

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 1083 of 2022

with

CAN 1 of 2022

Reserved on: 09.02.2023

Pronounced on: 20.03.2023

West Bengal State Electricity Distribution Company Limited and Ors.

...Appellant

-Vs-

Transmission & Distribution (India) Limited

...Respondents

Present:-

Mr. Sumit Kr. Panja,
Mr. Sumit Ray, Advocates

... for the Appellants

Mr. Debnath Ghosh,
Ms. Ardeeka Pandey,
Mr. Arkodeb Sinha,
Mr. Biswajit Konar,
Mr. Arijit Mahinder, Advocates

... for the Respondent

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. By this intra-court appeal, West Bengal State Electricity Distribution Company and its authorities (respondents in the writ petition) have challenged the order of the learned Single Judge dated 7th of June, 2022 allowing W.P.A. No. 7716 of 2013 and directing the appellants to give a new electricity connection to the writ petitioner (sole respondent in this appeal) without insisting upon payment by the

writ petitioner of outstanding dues, if any, of the previous owner, subject to compliance of all other formalities in accordance with law. The petitioner had filed the writ petition with the plea that they had purchased the land in question on 26th of April, 2010 through four deeds of conveyance from one Biswanath Beriwal and they were delivered the possession of the land simultaneously. There was no electricity connection at the purchased premises, therefore, writ petitioner had applied to the appellant for new connection at its premises on 23rd of February, 2012 by depositing the requisite earnest money. The application remained pending though all the requisite formalities were completed and finally vide letter dated 9th of January, 2013, appellant had declined to give supply of electricity to the premises of the petitioner on the plea of submission of the purported “payment clearance” with respect to the previous connection of one “M/s. CD Steelco”. Vide subsequent communication dated 8th of February, 2013, certain amount was expressly demanded by the appellants on account of OSD and other charges on the alleged account of the said M/s. CD Steelco. Being aggrieved with the same, writ petition was filed by the petitioner challenging the notices dated 9th of January, 2013 and 8th of February, 2013 and further seeking a direction to the appellants to allow the application for new connection and give supply of electricity to the premises of the petitioner.

2. Learned Single Judge by the impugned order has allowed the petition finding that there was no nexus between the writ petitioner and the erstwhile consumer and thereby directing the appellants to give new electricity connection.

3. Submission of learned counsel for the appellants is that learned Single Judge has committed an error in holding that there was no nexus between the writ petitioner and the erstwhile purchaser. In support of his submission, he has referred to the sale deeds which were executed by the erstwhile co-owners in favour of the writ petitioner. He submits that the condition of nexus as provided in Regulation 13.9 is satisfied in this case, therefore, the order of the learned Single Judge cannot be sustained. He has also submitted that joinder of the erstwhile owner M/s. CD Steelco was necessary. In support of his submission, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **Isha Marbles vs. Bihar State Electricity Board and Another** reported in (1995) 2 SCC 648 and in the matter of **Paschimanchal Vidyut Vitran Nigam Limited and Others vs. DVS Steels and Alloys Private Limited and Others** reported in (2010) 1 SCC 210.

4. Learned counsel for the respondent (writ petitioner) has submitted that the nexus is to be established by the appellant electricity company, which they have failed to establish and that the demand raised by the appellant company was barred by limitation. He further submits that the application dated 3rd of January, 2013 was made by the writ petitioner as a new consumer and the reasons for rejection of the said application are unsustainable. In support of his submission that the demand is barred by time, he has placed reliance upon Section 56(2) of the Electricity Act, 2003 and has submitted that if the amount is not recoverable in law, then a condition to pay the said amount cannot be imposed on the purchaser. He submits that there is no nexus between M/s. CD Steelco and the writ petitioner as they have no common

Directors or share-holders. In support of his submissions, he has placed reliance upon the judgments of the Hon'ble Supreme Court in the matter of **Isha Marbles (supra)**, in the matter of **New Delhi Municipal Committee vs. Kalu Ram and Another** reported in **(1976) 3 SCC 407** and the Division Bench order of this Court in the matter of **Damodar Valley Corporation and Ors. vs. Shree Ramdoot Rollers Private Ltd.** dated **24th of April, 2020** passed in **FMA 956 of 2019**. He has also submitted that the joinder of M/s. CD Steelco was not necessary and in support of his submission, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay and Others** reported in **(1992) 2 SCC 524**.

