

D/L. 37.
March 27, 2023.
MNS.

WPA No. 26660 of 2022

Arunava Dey
Vs.
State of West Bengal and another

Mr. Dhiman Ray,
Mr. Dip Chanda

...for the petitioner.

Mr. Subrata Dasgupta

...for the State.

Mr. Debjit Mukherjee

...for the Distribution Licensee.

Affidavits-in-opposition and reply filed in
Court today be kept on record.

Learned counsel for the petitioner contends, by placing reliance on a judgment reported at *AIR 2023 Calcutta 61 (Moumita Ghosh Vs. West Bengal State Electricity Distribution Company Limited and others)*, that as per Clause 13.9 of Regulation 46 of 2010 Regulations of the WBERC, unless any nexus is shown between the previous consumer and the purchaser, the West Bengal State Electricity Distribution Company Limited (WBSEDCL) cannot stipulate the pre-payment of the

outstanding dues left by the previous consumer as a pre-condition for giving electricity to the purchaser.

However, in the present case, although the petitioner agreed to deposit an amount allegedly left due by the borrower of the vendor, from whom the petitioner purchased through a bank sale, the petitioner does not now admit the liability to pay even such amount. Moreover, the WBSEDCL went so far as to list a number of alleged outstanding dues left by different consumers in respect of the premises, which were allegedly to be paid by the petitioner, who had no connection with such liabilities, before the electricity connection being given to the petitioner.

Learned counsel for the petitioner contends that the letter written by the petitioner dated September 23, 2022, annexed at page 39 of the writ petition, could not amount to an admission of such dues on the part of the petitioner. Moreover, the petitioner had agreed to make payment of the borrower's dues under compulsion, since the WBSEDCL was refusing to give electricity connection to the petitioner unless such amount was cleared.

Learned counsel also places reliance on the sale certificate of the petitioner, which clearly indicates that the list of encumbrances, which were payable by the petitioner, was shown to be “NIL” in the said certificate. As such, it is argued that the petitioner is entitled to electricity connection being given upon payment of the due charges as per law without the WBSEDCL insisting upon the outstanding dues left by any of the previous consumers.

Learned counsel appearing for the WBSEDCL also places reliance on the sale certificate annexed at page 27 of the writ petition. In the last sentence of the first paragraph of the sale certificate, it is mentioned that the sale of the scheduled property was made “without freeing from encumbrances listed below in list II”.

It is further contended that the said provision, read in conjunction with the statement of the petitioner in the letter written by the petitioner (Annexure P3 at page 39 of the writ petition), where the petitioner admitted in Bengali vernacular that the petitioner was agreeable to pay the dues left outstanding by the borrower, oblige the petitioner to clear the entire

outstanding dues before getting electricity connection.

It is submitted, by placing reliance on the affidavit-in-opposition used by the WBSEDCL, that the letter itself is sufficient indicator of a nexus between the petitioner and the borrower/erstwhile consumer.

Such contentions, of course, are refuted by learned counsel for the petitioner.

A perusal of the sale certificate relied on by both the parties indicates clearly that the SARFAESI sale was not made on an “as is where is” basis.

It was, rather, mentioned clearly in the sale certificate that the sale of the scheduled property was being made free from all encumbrances known to the secured creditor as listed in list I, on deposit of the money demanded by the undersigned therein.

In the next sentence, it was mentioned that the sale of the scheduled property was made without freeing from encumbrances listed in list II thereunder. However, in list II given in the sale certificate, it was mentioned that the list of encumbrances not freed from, and subject to which sale made, was “NIL”.

Hence, it is evident from the sale certificate itself that the purchaser in the SARFAESI sale, that is, the present petitioner, was in no position to know about previous liability or outstanding dues left with regard to the said premises.

The sale being one without encumbrances and a public sale, it cannot be said that there is any nexus whatsoever, in the absence of anything else, between the petitioner and the borrower.

That apart, on a composite reading of the letter written in Bengali vernacular, annexed at page 39 of the writ petition, it is seen that the petitioner had agreed to pay only the outstanding dues in respect of the borrower, that too under compulsion, since otherwise the WBSEDCL was not inclined to give electricity connection, which was also indicated in the said letter itself. Moreover, the petitioner had indicated in the letter that it is only from the office of the WBSEDCL that the petitioner came to know about the said outstanding dues.

Such statement and payment cannot, in any manner whatsoever, create any previous nexus between the petitioner and the borrower,

either at the juncture when the sale was made or before.

Hence, as also laid down in *Moumita Ghosh (supra)*, Clause 13.9 of Regulation 46 of 2010 of the WBERC clearly imposes a burden on the WBSEDCL to prove nexus between the previous consumer and the new applicant for the purpose of insisting upon prior payment of outstanding dues left by such previous consumer for the purpose of giving new electricity connection.

Such provision being fully applicable in the present case and since the WBSEDCL failed to prove any nexus whatsoever between the petitioner and any of the previous consumers, the demand of the WBSEDCL for prior payment by the petitioner of all outstanding amounts in respect of the premises is patently illegal and *de hors* the law and Regulations.

Accordingly, WPA No. 26660 of 2022 is allowed, thereby directing the WBSEDCL to give electricity connection to the petitioner as expeditiously as possible, positively within a fortnight from this date and/or from compliance of all formalities by the petitioner, whichever is later.

However, in view of the above observations, the WBSEDCL shall not insist upon payment of the outstanding dues with regard to the same premises left by any other person than the petitioner at any point of time as a pre-condition for giving such electricity connection to the petitioner.

Parties shall act on the 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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)