IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Justice Hiranmay Bhattacharyya

WPA 6445 of 2017

M/s. Fabulous Commercial Pvt. Ltd. & Anr.

VS.

West Bengal State Electricity Distribution Co. Ltd. & Ors.

For the petitioners : Mr. Debashish Kundu
Mr. Saumyen Datta
Mr. Rajendra Nath Barik ..... advocates

For the WBSEDCL : Mr. Sujit Sankar Koley ...... advocate

Reserved on : 26.07.2024

Judgment on : 23.08.2024

<u>Hiranmay Bhattacharyya, J.:</u>

1. This writ petition is at the instance of a private limited company and its director praying for a declaration that the amount of outstanding dues of the erstwhile consumer collected from the petitioner company is bad, illegal, arbitrary and nullity and for a direction upon the licensing company to refund the amount of Rs. 32,23,874/- along with interest thereon.
2. The writ petitioner company claimed to have purchased land measuring about 5.0535 acres situated at Mouja Jogivita under Police Station Matigara in the District of Darjeeling comprising several plots of land from the erstwhile owner

namely, M/s North East Engineering Company Private Limited. The erstwhile owner had a decentralized bulk electric connection bearing consumer no. D41273. The petitioner applied for 33 KVA electricity connections for setting up an industrial unit for manufacturing TMT Bars. At the time of joint inspection, the petitioners came to know that the electricity connection of the erstwhile consumer was terminated as per the request of the said consumer with effect from 16.11.2011 and there was an outstanding dues of Rs. 14,33,193/-. Since the petitioners were in urgent need of electricity connection, the petitioner paid the said old outstanding dues on account of M/s North East Engineering Company Private Limited of Rs. 14,33,193/- on 8.3.2014. The respondent authorities by a letter dated 10.3.2014 informed the petitioner that the total outstanding dues of the erstwhile consumer at the premises in question amounts to Rs. 33,23,874/- and after adjusting the payment of Rs. 14,33,193/-, the balance outstanding dues amounts to Rs. 17,90,681/-. Petitioners claim to have paid the aforesaid outstanding dues of Rs. 17,90,681/- by three installments each amounting to Rs. 5,96,894/-. The petitioner also paid a sum of Rs. 4,86,536/- on account of service connection charges on 29.4.2014 as per the quotation dated 23.4.2014. Thereafter the respondent authorities effected supply of electricity to the petitioner at the premises in question for the purpose of running their factory. The petitioner company claims to have regularly paid the electricity charges on the basis of bills raised by the licensing company. Petitioners by a letter dated 15.5.2016 requested the respondent authorities to refund the aforesaid amount of Rs. 32,23,874/- which was collected from the petitioner company on account of old outstanding dues of the erstwhile consumer. A reminder letter dated 24.02.2017 claiming refund of the aforesaid amount was also submitted before the licensing company. In spite of repeated requests, the licensing company did not refund the aforesaid amount to the petitioner company and the petitioner company was, therefore, compelled to file the instant writ petition.

3. Mr. Kundu, learned counsel representing the petitioner, contended that the electricity connection of the erstwhile consumer was terminated as per the request of the said consumer with effect from 16.11.2011. He contended that Clause 3.4.2 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013 (for short the "2013 Regulations") provides for recovery from a new and subsequent consumer, the dues of the previous and defaulting consumers in respect of the same premises only if the nexus between the previous and defaulting consumers and the new consumers is proved. He contended that the erstwhile consumer is a private limited company. The writ petitioner is also a private limited company. He submitted that each company is a separate and distinct legal entity and, therefore, the question of nexus between the erstwhile consumer and the writ petitioner does not arise. He further contended that the existence of common shareholders or directors cannot lead to an inference that one company will be bound by the acts of the other and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Indowind Energy Limited vs. Wescare (India) Limited and Another*** reported at ***(2010) 5 SCC 306***.

4. Mr. Kundu further contended that since the petitioner company was in urgent need of electricity for the purpose of starting the factory the petitioner company paid the outstanding dues of the erstwhile consumer under protest. He further contended that the licensing company cannot now raise the issue of nexus between the erstwhile consumer and the petitioner herein after having released the Bank Guarantee to the erstwhile consumer. Mr. Kundu further contended that the alleged outstanding dues was on account of revision of tariff with effect from 01.04.2012 and onwards and since the erstwhile consumer surrendered his connection in the month of November, 2011 such outstanding dues could not have been realised from the petitioner company.

