

In the High Court at Calcutta

Constitutional Writ Jurisdiction Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No.3241 of 2022

Moumita Ghosh

Vs.

West Bengal State Electricity Distribution Company Limited and others

For the petitioner: Mr. Kushal Chatterjee, Mr. Saptarshi Kumar Mal, Mr. Asif Sohail Tarafdar

For the WBSEDCL: Mr. Srijan Nayak, Mrs. Rituparna Maitra

Hearing concluded on :19.09.2022

Judgment on: 27.09.2022

Sabyasachi Bhattacharyya, J:

1. The petitioner and her husband Mintu Ghosh purchased a property from one Syed Masud Ali by a registered deed of conveyance dated September 23, 2021. Thereafter, the petitioner applied for an electricity connection to the said premises. Initially the WBSEDCL dilly-dallied in the matter, for which a writ petition was preferred by the petitioner. Upon a direction being given by this Court, the WBSEDCL processed the application for new electricity connection of the petitioner and, vide communication dated December 29, 2020, intimated the petitioner that total outstanding dues to the tune of Rs.56,79,649/- was lying unpaid against the connection at the said property.

Pending outstanding dues were to be cleared, it was insisted by the WBSEDCL, for a new electricity connection to be given to the petitioner.

2. Learned counsel appearing for the petitioner contends that the Distribution Licensee acted without jurisdiction in insisting upon payment of outstanding dues left by a previous consumer, in the absence of any nexus between the petitioner/purchaser and the erstwhile owner.

3. Learned counsel for the petitioner places reliance on a co-ordinate bench judgment rendered in M/s. Shree Krishna Paper Mills and another Vs. The West Bengal State Electricity Distribution Co. Ltd. and others, reported at 2009 SCC OnLine Cal 1543. In the absence of any nexus between the erstwhile defaulting consumer and the petitioner having been established, the learned Single Judge held that the outstanding dues could not be charged from the purchaser.

4. While defending the demand of the WBSEDCL, learned counsel appearing for the WBSEDCL submits that as per the extant regulations, the Distribution Licensee is well within its powers to insist upon payment of all outstanding dues left by the vendor/erstwhile consumer from the subsequent purchaser of the premises.

5. In support of such contention, learned counsel cites Paschimanchal Vidyut Vitran Nigam Limited and others Vs. DVS Steels and Alloys Private Limited and others, reported at (2009) 1 SCC210. Learned counsel also places reliance on a Division Bench Judgment of this Court passed in The Assistant Engineer and another Vs. Sri Nirmal Kumar Mondal and another, reported at 2010 (2) CLJ (Cal) 450 and another unreported Division Bench Judgment delivered in MAT 178 of 2010.

In the said cases, it is argued, the Courts had held that arrears due in regard to supply of electricity made to the premises can be claimed while giving connection to the subsequent purchaser.

6. Upon considering the submissions of learned counsel and going through the materials-on-record, it is clear from the deed of conveyance, by which the petitioner and her spouse purchased the property, annexed as Annexure P- 1 at page 16 of the writ petition, that no encumbrance with regard to default in electricity charges were mentioned within the four corners of the deed of transfer.

7. Rather, the said document clearly stipulated that the purchasers were indemnified against all estate and encumbrances created by the vendors or any person or persons lawfully or equitably claiming from, under and in trust for them.

8. It is well-settled that, in any event, electricity dues do not form a charge over a property, to be borne by the subsequent purchaser. In Paschimanchal Vidyut Vitran Nigam Limited and others (supra), the Supreme Court had, inter alia, upheld the vires of Clause 4.3 of the Electricity Supply Code, sub-clauses (g) and (h).

9. Sub-clause (g) provides that where the property has been legally sub divided, the outstanding dues for the consumption of energy on such premises, if any, shall be divided on pro-rata basis.

10. Sub-clause (h) stipulates that a new connection to such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises is duly paid by the applicant.

11. Licensee shall not refuse connection to an applicant only on the ground that dues on the other portion (s) of such premises have not been paid, nor shall the Licensee demand record of last paid bills of other portion (s) from such applicants.

12. The said facts and circumstances substantially differ from the present case. The vires of the Clauses as indicated above were upheld by the Supreme Court on the premise that if any statutory rules govern the conditions relating to sanction of a connection of supply of

electricity, the Distributor can insist upon fulfillment of the requirements of such rules and regulations.

13. It was further observed that there was nothing unreasonable in a provision enabling the distributor/supplier to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, to insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchaser/occupants of premise, it was held, to satisfy themselves that there were no electricity dues before purchasing/occupying the premises. The Supreme Court went on to observe that the purchasers can also incorporate in the deed of sale or lease appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable.

14. Precisely such a clause was incorporated in the purchase deed of the petitioner and her spouse. It was specifically provided in the registered sale deed that the purchasers were indemnified against all encumbrances created by the vendors or any person or persons lawfully or equitably claiming from the estate.

