

14th May,
2024
(AK)
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W.P.A 13201 of 2024

Raju Samanta
Vs.
The West Bengal State Electricity Distribution Company
Limited and another

Mr. Sourojit Dasgupta
Mr. Vishwarup Acharyya
Mr. Arash Dutta

...for the petitioner.

Mr. Debjit Mukherjee

...for the WBSEDCL.

1. Affidavit-of-service filed in court today be kept on record.
2. An interesting question has been raised by the petitioner. When the petitioner applied for a new electricity connection, the WBSEDCL raised an offer letter.
3. After compliance of the same, the WBSEDCL raised a plea that the petitioner is required to pay outstanding dues for getting the connection.
4. Subsequently it was clarified that in view of there being an allegation of pilferage against the petitioner's father with regard to unauthorized consumption of electricity, the amount imposed against the petitioner's father in connection with the said case has been construed to be outstanding

dues insofar as the present new connection is concerned.

5. Learned counsel for the petitioner submits that two provisions of the Regulations framed by the WBERC have been relied on by the WBSEDCL, none of which are applicable to the present case.
6. The first such provision is Clause 13.9 of Regulation 46 of the WBERC which provides that 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. The other provision is Clause 3.4.2 of Regulation 55 which provides that the licensee shall be eligible to recover from a new and subsequent consumer(s) the dues of the previous and defaulting consumers

in respect of the same premises only if a nexus between the previous and defaulting consumer(s) and the new consumer(s) in respect of the same premises is proved. The onus of proving a nexus, if claimed by a licensee, shall lie on the licensee.

8. Learned counsel, by placing reliance on the definition of the word “consumer” in Section 2(15) of the Electricity Act, 2003, which is the parent statute under which the Regulations have been framed, argues that such definition includes any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the said Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.
9. It is argued that the definition of consumer is not available in either of the Regulations cited above.
10. In the definition of the said term in Section 2(15), only a person who has been given connection by a licensee or the Government is contemplated as a consumer.
11. In the present case, the father of the petitioner did not have any electricity meter in his name, nor was

any consumer number quoted in the assessment made against the petitioner's father.

12. Hence, it is contended that neither of the Regulations which have been cited, both of which speak about the outstanding dues of a previous 'consumer', apply to the petitioner.
13. As such, it is argued that the claim of the outstanding dues in the name of the petitioner's father, which is cited as a *sine qua non* for giving electricity supply to the petitioner, is not tenable in the eye of law.
14. Learned counsel for the petitioner cites a judgment of the Supreme Court in the case of *K.C. Ninan vs. Kerala State Electricity Board and others* reported at (2023) 9 SCR 637.
15. In the said judgment, the Supreme Court observed, inter-alia, that the duty of supply electricity under Section 43 is only with respect to the owner or occupier of the premises, and not the premises, as it is the owner or occupier who has the statutory right to demand electricity for the premises under their use or occupation.
16. It was also observed by the Supreme Court that it is always the consumer who is supplied electricity and is held liable for defaulting on payment of dues or charges for supply of electricity. Perforce, the premises cannot be held to be a defaulter and no

dues can be attached to the premises of the consumer.

17. Thus, in the present case, the pivot to be considered is the definition of consumer.
18. It is reiterated by the petitioner that as per the definition in Section 2(15) of the 2003 Act, the petitioner's father was not a consumer and hence the demand of outstanding dues made by WBSEDCL is *de hors* the law.
19. Learned counsel for the WBSEDCL, at the outset, submits that the writ petition should be dismissed for suppression of material facts.
20. It is contended that the petitioner took out a complaint before the concerned consumer disputes redressal forum and has obtained an order from the said authority, against which an appeal has been preferred by the WBSEDCL.
21. Thus, the WBSEDCL cannot be vexed twice for the self-same cause of action by the petitioner.
22. It is, thus, contended that the writ petition is liable to be rejected on such count alone.
23. Learned counsel for the WBSEDCL further submits that even recently, it was found that the petitioner is distributing electricity illegally by unauthorized use of electricity and as such it is apprehended that if given a new connection, the same would be

misused by the petitioner by distributing in the locality illegally.

24. Learned counsel for the petitioner contends that the argument regarding maintainability of the writ petition is not tenable in the eye of law, since the two statutes operate in different fields.
25. Upon a consideration of the argument as to maintainability, this court finds that the same is not tenable in the eye of law, as rightly argued by the petitioner.
26. First, the Consumer Protection Act deals with deficiency of services and compensation/damages etc. therefor, whereas the Electricity Act, 2003 is a special statute governing the right of a person to get electricity connection and the modalities thereof.
27. Hence, although there may be partial similarity and overlap in the reliefs sought before the two forums, the scope of the two statutes are parallel and different from each other.
28. Before the consumer forum, the claim is compensation for deficiency of service whereas under the Electricity Act, 2003, the moot contention is whether the petitioner's right to get electricity connection can be fettered with the claim of outstanding dues made by the WBSEDCL.
29. Moreover, the Consumer Protection Act itself provides that the said statute is in addition to and

not in derogation of any other statute and as such, I do not find any conflict between the two statutes to hold that the non-mention of the consumer forum matter in the writ petition was material and that suppression of the same leads to the consequence of dismissal of the writ petition.

