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07.11.2024
Court No. 14
AGM

**In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 20877 of 2024

**Smt. Tanushree Mondal
vs.
The West Bengal State Electricity Distribution
Company Limited & Ors.**

**Mr. Tapash Kumar Bhattacharya.
Mr. Aviroop Bhattacharya.
Ms. Sahima Mollah.**

... For the Petitioner.

Mr. Amitabh Shukla.

... For WBSEDCL.

1. The application made by the petitioner seeking shifting of the existing 11KV overhead line is pending disposal at the end of WBSEDCL.

2. The Divisional Engineer (T) vide communication dated 29th May, 2024 requested the petitioner to submit the way leave permission from the neighbour. The communication does not indicate the name of the neighbour from whom the way leave permission is required to be obtained.

3. The petitioner submits that the neighbour may not be agreeable to provide the way leave permission. For non-submission of the way leave permission, the shifting ought not to be stalled.

4. Learned advocate for the petitioner relies upon the judgment delivered by this Court in the matter of **Sk. Samsud Doha –Vs- West Bengal State Electricity Distribution Co. Ltd.** reported

in **2012(5) CHN (CAL) 772** wherein the Court held that Regulation 3.2.1. of the West Bengal Electricity Regulatory Commission (Standards of Performance of Licensees Relating to Consumer Services) Regulations, 2010 cannot override the mandatory statutory duty of the licensee to supply electric connection to an applicant who has failed to provide way leave without resorting to the statutory powers of setting up electric works in terms of Section 67 of the Electricity Act, 2003 read with Rule 3 of the Works of Licensees Rules, 2006.

5. Learned advocate representing the Distribution Company Limited relies upon the instruction forwarded by the Divisional Engineer (T) signed on 24th August, 2024 which mentions that an inspection was conducted and it was found that the pole passes over the land of the petitioner and necessary way leave permission of the neighbour is required for shifting of the pole. As no way leave permission was submitted by the petitioner, the authority was not in a position to shift the overhead line.

6. It appears from the submission made on behalf of the parties and on perusal of the instruction of the Distribution Company Limited that the licensee is silent as to whether any objection was at all raised by the neighbour of the petitioner or not.

7. The name of the neighbour from whom the permission will be required has also not been disclosed. In the event, way leave permission is not given by the neighbour, the Distribution Company Limited ought to resort to the provision of law and not sit tight without taking any steps for shifting the overhead line as prayed for by the petitioner.

8. The Court in the matter of Sk. Samsud Doha (supra) has made it clear that the prayer of the applicant has to be considered in accordance with the provisions of the Electricity Act, 2003.

9. In view of the above, the instant writ petition is disposed of by directing the competent authority of WBSEDCL to take steps to conduct fresh spot inspection for the purpose of processing the prayer of the petitioner for shifting of the overhead line and thereafter take necessary consequential steps in the matter in accordance with law at the earliest but positively within a period of twelve weeks from the date of communication of this order.

10. Instruction forwarded by the Divisional Engineer (T) dated 24th August, 2024 be retained with the records.

11. Affidavit-of-service filed in Court today be kept with the records.

12. The writ petition stands disposed of.

13. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)