

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 26.03.2025

DELIVERED ON: 26.03.2025

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

F.M.A. 358 of 2025

With

I.A. No. CAN 1 of 2025

**Smt. Sunita Saha being the Sole
Proprietress of Sreema Garments**

Vs.

**West Bengal State Electricity Distribution
Company Limited & Ors.**

Appearance:-

Mr. Gurudas Mitra

Mr. Sanjib Kr. Mal

Mr. Atanu Roy Chowdhury

Mr. Pushan Majumder

.....For the Appellant

Dr. Madhusudan Saha Roy

Mr. Debanjan Chatterjee

.....For the Respondents/WBSEDCL

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. We have heard Mr. Gurudas Mitra, learned advocate appearing for the appellant and Dr. Madhusudan Saha Roy, learned advocate appearing for the respondents/licensee.
2. This intra-Court appeal filed by the writ petitioner is directed against the order dated 6th January, 2025 in W.P.A. 30288 of 2024. The appellant had filed the said writ petition challenging a disconnection notice dated 10th

December, 2024, which was passed on the ground that the appellant had made a wrongful declaration in the application for new electricity service connection and, therefore, the conditions stipulated under Clause – 3 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code), Regulation, 2013 (for brevity “2013 Regulations) have been breached. In this regard, the learned advocate appearing for the respondents/West Bengal State Electricity Distribution Company Limited (hereinafter referred to as the “licensee”) produced the copy of the application filed by the applicant for grant of new service connection and it is stated that the applicant has to give an undertaking and in Column - 7 (iv), the appellant has stated that there is no other service connection (live/disconnected) in the same premises having outstanding dues for which the new service connection is being applied for.

3. It is submitted that in the very same premises, a service connection was given to the appellant’s father-in-law, who was running a hatchery business under the name and style ‘Mother Hatchery’ and the said service connection has been disconnected and huge arrears are payable by the said licensor. This fact has been suppressed by the appellant and having filed a wrong declaration, the authority is entitled to invoke the power under Clause 4.5 of the 2013 Regulations.
4. Clause 4.5.1 states that the licensee may disconnect the supply of electricity to a consumer, if the latter makes any incorrect or wrong declaration for obtaining new connection or any matter related to supply of electricity. Clause 4.5.2 states that before disconnection is effected under Regulation 4.5.1, the licensee shall give a notice in writing to the consumer concerned stating the reasons for the proposed disconnection and calling

upon him to state within seven days from the date of receipt of the notice, if the consumer has anything to state in the matter, and the supply may be disconnected if the explanation of the consumer is not satisfactory or if no response is received from him. Therefore, it is submitted by the learned advocate appearing for the licensee that the power under Clause 4.5.1 was rightly exercised as it has been confirmed that the appellant has made a wrong declaration at the time of submitting an application for grant of new electricity service connection.

5. Furthermore, it is submitted that the relationship of the parties i.e. the defaulting consumer viz. Mother Hatchery is run by none other than the father-in-law of the appellant and there is a close nexus between them, which is evident from the relationship of parties and the attempt of the appellant is to somehow defeat the right of the licensee to recover the huge arrears payable by the appellant's father-in-law.
6. We are in agreement with the learned advocate appearing for the licensee that Clause – 4.5 gives power to the licensee to disconnect the supply for incorrect or wrong declaration. However, the facts of the present case are very peculiar and distinct, which has convinced us to take a different view in the matter even assuming but without admitting that the appellant had given a wrong declaration or incorrect declaration. We say so because the present writ petition is the 4th writ petition filed by the appellant.
7. The 1st writ petition was filed in W.P.A. 26168 of 2023, which was filed challenging the disconnection of electricity supply alleging non-payment of electricity charges. In the said writ petition, the licensee placed certain documents before the Court and submitted that these documents will clearly indicate that there are serious allegations of suppression of material

fact committed by the appellant/writ petitioner and that the appellant's father-in-law had left huge arrears of electricity charges, which are required to be paid by the petitioner for getting restoration of her connection in view of the nexus between the two. Further, the licensee submitted that they have already intimated the petitioner to pay such huge dues for getting reconnection.

8. The learned Writ Court taking note of the allegations, which were made against the petitioner by the licensee and noting that there are serious allegations and these are being factual issues, which required appreciation of evidence, the appellant was relegated to approach the Grievance Redressal Officer (GRO), who is the appropriate forum to decide such disputes. Thus, at the earliest point of time, this issue regarding suppression of material facts was mentioned by the licensee, which was noted by the learned Single Bench while disposing of the writ petition by order dated 29th November, 2023.
9. In terms of the directions issued, the appellant approached the GRO, who had taken the petition in file in GR No.781 of 2023/4095 dated 5th December, 2023 and final order dated 29th December, 2023 was passed directing the appellant to pay the total outstanding dues of her Garment company called 'Sreema Garments' as well as the total dues of Mother Hatchery to get reconnection of her electricity service.
10. As could be seen from the said order passed by the GRO, the matter concerning the disconnected electricity supply standing in the name of Mother Hatchery was also subject-matter of consideration. The appellant filed WPA No.3165 of 2024 challenging the order passed by the Regional Grievance Redressal Officer (RGRO). It appears that the said writ petition

was disposed of by directing the appellant to approach the Ombudsman, who was the appellate authority against the order passed by the GRO. The appellant filed an application under Section 42(6) of the Electricity Act, 2003 before the Ombudsman. The Ombudsman by final order dated 15th July, 2024 allowed the appeal and directed the licensee to restore the service connection to the appellant on payment only of her outstanding dues and other charges as per the norms of the licensee. Further, it was specifically ordered that the liability of outstanding dues of Mother Hatchery cannot be imposed on Shreema Garments. In the said order passed by the Ombudsman, the contentions of the licensee were also noted with regard to suppression of facts. The order passed by the Ombudsman appears to have not been implemented by the licensee, which compelled the appellant to approach the Court for the 3rd time by filing WPA 21782 of 2024.