30. In any event, the petitioner has not suppressed about the said challenge but has pleaded the same in the writ petitioner. Thus, the question of suppression does not arise at all.
31. Insofar as the merits of the matter are concerned, the judgment of the Supreme Court cited by the petitioner fixes electricity connection to a consumer and not to the premises.
32. However, the relevant provisions of the WBERC Regulations were not under consideration before the Supreme Court in the said judgment.
33. Clause 3.4.2 of Regulation 55, in no uncertain terms, provides that the licensee shall be eligible to recover from a new and subsequent consumer the dues of a previous and defaulting consumer in respect of the same premises if a nexus is established.
34. On the other hand, Clause 13.9 of Regulation 46, in similar tune, provides that for getting a new connection for electricity supply 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 or her name located in the area of supply.

35. Not stopping there, Clause 13.9 also provides that the intending consumer 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 and/or who has/had benefited from non-payment of the aforesaid outstanding dues by the previous consumer(s) to the licensee.
36. Thus, although through the focal lens of a consumer, both the Regulations connect the outstanding dues to the premises as well.
37. Insofar as the present case is concerned, learned counsel for the petitioner is justified in arguing that it has to be ascertained first as to whether the petitioner's father can come within the purview of the term "consumer" as contemplated in the 2003 Act, only upon which the Regulations mentioned above apply.
38. Undoubtedly, both the relevant clauses in the Regulations, as discussed above, speak about outstanding dues left by the previous consumer and the nexus between the two.
39. The nexus cannot be denied in the present case since the petitioner is the son of the accused person

in the proceeding regarding pilferage of electricity and resides at the same premises.

40. The moot question here is whether the petitioner's father could be labelled as a 'consumer' within the contemplation of the said Regulations.

41. Section 2(15) of the Electricity Act, 2003 defines the term "consumer" as follows:

"Consumer means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be."

42. A careful scrutiny of the said provision shows that there are two separate limbs to the said definition.

43. The first limb envisages any person who is supplied with electricity for his own use *by a licensee or Government* or by any other person engaged in the business of supplying electricity to the public under the Act or any other law for the time being in force.

44. However, the second limb, with a conjunction "and" in-between, provides that the definition of consumer includes any person *whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the*

Government or such other person as the case may be.

45. Hence, insofar as the first portion of the definition is concerned, the electricity connection has to be supplied by the licensee the Government or any other recognized entity.
46. However, insofar as the second portion of the definition is concerned, it merely requires that the concerned person's premises are for the time being connected for the purpose of receiving electricity with the works of a licensee.
47. The three key component of the second limb are:
 - i) The premises of the person are to be connected to the works of a licensee;
 - ii) Such connection may be for the time being; and
 - iii) The said connection must be for the purpose of receiving electricity.
48. Hence, taking into consideration the second limb of the definition, a person may or may not have an electricity meter granted by the licensee in his or her name to fall within the definition of 'consumer'.
49. Irrespective of whether such a meter is given to the said person by a licensee or the Government, the person falls within the definition of consumer if his or her premises are for the time being connected to the licensee's works for the purpose of receiving

electricity. The definition is neutral regarding such connection being lawful or unlawful.

50. Such connection has to be with the works of a licensee and for the purpose of receiving electricity.
51. In the present case, all three criteria are satisfied in respect of the petitioner's father, since an allegation was made that the petitioner's father was, by resorting to unlawful means, using electricity in unauthorized manner by taking such electricity to his premises and also distributing to others.
52. Hence, the petitioner's father was a person whose premises were for the time being connected for the purpose of receiving electricity and the connection was with the works of a licensee, even if not lawfully.
53. In such context, it cannot but be held that the petitioner's father fell within the purview of the term "consumer" as envisaged in the 2003 Act as well as Clause 13.9 of Regulation 46 and Clause 3.4.2 of Regulation 55 of the WBERC.
54. In such view of the matter, the insistence of the WBSEDCL for the petitioner to clear the outstanding dues standing in the name of the petitioner's father on the allegation of pilferage for giving a new electricity connection to the petitioner is fully justified and in consonance with the law.

55. However, it is made clear that nothing in the above order shall prejudice the rights and contentions of the parties insofar as the proceeding pending before the appellate forum under the Consumer Protection Act is concerned.
56. In the said proceeding, the concerned forum would be at liberty to ascertain whether there was a deficiency of service and for such purpose, whether the petitioner is entitled to any compensation.
57. Although certain issues may incidentally overlap between the two considerations, the findings rendered above shall not be held to be conclusive or prejudicial to the rights and contentions of the parties in the pending proceedings before the consumer (appellate) forum.
58. In the light of the above observations, WPA 13201 of 2024 is dismissed on contest without, however, any order as to costs.
59. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)