5. Mr. Koley learned advocate appearing for the respondent licensing company disputed the contentions of Mr. Kundu. He contended that the petitioner

company and the erstwhile consumer have common identity as one of the director of the erstwhile consumer is also a director of the writ petitioner company. The city office of both the erstwhile consumer and the petitioner company are at the same address. Therefore, according to Mr. Koley, there is a direct nexus between the petitioner company and the erstwhile consumer against whom the electricity dues are outstanding. He further submitted that the writ petitioner company themselves offered to clear the outstanding dues of the erstwhile consumer and accepted the terms and conditions of supply offered by the licensing company. He contended that the petitioner company cleared the outstanding dues of the erstwhile consumer before entering into the contract for supply of electricity with the licensing company. He further contended that after the petitioner paid the outstanding dues, the licensing company effected supply of electricity to the petitioner company and the petitioner company cannot now turn around and claim refund of the amount paid by the petitioner company towards outstanding dues of the erstwhile consumer. Mr. Koley referred to Clause 4.6.4 of the 2013 Regulations in support of his contention that new service connection can only be provided in the same premises if the outstanding dues against the erstwhile consumer is cleared.

6. In reply Mr. Kundu contended that Clause 4.6 deals with deemed termination of agreement. He contended that the erstwhile consumer surrendered his service connection and the agreement between the licensing company and the erstwhile consumer was terminated by mutual consent and, therefore, the same cannot be said to be deemed termination of agreement under Clause 4.6 of the 2013 Regulation. He contended that Clause 4.6.4 deals with outstanding dues against the deemed terminated consumer and the same cannot be equated with the alleged outstanding dues of the erstwhile consumer who had surrendered his electricity connection.

7. Heard the learned advocates for the parties and perused the materials placed.

8. The writ petitioner prayed for a declaration that Clause 3.4.2 of the 2013 Regulation is unconstitutional and the same is null and void. Mr. Kundu

learned advocate for the petitioner in course of his argument submitted that he is not pressing the aforesaid prayer and this Court by an order dated 18.07.2024 rejected prayer (a) of the writ petition as "not pressed".

9. The issue that falls for consideration in this writ petition is whether the petitioner company is entitled to refund of the amount collected from the petitioner company on account of outstanding dues of the erstwhile consumer.

10. The petitioner company purchased the premises in question from one M/s. North East Engineering Company Private Limited. The said company enjoyed decentralised bulk electricity connection in its name in the said premises bearing consumer no. D41273. As per the request of the said company the electricity connection under the aforesaid consumer number was terminated with effect from 16.11.2011.

11. After purchasing the said property from M/s. North East Engineering Company Private Limited, the petitioner company applied for 33 KVA new electricity connection for the purpose of setting up an industrial unit for manufacturing TMT Bars. Pursuant to the application made by the petitioner company for supply of electricity connection, a joint inspection of the premises in question was conducted. From the joint inspection report it appears that there is an outstanding dues amounting to Rs. 14,33,193/- against the disconnected consumer no. D41273.

12. The petitioner company by a letter dated 01.3.2014 addressed to the 5th respondent specifically stated that after inspection they came to learn that there are some dues in connection with earlier occupier of the premises in question. It was further stated in the said letter that the company assures that they would honour the decision whatsoever will be logical in connection with the outstanding bill with the earlier occupier of the said premises by way of waiver of outstanding in full or to arrange for payment by installments.

13. The petitioner company under a covering letter dated 8.3.2014 forward a cheque for the sum of Rs. 14,33,193/-. Thereafter the 5th respondent by a letter dated 10.03.2014 informed the petitioner company that there is an outstanding dues of Rs. 33,23,874/- in respect of M/s North East Engineering

Company Private limited (consumer no. D41273) and after adjusting the amount of Rs. 14,33,193/- already paid by the petitioner company, the total outstanding dues against the said disconnected connection in the same premises is Rs. 17,90,681/-.

14. Thereafter, the petitioner company by a letter dated 25.3.2014 prayed for allowing the petitioner company to pay the aforesaid dues of the earlier occupier of the premises by three equal installments. The 5th respondent by a letter dated 2.4.2014 communicated its acceptance of the petitioners' proposal for payment of the outstanding amount of Rs. 17,90,681/- in respect of consumer no. D41273 by three equal installments. The installment bill was also enclosed with the said letter dated 2.4.2014 wherefrom it appears that the due date for the first installment amounting to Rs. 5,96,894/- was 16.4.2014 and the second and the last installments of equal amounts are to be paid within 16.5.2014 and 16.6.2014 respectively.
15. The petitioner paid the first installment on 3.4.2014. Thereafter the Chief Engineer (Commercial) being the 4th respondent herein issued an offer letter dated 23.4.2014 requesting the petitioner company to accept the terms and conditions of supply and to deposit the requisite service connection charge quoted therein within the stipulated period.
16. After going through the offer letter, this Court finds that the total amount payable on account of super vision charge of 33 KVA indoor equipment and cost towards execution of entire portion of service connection work on turnkey basis under super vision of WBSEDCL and cost of PCC Poles is Rs. 5,06,536/. After adjusting the amount of earnest money of Rs. 20,000/- the petitioner was directed to deposit the amount of Rs. 4,86,536/-.
17. Paragraph 16 of the said offer letter states that the bulk power supply which the petitioner has applied for will be released after settlement of all outstanding dues including payment of the balance of installments of Rs. 11,93,787/- as stated in the letter dated 2.4.2014. Paragraph 16 of the offer letter dated 23.4.2014 would be relevant for deciding the writ petition and, therefore, the same is extracted herein after.

