

D/L 14
27.11.2024
Court No.14
PRADIP

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 26599 of 2024

Hira Restaurant cum Bar & Anr.

Vs.

The State of West Bengal & Ors.

Mr. Sayan Banerjee

Ms. Suparna Dutta

...for the Petitioners.

Mr. Debjit Mukherjee

...for WBSEDCL

Mr. Aniruddha Sen

Ms. Indumoli Banerjee

...for the State

1. Affidavit-in-opposition filed on behalf of the respondent no. 3 and the affidavit-in-reply filed thereto on behalf of the petitioner is taken on record.
2. The petitioner no. 2 is the proprietor of the petitioner no. 1. She is running a restaurant cum bar. The electricity connection at her restaurant cum bar has been disconnected on account of nonpayment of outstanding dues, in respect of the meter standing in the name of Swapan Kr. Basak who happens to be her brother-in-law.
3. The intimation regarding disconnection of commercial meter addressed to the husband of the petitioner no. 2 Tapan Basak dated 4th October, 2024, mentions that during inspection by the official inspection team at the commercial premises, it was found that one service connection exist in the name of Mr. Swapan Basak, which stood disconnected on 20th March, 2016 as the amount remained unpaid for a considerable period of time. Two other existing electric meters at the same premises in the name of Tapan Basak and in the name of Hira Basak along with the service cable and all materials, installation etc. from the premises were dismantled as per the WBSEDCL norms and WBERC regulations. The letter indicates that such

step was taken in consultation with his brother Swapan Basak as both had blood relation between them.

4. Specific case of the petitioners is that, the premises of Tapan Basak and Swapan Kr. Basak are separate. The relationship between Tapan and Swapan is not cordial. For non-payment of the dues by Swapan Kr. Basak, the licensee ought not to disconnect the electricity in the premise of either the petitioners or Tapan Basak, the husband of the petitioner no. 2.
5. It has been submitted that, as there is no electricity the petitioner no. 2 is not in a position to run her business resulting in financial loss. Her life and livelihood is at stake.
6. Reference has been made to the West Bengal Electricity Regulatory Commission (Electric Supply Code) Regulations, 2013. Clause 3.4.2 of which mentions 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 the 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 the licensee, shall lie on the licensee.
7. The West Bengal Electricity Regulatory Commission (Standard of Performance of Licensees relating to Consumer Service) Regulations, 2010 has been placed. Clause 13.9 of the said Regulations mentions that for getting a 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 benefitted from non-payment of the aforesaid outstanding dues by the previous consumer(s) to the licensee.

8. It has been submitted that the petitioners in no way have benefitted from non-payment of the outstanding dues. The Regulations mention that the outstanding dues of the service connection have to be in his/her name. As the meter with outstanding dues stands in the name of somebody else and not in the name of the petitioners, accordingly, the licensee ought not to disconnect the electric connection of the petitioners for realizing the outstanding dues of a third party.
9. An information slip issued by the clerk of the court of the learned Civil Judge (Junior Division), Gangarampur at Buniad has been relied upon in support of the submission that a Civil Suit in between the petitioner no. 2 and the private respondent Swapna Kr. Basak is pending consideration and an order has been passed on 19th September, 2024 directing the parties to maintain status-quo with regard to the nature and character of the suit property.
10. It has been argued that the right of the petitioner to do her business is being infringed because of disconnection of electric supply.
11. Reliance has been placed on the judgment delivered by the Division Bench of this Court in ***West Bengal State Electricity Distribution Company Limited & Ors. Vs. Transmission & Distribution (India) Limited*** wherein the Court held that as 'nexus' is a condition precedent of casting the liability of the previous outstanding dues on a new applicant, in the absence of such satisfaction on such score, there is no scope of attributing such liability on the petitioner.

