover, the petitioner and other vendors' occupation of the area had not been disputed by either the Distribution Licensee or the respondent no. 9, it was observed, although the respondent no. 9 specifically disputed the legality of such possession.

In such circumstances, it was held that merely due to an objection raised by the respondent no. 9 as to the legality of the petitioner's possession, the right conferred on the petitioner and other vendors, who are evidently in settled occupation, under Section 43 of the 2003 Act cannot be curtailed.

Accordingly, the writ petition was disposed of by directing the WBSEDCL to immediately make the necessary installation and raise the structures necessary for giving electric connection individually to the petitioner therein and/or other applicants, if any, subject to compliance of all due formalities in law by the petitioner and the other applicants.

Certain other consequential directions were also passed in the said order. After the said adjudication, a dispute was raised by a third

party, which was ultimately decided by the concerned District Magistrate. The District Magistrate, vide order dated November 22, 2022, had ultimately observed that the Distribution Licensee, that is, the WBSEDCL shall pay an amount of Rs.17,934/- to the private respondent for erecting eight electric poles and shall draw the electric cable through these poles to give the electric connection to the petitioner. Thereafter, the same was challenged, but ultimately no deviation could be obtained by the objector therein, to the direction to supply electricity to the petitioner.

It is seen that at present, the same respondent no. 9 has again raised a similar objection when the WBSEDCL is seeking to install eleven further poles on the land-in-question, the ownership of which, according to learned counsel for the respondent no. 9, nobody is sure about.

Even surmising that the respondent no. 9 is the owner of a part or the whole of the property over which the poles are being installed, the Works of Licensee Rules, 2006 (2006 Rules) clearly specify that in case of dispute, the same is required to be decided by the District Magistrate.

In so far as the present dispute is concerned, the same pertains to the self-same subject matter, which fell for consideration previously before the writ court and thereafter before the District Magistrate.

The issue raised before the Magistrate as well the writ court was whether the WBSEDCL was entitled to give electricity connection to the petitioner. The corollary to such main issue was the amount of compensation, if payable, which was to be paid to the persons over whose land the installations were being made.

In particular, the respondent no. 9, which was a party to the initial writ petition, being bound by the order passed therein, cannot resile from such position and seek to reopen the final conclusion reached in the said writ petition by an order of court, inasmuch as the right of the WBSEDCL to give electricity connection to the petitioner is concerned and/or as to the right of the petitioners to get such electricity connection.

68 applicants, being local vendors, whose applications are still pending, had already applied at the relevant juncture as well and their contentions regarding their right to get electricity

connection has been conclusively decided on the earlier occasions.

After the writ court having turned down the prayer of respondent no. 9, in the capacity of the owner of the land, it does not lie in the mouth of the respondent no. 9 to raise objection when further electric poles are sought to be installed for the purpose of compliance of the order of the court and to give electricity connection to the pending applicants, who are fruit and vegetable vendors in the area.

Needless to say, the applicants have to comply with other formalities, but in so far as the objection of the respondent no. 9 is concerned, the same has been rendered a non-issue after the previous adjudication and cannot be reopened before the District Magistrate again and again, repeatedly.

Hence, irrespective of the dispute raised by the respondent no. 9 before the concerned District Magistrate, the same is a foregone conclusion in view of the order passed by the writ court on earlier occasions. The petitioner-society and its members, being the fruit/vegetable vendors in the locality, have a right to get an electricity connection individually for each of the

applicants, irrespective of the objection raised by the respondent no. 9.

However, undoubtedly, the WBSEDCL is also required to consider the question of compensation and quantum thereof, if payable, to the owners of the land over which the eleven electricity poles are being installed. If a due application for compensation is made by the respondent no. 9 or any other party, the same shall be decided duly in accordance with law by the WBSEDCL and compensation shall be disbursed to the entitled parties accordingly.

However, in the event it is seen that the applicants are not satisfied with the compensation, if any, granted by the WBSEDCL, it will be open to such aggrieved persons to make necessary applications before the concerned District Magistrate within the purview of the 2006 Rules.

However, there cannot be any further impediment for the electricity connection being given to the applicants through/over the eleven electricity poles, which have been installed by the WBSEDCL.

Hence, WPA No. 12705 of 2023 is allowed, thereby directing the WBSEDCL to

immediately take steps to give electricity connection to all the applicants, who are members of the petitioner-society, whose applications are already pending, irrespective of the objection raised by the respondent no. 9 without waiting for the outcome of the dispute raised before the District Magistrate. Such connection shall be given to the applicants in the pending applications as expeditiously as possible, positively within two months from date, subject to their compliance with other formalities.

However, nothing in this order shall preclude the respondent no. 9 and/or any other aggrieved party/land owner to make appropriate applications for compensation.

In the event the WBSEDCL personnel face any obstruction from any quarter, including the respondent no. 9, in giving such connection to the applicants, it will be open to the WBSEDCL personnel to approach the concerned police authorities, being the respondent no. 8, the Inspector-in-Charge, Sankrail Police Station, Howrah Police Commissionerate, for adequate police assistance in that regard.

If so approached, the Inspector-in-Charge, Sankrail Police Station, shall act on the written

communication of the learned advocates for the petitioner and/or the WBSEDCL and give such assistance to the WBSEDCL personnel on the basis of a server copy of this order, without insisting upon prior production of a certified copy thereof.

Such assistance shall be given with adequate forces and, if need be, by recruiting further forces from superior authorities, at the cost of the petitioner-society.

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.)