Moreover, the said judgment is not a precedent on the West Bengal Electricity Regulatory Commission (WBERC) Regulations, which are applicable to the present case. Insofar as the Division Bench judgment in Sri Nirmal Kumar Mondal and another (supra) and in the unreported Division Bench judgment, both cited by the WBSEDCL, are concerned, it was reiterated in both the said Judgments that the Distributor can insist upon fulfillment of requirement of the rules for effecting supply of electricity.

15. Moreover, in Sri Nirmal Kumar Mondal and another (supra), the writ petitioner was agreeable to pay the amount as claimed by the WBSEDCL but only contended that three other occupiers also enjoyed the said electricity and he is agreeable to pay one-fourth dues of the WBSEDCL, which prayer was allowed by directing payment on pro-rata basis.

16. Even in the other unreported Division Bench Judgment of this Court, the same provisions were reiterated. Both the Division Benches place reliance on Paschimanchal Vidyut Vitran Nigam Limited and others (supra).

17. Let us scrutinise the relevant Regulation with regard to the WBSEDCL claim in the present case. Regulation No.46, that is the WBERC (Standards of Performance of Licensees Relating to Consumer Services) Regulations, 2010, stipulates in Clause 13.9 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 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 pro-rata manner, if it is established that he/she has had a nexus with the previous consumer including the purchaser of a property in respect of which their outstanding dues or who had benefitted from non-payment of the said outstanding dues by the previous consumer.

18. In the present case, learned counsel for the WBSEDCL has sought to level various aspersions against the writ petitioner/purchaser. It has been contended that the purchasers had pre-purchase knowledge with regard to the electricity dues and that the property was purchased at a low price, allegedly in consideration of the electricity dues to be discharged by the purchasers.

19. However, the provisions of the sale deed itself bely such contentions of the petitioner. The WBSEDCL has failed to establish, even on a preponderance of probability, that the purchasers had pre-purchase knowledge or paid a demonstrably low consideration for purchase of the property.

20. In the deed itself, the purchase price was shown to be Rupees Forty Lakh. The Memo of consideration attached to the deed indicated the exact mode in which the purchasers had disbursed such amount in favour of the vendor.

21. The deed itself clearly contains a clause that indemnifies the purchasers against all encumbrances created by the vendors or persons lawfully or equitably claiming from the vendors in respect of the estate. Hence, no nexus has been established at all between the petitioners and the vendors/erstwhile consumers inasmuch as electricity default is concerned.

22. In all the cited Judgments, the courts have insisted upon the rules and procedures being followed.

Even agreeing to such proposition, it is evident from Clause 13.9 of Regulation 46 of 2010 of the WBERC that no "nexus" with the previous consumer and the purchaser was established by the WBSEDCL, nor could the WBSEDCL show from any material that the purchasers had benefitted from non-payment of the aforesaid outstanding dues. The purchasers only came in possession of the property after purchase, prior to which the alleged default had been left outstanding by the vendor. The sale deed indemnifies the purchasers as discussed above. Moreover, there was no question of the purchaser deriving any benefit from the default or having any nexus with the purchasers.

23. Furthermore, it is well-settled that new allegations cannot be furnished as grounds subsequently in pleadings filed with regard to a writ petition. Although several allegations have been made from the bar and sought to be indicated in the affidavit-in-opposition of the WBSEDCL, the impugned demand letter dated December 29, 2020 did not disclose any such ground at all.

24. Hence, the WBSEDCL cannot be permitted to insist upon payment of the outstanding dues left by the vendor from the purchaser for giving new connection.

25. In such circumstances, there was no justification for the WBSEDCL insisting upon prior payment of all outstanding dues by the petitioner before giving a new electricity connection to the petitioner.

26. Hence, WPA No.3241 of 2022 is allowed, thereby directing the WBSEDCL to immediately raise a fresh quotation on the basis of application no.5003191018 of the petitioner for new electricity connection at the premises-in-question, de hors the alleged outstanding dues of Rs.56,79,649/-, as claimed in the impugned letter dated December 29, 2020. Such letter, being Annexure P- 4 at page 54 of the writ petition, is hereby set aside.

27. Upon payment of due charges payable in law for getting a new electricity connection and compliance of all formalities, of course, without any payment of outstanding dues left allegedly by the vendor/erstwhile consumer, the WBSEDCL shall give a new electricity connection to the petitioner as expeditiously as possible, preferably within a fortnight from the date of compliance of such formalities by the petitioner, without insisting upon prior payment of any outstanding dues which might have been claimed from the erstwhile consumer.

28. However, it is made clear that nothing in this order shall prejudice the rights of the WBSEDCL to recover the amount of outstanding dues as claimed by the WBSEDCL from the erstwhile consumer/vendor Syed Masud Ali in due process of law.

29. There will be no order as to costs.

30. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)