12. It has been submitted that, the criminal proceedings which was initiated against Swapan Kr. Basak has been dismissed and Swapan has been discharged of his criminal liability.
13. Prayer has been made to direct the authority to reconnect the electric supply so that the petitioners can run their business.
14. Learned advocate representing the Distribution Company Limited opposes the prayer of the petitioners.
15. It has been submitted that there is clean, clear and definite nexus in between the parties. Documents have been annexed to the affidavit-in-opposition starting from the year 2014 to show that the parties are residing at the same premises. The application for reconnection filed by Swapan Kr. Basak was actually submitted by Tapan Basak, the husband of the petitioner no. 2 by mentioning the phone number of the husband of the petitioner.
16. It has been submitted that the inspection report of the licensee clearly indicates that the meters are of the same premises. Swapan was enjoying electricity from the connection of the petitioners. It has been submitted that, pendency of civil proceedings in between the parties does not necessarily imply that the relationship between the parties is not cordial.
17. It has been pointed out that the Title Suit is a sham one and has been deliberately filed only to show that the relationship in between the parties is acrimonious, when in fact it is not.
18. It has been argued that being discharged from the criminal liability does not, *ipso facto*, mean that the consumer will be let off the civil liability that he is required to discharge. The due of the private respondent is nearly rupees eight lakh. Till the outstanding payment is made, the Distribution Company Limited will not be in a position to reconnect the supply line of the petitioners.

19. Learned advocate representing the Distribution Company Limited distinguishes the judgment relied upon by the petitioner and contends that the same will not be applicable in the facts and circumstances of the instant case.

20. Prayer has been made to dismiss the writ petition.

21. Upon hearing the submissions made on behalf of the parties and on perusal of the materials on record, it appears that the petitioner has relied upon various documents issued by the Distribution Company Limited in favour of the private respondent in whose name the meter is standing with outstanding dues. The petitioner nowhere disclosed in the writ petition with regard to the source of the said documents. It has been submitted in Court that the documents were handed over by the staff of the Distribution Company Limited. The Court fails to understand as to how the staff of the Distribution Company Limited could get hold of the postal receipt of the article which was put to post addressed to the Distribution Company Limited. The postal receipt always remains with the sender and not with the sendee. The sendee has no access to the postal receipt. The letter with the postal receipt must have been with either Swapan or Tapan.

22. The private respondent is not represented. The inspection report of the Distribution Company Limited clearly mentions that, the meter is in the same premises. Only at one place in the communication dated 4th October, 2024 it has been mentioned that the address of Swapan Basak 'is next to your premises'. That apart, all along the steady stand of the Distribution Company Limited is that the parties reside at the same premises.

23. The application made by Swapan Kr. Basak for obtaining connection mentions the phone number of the husband of the petitioner no.2. The intimation of

disconnection addressed to Tapan mentions that such step is being taken on consultation with Swapan who is his blood relation.

24. The Regulations relied upon by the petitioners provides for disconnection if there is outstanding dues in respect of the same premises and if nexus is proved between the defaulting consumer(s) and the new consumer(s). The Court is not convinced either with the submissions made on behalf of the petitioners or upon perusal of the documents placed before the Court that there is absolutely no nexus between the parties.

25. On the contrary it appears that, there is a nexus between Swapan Basak, Tapan Basak and Hira Basak. They are all members of the same family and stay in the same premises. Tapan Basak usually runs the business of Swapan Basak in name of Bajrangbali Line Hotel. The petitioner no. 2 is also in the same restaurant and hotel business. All will be benefitted if electric connection is restored without clearing the outstanding dues. The civil suit is only a feeble attempt to show that there is a discord between the parties with the view to disprove the nexus claimed by the licensee. Tapan made application for registration of trade by disclosing the name of Bajrangbali Line Hotel.

26. In the judgment relied upon by the petitioners, the Court was not satisfied with the nexus between the parties and the dues sought to be recovered was more than a period of two years. In the instant case, there is a clear nexus between the parties, accordingly, the ratio relied upon by the petitioners will not be applicable in the present case.

27. The Court is not inclined to exercise jurisdiction in the matter. The writ petition fails, and is hereby dismissed.

28. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Amrita Sinha, J.)