Form No. J (2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

MAT 1883 of 2022
IA NO: CAN/1/2024
CAN/2/2024

The West Bengal State Electricity Distribution Company Limited & Ors.
vs.
Akshay Lodha & Ors.

For the Appellants	:	Mr. Srijan Nayak, Advocate Mrs. Rituparna Maitra, Advocate
For the Respondents	:	Mr. Rishav Banerjee, Advocate Mr. Tanish Ganeriwala, Advocate Mr. Karanjeet Sharma, Advocate
Heard on	:	20.11.2024
Judgment on	:	20.11.2024

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the Distribution Company.

2. Appeal is directed against the judgment and order dated November 7, 2022 passed in W.P.A. No. 21120 of 2022.

3. By the impugned judgment and order, learned Single Judge held that, there was no nexus between the writ petitioner and the defaulting

consumer, and therefore, directed the Distribution Company to give new electricity connection to the writ petitioner.

4. Learned advocate appearing for the appellants submits that, appellants are entitled to either disconnect electric supply or not to grant electric connection to a consumer, in the event there is a nexus between the defaulting the consumer and the new consumer. In support of such contention, he relies upon the notification dated May 31, 2010 issued by the West Bengal Electricity Regulatory Commission particularly Regulation 13.9 thereof as also the subsequent notification dated August 7, 2013 of the West Bengal Electricity Regulatory Commission particularly 3.4.2 thereof.

5. Relying upon **(2009) 1 Supreme Court Cases 210 *(Paschimanchal Vidyut Vitran Nigam Limited and Others versus DVS Steels and Alloys Private Limited and Others)*** learned advocate appearing for the appellants submits that recovery of electricity dues from the purchaser of a sub-divided plot is permissible. In the facts and circumstances of the case, he submits that, two plots of land are involved namely, plot Nos. 424 and 381. He submits that, a portion of these plots were gifted to the writ petitioner by his father. Father of the writ petitioner is the person in control and management of the defaulting company.

6. Learned advocate appearing for the appellants submits that, nexus contemplated under the regulation stands established. The writ

petitioner as the son is seeking new electricity connection while the father of the writ petitioner raked up electricity bill in excess of Rs.42 Lakhs apart from delayed payment surcharges in respect thereof.

7. Learned advocate appearing for the appellants relies upon ***2023 SCC OnLine SC 663 (K. C. Ninan versus Keral State Electricity Board and others)*** and submits that, the ratio of ***Paschimanchal Vidyut Vitran Nigam Limited (Supra)*** was followed. He submits that, in the facts and circumstances of the present case, the impugned judgment and order be set aside.

8. Learned advocate appearing for the private respondent/writ petitioner submits that, there is no nexus between the writ petitioner and his father in respect of plots of land concerned. He draws attention of the Court to the findings returned by the learned Single Judge in the impugned judgment and order. He submits that, the transfer took place before the electricity bills were accumulated. Consequently, he submits that, the appeal should be dismissed.

9. Learned advocate appearing for the writ petitioner submits that, so far as a portion of R.S. plot no.424 is concerned, the same was never part and parcel of any property owned by the so called defaulting company.

10. Madhav Edible Products Limited Company, was a consumer of the appellants. It raked up electricity consumption bill in excess of Rs.41 Lakhs excluding delayed payment surcharges.

11. In course of hearing of the appeal, we requested the learned advocate for the petitioner to inform us as to whether the writ petitioner is a shareholder of such defaulting company or not. On instructions, learned advocate for the writ petitioner answers such query in the affirmative.

12. Shree Madhav Edible Products Limited was controlled by the father of the writ petitioner along with the brothers and other close family members of the writ petitioner. Father and brothers of the writ petitioner are the directors of the defaulting company.

13. Two plots of land are involved in the present appeal, namely, R.S. Plot no.424 and R.S. Plot No.381.

14. In respect of R.S. Plot No.424, it was initially owned by Nemaji Mallick and Omar Mallick. Such property was purchased by the father of the writ petitioner. Father of the writ petitioner transferred such property to the writ petitioner by Deed of Gift dated January 8, 2015.

15. R.S. Plot no.381 was purchased by the father of the writ petitioner in November 30, 1991. Father of the writ petitioner transferred such property by Deed of Gift on January 8, 2015 to the writ petitioner.

16. Writ petitioner seeks new electricity connection in respect of a

unit to be run on such gifted portion of R.S. Plot No. 424 and R.S. Plot No. 381.

17. Issue is whether application for new connection can be withheld on the ground that there is a nexus between the company defaulting consumer and the writ petitioner.

18. West Bengal Electricity Regulatory Commission Notification dated May 31, 2010 in Regulation 13.9 states that for obtaining a new connection all outstanding dues in respect of other services should be cleared.

19. West Bengal Electricity Regulatory Commission promulgated the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2013 which governs the field today. Regulation 3.4.2. of the Regulations of 2013 finds a licensee to be eligible to recover from a new and subsequent consumer the dues of the previous and defaulting consumer in respect of the same premises only if a nexus between the previous and the defaulting consumer and the new consumer in respect of the same premises is proved. The onus of proving is upon the licensee.

20. **Paschimanchal Vidyut Vitran Nigam Limited & Ors**. (supra) held as follows:-

> *"12. But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor*

seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrear5s due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them."

21. This view of the Supreme Court was followed in **K.C. Ninan** (supra). Both **Paschimanchal Vidyut Vitran Nigam Limited & Ors. & K.C. Ninan** (supra) held that condition of supply mandating the clearance of electricity dues of a previous owners by a new purchaser before the electricity supply is restored or a new connection is given to the premises cannot be termed as unreasonable or arbitrary.

22. In the facts of the circumstances of the present case, the appellant before us is required to establish a nexus between the defaulting

consumer and the new consumer for the purpose of denying new electricity connection to the writ petitioner.

23. To our mind, appellant succeeded in establishing such nexus. Writ petitioner is a shareholder of the defaulting company which consumed the electric supply and did not pay for the electricity dues. If the corporate veil of the defaulting company is lifted then it would appear that the family members of the writ petitioner including his father are the shareholders of such company. Father and the brothers of the writ petitioner are the Directors of such defaulting company. Defaulting company is the alter ego of the writ petitioner and his family members. Writ petitioner carried on business by himself and his family members including his father through the agency of the defaulting company.

24. The two plots on which the writ petitioner seeks new electricity supply are derived from the father of the writ petitioner who is a Director of the defaulting company.

25. In such circumstances, the only inference possible according to us is that there is a nexus between the defaulting company and the writ petitioner. Consequently, the appellant before us is entitled to deny new electricity connection to the writ petitioner in terms of Regulation 3.4.2 of the Regulations of 2013.

26. Defaulting company already consumed the electricity supply and raked up a bill in excess of Rs.41 lakhs. If such bill is not recovered, the same in terms of the Electricity Act, 2013 will be added to the costs of electric supply and the other consumers of such electricity producing company will be liable to pay for the enhanced rate.

27. It is, therefore, imperative and in public interest that outstanding bills are allowed to be recovered by the distribution or the licensing company as the case may be, either from the defaulters or the persons seeking new connection with a nexus with the defaulters.

28. In such circumstances, we set aside the impugned judgment and order. W.P.A. No. 21120 of 2022 is dismissed.

29. **M.A.T. 1883 of 2022** and the connected applications are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

30. I agree.

(Md. Shabbar Rashidi, J.)

Signed By :
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High Court of
Calcutta
21 st of November
2024 04:12:11 PM

CHC/SD