"16. A bill amounting Rs.17,90,681/- (Rupees seventeen lakh ninety thousand six hundred and eighty one) only, against re-determination of tariff for the year 2011-12 & 2012-13, was raised by the Regional Manager, Darjeeling Region against one disconnected consumer no.- D41273 in the name of M/s. North East Engineering Co. Pvt. Limited in the premises where you have applied for the "bulk power supply. Subsequently, you have requested for making payment of the said amount in three equal instalments. Your request was accepted and terms and conditions of making payment was sanctioned by the Regional Manager, Darjeeling Region, through no. - SLG/ BLK/ 273/ 02/2014/ SUPP/ INSTALLMENT dated 02.04.14. In response to the same, you have deposited an amount of Rs.5,96,894/- (Rupees five lakh ninety six thousand eight hundred and ninety four) only on 03.04.14. In this context it may be noted that the bulk power supply, which you have applied for, will be released after settlement of all outstanding dues including payment of the balance two instalments of Rs.11,93,787/- (Rupees eleven lakh ninety three thousand seven hundred and eighty seven) only, as stated in the letter no. - SLG/ BLK/ 273/ 02/ 2014/ SUPP/ INSTALLMENT dated 02.04.14."

18. The said offer letter further states that the terms and conditions of supply as indicated in the said offer letter are to be accepted unequivocally and requisite service connection charges quoted therein to be deposited.
19. Thereafter the petitioner by a letter dated 2.5.2014 stated that the petitioner company is accepting all the terms and conditions of supply unequivocally as enumerated in the offer letter dated 23.4.2014. The petitioner company also deposited the amount of Rs. 4,86,536/- on account of service connection charge.
20. The petitioner company accepted all the terms and conditions of supply as enumerated in the offer letter dated 23.04.2014 unequivocally vide letter dated 02.05.2014. Unequivocal acceptance of the terms and conditions of the offer letter gave rise to a concluded contract. It is not in dispute that the petitioner company paid the balance two installments amounting to Rs. 11,93,787/-. Thereafter, the agreements were executed between the petitioner and the

licensing company and bulk power supply has been effected to the petitioner company at the premises in question.

21. The bulk power supply was effected by the respondent licensing company upon unequivocal acceptance of the terms and conditions to liquidate all outstanding dues as well as payment of the entire outstanding dues. This Court, therefore, holds that after being favoured with the bulk power supply on the basis of agreed terms and conditions to liquidate all outstanding dues, the petitioner company is estopped from claiming refund of the amount paid by the petitioner company on account of outstanding dues of the erstwhile consumer. The issue is thus answered in the negative and against the petitioner.

22. Mr. Kundu would contend that the payments of outstanding dues were made under protest. Though some of the letters issued by the petitioner stated that the payment of the outstanding dues were under protest but the same would be of no effect in view of the letter dated 02.05.2015 issued by the petitioner company accepting all the terms and conditions of supply enumerated in the offer letter dated 23.04.2014 unequivocally.

23. In view of the findings recorded hereinbefore the issue as to applicability or otherwise of Clauses 3.4.2 and 4.6.4 to the case on hand has become academic and the same is left unanswered.

24. There is, however, no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in ***Indowind Energy Limited*** (supra) that each company is a separate and distinct legal entity and the mere fact that the two companies have common shareholders or common Board of Directors, will not make two companies a single entity. It was further held that nor will the existence of common share holders or directors lead to an inference that one company will be bound by the acts of the other. The said decision cannot come to the aid of the petitioner as the petitioner company has accepted the terms and conditions of supply as enumerated in the offer letter.

25. For all the reasons as aforesaid this Court is not inclined to grant any relief to the writ petitioners. The writ petition accordingly fails and the same stands dismissed. There shall be, however, no order as to costs.

26. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)

(P.A.-Sanchita, Rinki)