

D/L. 23.
August 17, 2023.
MNS.

WPA No. 15697 of 2023

Jaydeb Mistri
Vs.
State of West Bengal and others

Mr. Ranjan Kali,
Mr. Mitul Chakraborty,
Mr. Shaswat Nayak,
Ms. Mili Saha,
Ms. Payel Nath

... for the petitioner.

Ms. Susmsita Chatterjee

...for the WBSEDCL.

Mr. Allen Felix

...for the respondent 5.

Mr.Sattwik Bhattacharyya,
Mr. Aashutosh Bhattacharyya

...for the respondent no. 6.

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

Learned counsel for the petitioner
contends that the petitioner has been enjoying
electricity connection at the disputed premises as
tenant thereof. During such subsistence of the
connection, a writ petition was filed by the private
respondent no. 5, giving rise to WPA 12846 of
2023. A co-ordinate Bench of this Court passed

an order on May 29, 2023 recording that the present respondent no. 5, who was the petitioner therein, was challenging the action of the West Bengal State Electricity Distribution Company Limited (WBSEDCL) in providing electricity connection to the petitioner without the consent of the present respondent no. 5. The learned Single Judge further directed the respondent authorities, particularly, the respondent no. 2 (WBSEDCL), to consider the representation submitted by the present respondent no. 5 (writ petitioner therein) within eight weeks from the date of receipt of a copy of the order.

Surprisingly, on the very next date, that is, May 30, 2023, the WBSEDCL gave a notice to the petitioner, thereby stating that, “to comply with the court’s order”, the said respondent was bound to disconnect the petitioner’s service connection. Giving effect to such threat, the electricity connection of the petitioner was disconnected on June 2, 2023. Challenging such palpably illegal action of the WBSEDCL, the petitioner has preferred the instant writ petition.

Learned counsel appearing for the WBSEDCL falters while answering the court’s query as to how the WBSEDCL disconnected the

supply of the petitioner without prior notice to the petitioner. It is sought to be made by the WBSEDCL that despite previous notices, the petitioner did not respond to the same.

Learned counsel appearing for the respondent no. 5 vociferously argues that the petitioner had forged the signature of the respondent no. 5 in the alleged tenancy agreement between the petitioner and the respondent no. 5, for which a criminal complaint was lodged by the respondent no. 5.

However, upon query of court on its *locus standi*, the vociferousness of learned counsel for the respondent no. 5 is stymied and it is contended that the respondent no. 5 has, in the year 2023, transferred the property in favour of respondent no. 6.

In his turn, learned counsel for the respondent no. 6 submits that the petitioner has perpetrated forgery, both with regard to the tenancy agreement as well as the purported agreement for purchase, on the strength of which the petitioner has also sought a decree of specific performance.

On query of court, learned counsel submits that the respondent no. 6 learnt of such forgery

from the respondent no. 5, which is rather obvious, since the respondent no. 6, even as per his allegation, has come into the picture much later.

Surprise, surprise; learned counsel for the respondent no. 6 submits that the respondent no. 6 has obtained vacant and peaceful possession of the property from respondent no. 5 pursuant to his purchase in the year 2023.

However, the respondent no. 5 has never argued that the said respondent had obtained such vacant and peaceful possession by ousting the petitioner from the property.

As such, the peculiar scenario sought to be argued by the respondent no. 6 is that, although his predecessor-in-interest (respondent no. 5) got vacant possession and gave it to the respondent no. 6, the respondent no. 5 himself never alleged having got vacant and peaceful possession upon ousting the petitioner at any point of time. The respondent no. 6 has even applied for electricity connection in his name on the strength of such alleged vacant and peaceful possession.

It is clear from the materials on record that a travesty of justice has been perpetrated by the

WBSEDCL, in obvious collusion with the respondent nos. 5 and 6.