5. We have heard learned counsel for the parties and perused the record.

6. In the present case, the writ petitioner is the purchaser of the premises in question from the earlier owner. The West Bengal Electricity Regulatory Commission (Standards of Performance of Licensees Relating to Consumer Services) Regulations, 2010 have been framed by the West Bengal Electricity Regulatory Commission in exercise of the powers conferred by the Electricity Act, 2003. Regulation 13.9 relates to grant of new connection for supply of electricity and it also provides for responsibility to pay the outstanding charges on proof of nexus with the previous consumer. Regulation 13.9 is reproduced below for ready reference:

“... 13.9 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(s) to the licensee.”

7. A perusal of Regulation 13.9 reveals that an applicant for new connection is required to pay the outstanding dues of the previous consumer of the property if its nexus with the previous consumer is established.

8. In the present case, reliance has been placed upon the sale deeds which have been executed in favour of the writ petitioner by learned counsel for the appellants to prove the nexus between the writ petitioner and the previous consumer. On minute scrutiny of the said sale deeds, we do not find any nexus between the two. The sale deeds do not contain any condition for payment of outstanding dues of the previous owner nor does it reflect that the writ petitioner has been extended any benefit at the stage of execution of sale deeds on account of the pending electricity dues. Learned Single Judge in this regard has rightly found that:

“Insofar as the expression “nexus” is concerned, as discussed above, it has not been established in any manner that the petitioner/ purchaser had any nexus with the erstwhile consumer inasmuch as the outstanding arrears are concerned and/or that the petitioner benefited in any manner from such non-payment of the outstanding dues by the previous consumer to the Distribution Licensee. Since Clause 13.9 of Regulation 46 clearly adds ‘nexus’ as a condition precedent of casting the

liability of previous outstanding dues on a new applicant, in the absence of satisfaction on such score, there is no scope of attributing such liability on the petitioner in the present case.”

9. Learned counsel for the respondent has also pointed out that the share-holders and Directors of the writ petitioner and erstwhile consumer M/s. CD Steelco are different.

10. So far as the judgment in the case of **Isha Marbles (supra)** is concerned, that was a case of auction purchase and the Hon’ble Supreme Court took the view that where the premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply and what matters is the contract entered into by the erstwhile consumer with the Board and the Board cannot seek the enforcement of the contractual liability against the third party.

11. In the present case, the specific Regulation 13.9 exists which provides for the condition of nexus which has not been established, thence, the plea of the appellant in this regard cannot be accepted.

12. So far as the judgment in the matter of **DVS Steels and Alloys Private Limited (supra)** is concerned, in that case, the Hon’ble Supreme Court in paragraph 11 has held that the normal rule that a transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of the contract cannot be asked to pay the dues of his predecessors-in-title or possession, as the amount payable towards supply of electricity does not constitute “charge” on the premises. In paragraph 11 of the judgment, Hon’ble Supreme Court has taken note of the position when the purchaser of a premises

approaches the distributor seeking a fresh electricity connection to its premises. It has been held that if the rules are silent, the distributor can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. In the present case, Regulation 13.9 is applicable, therefore, learned Single Judge has rightly decided the issue keeping in view of the said Regulation.

13. That apart, it is also noticed that Section 56(2) of the Electricity Act, 2003 provides that no sum due from any consumer under Section 56 will be recoverable after a period of two years from the date when such sum first became due unless such sum was shown continuously recoverable as arrears of charges of electricity supply. Applicability of this section has not been disputed by learned counsel for the appellants and it is also not in dispute that the dues of the earlier owner were for a period much prior to two years of issuance of the demand notices which were impugned in the writ petition. In this regard, reliance has been placed in the judgment of the Hon'ble Supreme Court in the matter of **Kalu Ram and Another (supra)** rendered in relation to the recovery of arrears of rent under Public Premises (Eviction of Unauthorised Occupants) Act, 1958 wherein it is held that payable means legally recoverable and that Section 7 thereof did not create a right to realize arrears of rents without any limitation of time.

14. That apart, it is also noticed that though learned counsel for the appellants had raised the plea that M/s. CD Steelco was a necessary party but he has failed to substantiate it. In terms of the Regulation, the nexus was required to be established by producing the requisite material which could be done even in the absence of that party, which the appellant has failed to do in the present case.

15. In the above circumstances, we find no error in the order of the learned Single Judge. The appeal is accordingly dismissed.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
20.03.2023

PA(RB)

(A.F.R. / N.A.F.R.)