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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 16384 of 2023

Dipika Dey

Vs.

The West Bengal State Electricity
Distribution Company Limited & Ors.

Mr. Sukumar Ghosh,
Ms. Moumita Ghosh

...for the petitioner

Mr. Srijan Nayak

...for the WBSEDCL

Learned counsel appearing for the petitioner contends that the petitioner sought for a new electricity connection after constructing a house under the *Banglar Abas Jojona*.

Subsequently, the West Bengal State Electricity Distribution Company Limited (WBSEDCL) refused to give such connection unless the petitioner pays alleged outstanding dues, which was left due allegedly by the father-in-law of the petitioner.

It is contended that the petitioner approached the Grievance Redressal Officer (G.R.O.) concerned and, thereafter, went up to the Ombudsman. The Ombudsman, while dealing with the issue, upon

hearing both sides, specifically directed that the WBSEDCL, without any prejudice, shall provide the new domestic electricity connection to Smt. Dipika Dey (the petitioner) immediately on receipt of the order, on completion of the necessary formalities.

The case was, thus, disposed of.

Learned counsel appearing for the petitioner argues that the WBSEDCL, in contravention of such direction, has not yet given electricity connection to the petitioner, which has compelled the petitioner to move this Court.

Learned counsel appearing for the WBSEDCL submits that the Ombudsman did not have jurisdiction to take up the issue, since, under the law, it is only a 'consumer' who can move the Ombudsman in a challenge of such nature.

That apart, the petitioner, being the daughter-in-law of the defaulting consumer, obviously took benefit of such default and, as such, the nexus between the defaulting consumer and the petitioner is evident. Hence, it is submitted, the petitioner is duty-bound in law and under the regulation to pay the outstanding amounts prior to get a new electricity connection within the contemplation of

Clause 13.9 of Regulation 46 of the West Bengal State Electricity Regulatory Commission (WBERC).

Learned counsel for the WBSEDCL also contents that On May 27, 2023, the supply of the father-in-law of the petitioner was disconnected and on May 29, 2023, the petitioner applied for a new electricity connection. Hence, evidently, the petitioner was, prior to such disconnection, taking advantage of the electricity connection.

Perused the materials annexed to the writ petition and heard learned counsel for the parties.

A perusal of the impugned order of the Ombudsman clearly shows that the respondent-authorities submitted to the jurisdiction of the Ombudsman. That apart, since the petitioner duly applied for a new electricity connection and alleges that the petitioner complied with the pre-requisite formalities, it cannot be said that the Ombudsman did not have jurisdiction. In any event, in the absence of anything on record to show that the Licensee objected to the maintainability of the matter before the Ombudsman or before the G.R.O., the Licensee cannot be permitted, at this belated juncture and after knowing the outcome of the Ombudsman's adjudication, to raise the

question of maintainability/jurisdiction for the first time before the writ court. Hence, such objection of the respondent-Licensee is turned down.

Insofar as the disconnection is concerned, the Ombudsman, in his order, elaborately dealt with both sides' submissions. In paragraph no. 4 of the judgment of the Ombudsman, it was laid down that the representative of the petitioner submitted that his client, Smt. Dipika Dey (the present petitioner) is completely separated from the premises of her father-in-law. She has built one small house under the State Government Scheme, namely, *Banglar Abas Jojona*, and has applied for a fresh connection in respect of different premises.

The petitioner also produced all necessary documents towards her separate residence, it was recorded.

The Ombudsman, while dealing with such issue, observed in paragraph no. 13 of the judgement that the outstanding amounts were piled up due to non-action on the part of the Licensee and the consequence of the failure on the part of the Licensee cannot be imposed on the intending applicant. More importantly, it was observed that the applicant, during hearing, affirmed that she did

not stay with her father-in-law and that she had come to stay in her newly constructed building for the last one year, for which she had applied for a new connection. On such premise, the Ombudsman observed that Clause 13.9 of Regulation 46 of the WBERC is not applicable to the present case.

Moreover, it was observed by the Ombudsman in paragraph no. 19 of his judgment that on the scrutiny of available papers on records and submission of both parties it was held that the absence of physical boundary between the two plots of the petitioner and her father-in-law cannot be construed as ground for denial of fresh connection to the applicant. Both the families, it was observed, can be living independently and separately for so long; so the question of nexus does not hold any merit in the case.

It was also observed by the Ombudsman that it is surprising to note that the electricity bill has gone up to such an extent but the Licensee did not take any action for that.

Had the Licensee taken necessary action for disconnection of the electricity immediately after the expiry of due date, the electricity bills would not

have reached such a huge amount, which is, undoubtedly, a lapse on the part of the Licensee.

Since the amount has reached such a huge figure, it was observed that the Licensee is trying to justify their stand by imposing the amount to the intending consumer on the ground of nexus.

As such, the Ombudsman further observed that the higher authority of the WBSEDCL should keep a vigil on the issue.

Ultimately, the Ombudsman, upon such elaborate consideration of the materials on record, directed that the electricity connection be given by the WBSEDCL to the petitioner.

In fact, the Ombudsman, while passing the order-in-question, accepted one of the views which were probable in the facts of the case. It is well-settled that even an appellate court does not interfere with one of the probable views, if accepted by the first forum or the first appellate forum, merely because another view could be possible on the facts.

In the present case, the scope of interference under Article 226 of the Constitution of India is extremely limited. That apart, the WBSEDCL has, till date, not preferred any writ petition or any

further challenge to the Ombudsman's order, thereby letting the same attained finality.

The order was passed on May 17, 2023. Till date, despite having not challenged the same, the WBSEDCL, for some unexplained reasons, has not complied with the same. Thus, the WBSEDCL cannot be permitted, at this belated juncture, to resile from the decision taken by the Ombudsman or to contravene the same.

Hence, the WBSEDCL was duty-bound to comply with the order of the Ombudsman.

Accordingly, W.P.A. No. 16384 of 2023 is disposed of by directing the WBSEDCL to give a new electricity connection to the petitioner, as per her application, within a fortnight from date and/or from the compliance of the formalities by the petitioner, whichever is later.

It is made clear that such time-frame is directory and peremptory. In the event the WBSEDCL does not comply with the above direction, the said Licensee shall be liable for contempt of order of Court.

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

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.)