Although the WBSEDCL, in other more important instances, where people go without electricity, is extremely slow in taking appropriate action, in the present case, due to some unknown prompting, the WBSEDCL acted in proverbially hot haste, since the direction of the co-ordinate Bench dated May 29, 2023, merely to consider the representation of the respondent no. 5 challenging the electricity supply to the present writ petitioner within eight weeks, was given effect to on the very next date, that is, on May 30, 2023, by writing to the petitioner that “now to comply the court’s order against the aforesaid writ petition”, the WBSEDCL was bound not merely to consider the representation of respondent no. 5, but to *disconnect* the petitioner’s electricity connection.

First, such surprising action, without any ground or prior notice to the petitioner, was uncalled for. Secondly and more importantly, the co-ordinate Bench had not directed the WBSEDCL to disconnect the petitioner’s supply, but merely to consider the representation of the respondent no. 5 in that regard within eight weeks from the date of passing of the order.

As such, the said action of the WBSEDCL is palpably *de hors* the law and all norms of natural justice. Following up on such patently illegal action, the WBSEDCL proceeded further to actually disconnect the petitioner's supply on June 2, 2023.

The submission made on behalf of the WBSEDCL, to the effect that the WBSEDCL had given several notices, to which the petitioner did not respond, is patently absurd.

The sequence of events was that the co-ordinate Bench directed a consideration sought by the respondent no. 5's representation on May 29, 2023; on May 30, 2023, the WBSEDCL threatened disconnection of the petitioner's electricity supply and implemented such threat on June 2, 2023. It defies imagination as to how the WBSEDCL could issue notices within such short period to the petitioner and how the petitioner, despite getting opportunity, could not respond to the same.

In so far as the respondent no. 5 is concerned, despite the loud voice of learned counsel for the respondent no. 5, the respondent no. 5 has palpably no *locus standi* to object to the petitioner's electricity supply, in view of the

respondent no. 5 having transferred the property admittedly in favour of a third party. Although the respondent no. 5 may have had *locus standi* at the relevant juncture when the representation was made, that is, in the year 2021, as of today, the respondent no. 5 himself claims to be divested of title by transfer and, thus, having no *locus standi* to object the petitioner's electricity connection.

The respondent no. 6 has come out with a plea that even if the said respondent no. 6 has acquired any title in the property by virtue of transfer by the respondent no. 5, the same does not *per se* mean that the said respondent has obtained vacant and peaceful possession of the property. Within the contemplation of the Evidence Act, 1872, it is for the person, who alleges that a continuing tenancy or possession of a person has been terminated, to establish by proof that such termination has taken place.

The respondent no. 6 has relied on the purchase deed of the respondent no. 6, in which apparently the respondent nos. 6 and 5, the colluders, between themselves, have given vacant and peaceful possession, without the vendor (respondent no. 5) having obtained such

possession from the petitioner in the first place at any point of time.

Hence, in fine, the impugned disconnection notice and actual act of disconnection of the petitioner's valid electricity supply by the WBSEDCL is patently collusive with the respondent nos. 5 and 6. The petitioner has been in established and settled possession of the property all along and nothing cogent has been produced by any of the respondents, apart from the deed entered into *inter se* the respondent nos. 5 and 6, to show that the petitioner's possession was ever disputed.

In such view of the matter, WPA No. 15697 of 2023 is allowed on contest, thereby directing the WBSEDCL to restore the electricity supply to the petitioner, without charging anything whatsoever, latest within 48 hours from now.

Over and above such restoration of electricity connection, the WBSEDCL shall pay costs of Rs.50,000/- to the petitioner to compensate the extreme unpleasantness and inconvenience which was forced upon the petitioner by the WBSEDCL by its illegal act of disconnection of electricity. Such costs shall be adjusted with the future electricity bills raised for

the current consumption of electricity by the petitioner, till the entire amount of costs of Rs.50,000/- is adjusted with such current electricity bills.

The WBSEDCL will be at liberty to recover such costs from the recalcitrant officer(s)/ employer(s) of the WBSEDCL who was or were responsible for the impugned decision to send such notice and disconnect.

The parties shall act on the server copy of this order, without insisting upon prior production of a certified copy thereof.

Nothing in this order, however, shall affect the rights and contentions of the parties in any criminal or civil suit or proceedings, if pending or instituted in future between the parties before any competent forum whatsoever.

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.)