

D/L. 21.
January 4, 2023.
MNS.

WPA No.19693 of 2022

Ananda Manna
Vs.
The West Bengal State Electricity
Distribution Company Limited and others

Mr. Khairul Alam

... for the petitioner.

Mr. Mihir Kundu

...for the WBSEDCL.

Mr. Pratik Dhar,
Mr. Ritwik Pattanayak

...for the WBERC.

Learned counsel for the petitioner contends that despite a previous direction by this Court on the Ombudsman to rehear the issue-in-question on two grounds, primarily to ascertain whether the private respondent, Liyakat Molla, is entitled to take any electricity connection over the plot of the present petitioner and whether the present petitioner had given any consent in that regard at any point of time, the Ombudsman shirked the issue and failed to decide the same. That apart, it is contended that the Ombudsman placed reliance on a report, which was not a report filed by the BL&LRO at all.

The learned Senior Advocate appearing for the West Bengal Electricity Regulatory Commission (WBERC), representing the Ombudsman, submits that it is beyond the scope of the Ombudsman's jurisdiction to ascertain physically as to whether the electricity line has been taken over the petitioner's plot, that is, plot no. 654 or the said Liyakat's plot, that is, plot no. 655. As such, it is contended that the Ombudsman did his best in deciding the issue by placing reliance on the report filed from the office of the BL&LRO and coming to the conclusion that there was no premise for the objection raised by the petitioner inasmuch as the electricity line of Liyakat was not taken over the petitioner's land at all.

Heard learned counsel for the parties.

It is seen from the alleged written consent annexed at page 29 of the writ petition that the same does not contain any specific agreement/concession on the part of the petitioner regarding taking of an electricity connection over the petitioner's land. Rather, in Bengali vernacular, it is stated in the second paragraph thereof that the petitioner had no objection in respect of any sort of construction, electrification or anything else over any property *apart from* the petitioner's plot, that is, Dag No. 597 and LR 654.

In the present case, as such, the first issue goes in favour of the petitioner as against Liyakat, since no consent to the extent that an electricity connection for Liyakat's property may be taken over the petitioner's land was given at any point of time by the petitioner.

As regards the second question referred to the Ombudsman on the last occasion by this Court, that is, whether the said Liyakat is entitled to take electricity connection over the petitioner's land, the same has been decided by the Ombudsman on the basis of the records available before the Ombudsman and the Ombudsman cannot be faulted therefor.

However, the cardinal problem in the present case which arises is, as rightly pointed out on behalf of the Ombudsman, that the purported report filed by the BL&LRO is itself in dispute. The same indicates that the electricity line was never taken over the land of the petitioner, that is, plot no. 654. However, neither the Ombudsman nor the writ court is the appropriate authority to decide on such issue, which goes to the root of the problem.

Hence, the appropriate recourse for the petitioner is to have the matter decided by the concerned District Magistrate in so far as whether

the consent to take electricity to Liyakat's property at plot no. 655 over the petitioner's land has been taken at all.

Inasmuch as the petitioner's challenge to the report of the BL&LRO is concerned, it transpires from the said report, which has been annexed at page 12 of the affidavit-in-opposition filed by the Distribution Licensee, that the said report was countersigned by the BL&LRO, Panchla, Howrah and the inspection which led to the same was held in presence of a representative of the BL&LRO. It need not be construed that in every case the BL&LRO has to be present personally at the time of inspection.

On the basis of the materials available on record, it was well within the jurisdiction of the BL&LRO to send an authorised representative from the office of the BL&LRO to be present during the inspection.

As such, I do not find any patent irregularity inasmuch as the BL&LRO himself was the author of the report. However, inasmuch as the veracity of the contents of the report is concerned, the matter cannot be resolved herein without assessing available materials on facts.

Accordingly, WPA No. 19693 of 2022 is disposed of by granting the petitioner liberty to approach the concerned District Magistrate having territorial jurisdiction over the area concerned with the dispute as regards the electricity line of Liyakat Molla at Plot no. 655 having been taken over the petitioner's plot, that is, plot no. 654.

Upon deciding such issue, the District Magistrate shall, if need be, pass appropriate orders in that regard. Such adjudication shall be carried out by the District Magistrate upon prior notice to the concerned parties and upon giving an opportunity of hearing to all concerned and in accordance with law, preferably within eight weeks from the date of such reference being made by the petitioner.

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.)