11. The appellant contended that she had already tendered the amount directed to be paid by the Ombudsman and as per the demand notice issued by the licensee, the appellant was directed to pay a sum of Rs.9,80,668/- and that in spite of the amount having been tendered, the electricity connection was not restored. The writ petition was disposed of by order dated 3rd September, 2024 directing the authority to encash the demand draft and restore the supply. The appellant was directed to pay the reconnection charges as well as the current dues upon restoration of the supply, pursuant to which the supply was restored.
12. Once again, the appellant had to approach this Court by filing W.P.A. 24698 of 2024, wherein the appellant filed an application disclosing her intention and willingness to make payment of final assessment bill

amounting to Rs.62,673/- and also sought for liberty to challenge the said order before the appellate authority. The writ petition was disposed of by order dated 12th November, 2024 by granting liberty to the appellant to pay the said amount along with restoration charges giving further liberty to challenge the final assessment order before the appellate authority, in accordance with law, if so advised.

13. It is thereafter, a notice of reconnection was issued on 14th November, 2024 by the Assistant Engineer (E) & Station Manager, Baruipur CCC, WBSEDCL. It is interesting to read the said notice of reconnection, more particularly, the 2nd paragraph, which states that before reconnecting, inspection shall be made to confirm electrically isolation of appellant's premises to the disconnected premises of M/s. Mother Hatchery. Thus, it is evidently clear that the licensee was aware of the entire facts even at that juncture and also much earlier and such a stand was taken when the 1st writ petition was filed by the appellant, which led to the disposal of the writ petition with a direction to the appellant to approach the GRO.
14. Thus, after the restoration of supply, the notice dated 10th December, 2024 was issued invoking Clause 4.5 of the 2013 Regulations.
15. Appellant submitted a detailed reply running into 07 pages bringing all the facts on record and pointing out that the proposal to invoke clause 4.5 is not tenable.
16. The authority by order dated 20th December, 2024 rejected the application on three grounds namely, i) there is no impediment in issuing notice under Clause 4.5 of the 2013 Regulations; ii) there is no specific order from Ombudsman/Hon'ble High Court restricting the authority in taking steps

as per the provisions of law; and iii) the contentions made in the appellant's explanation is neither sustainable in law nor on facts.

17. As observed earlier, the facts of the present case are peculiar and unique in the sense that the licensee was fully aware of the factual situation, which was taken note of by the Ombudsman pointing out that the licensee has committed serious lapse. Thus, the present ground taken by the licensee invoking Clause - 4.5 of the 2013 Regulations, has to be held to be an afterthought in the facts and circumstances of the case.
18. We reiterate that the licensee has sufficient power under Clause - 4.5 but what is required to be seen is whether the licensee was justified in exercising such power in the case on hand, particularly in the facts, which we have set out in the preceding paragraphs.
19. The learned advocate for the licensee placed reliance on the decision of the Hon'ble Supreme Court in the case of **Central Airmen Selection Board & Anr. vs. Surender Kumar Das** reported in **(2003) 1 SCC 152** for the proposition that the principle of *promissory estoppel* is based on equitable principles and a person, who has himself misled the authority by making a fake statement, cannot invoke this principle, if his misrepresentation misled the authority into taking a decision which on discovery of the misrepresentation is sought to be cancelled.
20. Firstly, we need to point out that the fact situation in the said decision is entirely different from that of the case on hand. It is not as if the licensee was not aware of the facts. This is evident in several places, more particularly, in the order passed by the Ombudsman as well as in the notice of reconnection dated 14th November, 2024. Thus, we have no hesitation to hold that the disconnection of the electricity supply of the

appellant on the grounds set out in the notice could not have been raised at this belated stage, that too when on four earlier occasions, the appellant had approached this Court. Apart from that she had also filed a petition before the GRO as well as an appeal before the Ombudsman and hence, the action of the licensee has to be termed to be unreasonable and violative of Article 14 of the Constitution of India, which persuade us to interfere with the order passed by the learned Single Bench.

21. Accordingly, the appeal is allowed. The order passed by the learned Single Bench is set aside and the writ petition is allowed and the respondents/licensee are directed to restore the electricity supply not later than 4th April, 2025 upon the appellant remitting the requisite reconnection charges as well as any arrear towards consumption charges. In this regard, a demand should be raised on the appellant by not later than 2nd April, 2025.
22. It is once again made clear that the above order and direction has been passed taking into consideration the peculiar fact situation of the case on hand and, therefore, should not be treated as a precedent.
23. No costs.
24. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)