(2022) 11 CAL CK 0019

In the Calcutta High Court

Case No : W.P.A. No. 21120 Of 2022

Akshay Lodha APPELLANT

Vs

West Bengal State Electricity Distribution Company Limited And Others RESPONDENT

Date of Decision : 07-11-2022

Acts Referred:

Citation : (2022) 11 CAL CK 0019

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Sujay Bandyopadhyay, Shambhu Mahato, J. J. Das, Srijan Nayak, Rituparna Maitra, Tushar Sinha Mahapatra

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioner is the proprietor of Joybaba Agro, which is a showroom for selling tractors at Rupnarayanpur, Paschim Medinipur. The showroom has been constructed on the petitioner's own land of 109 decimals, Mouza – Rupnarayanpur, J.L. No.212, R.S. Khatian No.465 and 482/1, L.R. Khatian No.1018 and pertains to R.S. Plot Nos. 381 and 424, which have subsequently become L.R. Plot Nos.169 and 353. The petitioner became the owner of the said property by virtue of a registered deed of gift executed by his father Pradip Kumar Lodha in the year 2015.

2. Subsequently, the petitioner applied for getting new electricity service connection at the said showroom on July 14, 2021. However, the WBSEDCL sat tight over the matter and subsequently, upon the petitioner giving representations in that regard, intimated the petitioner vide letter dated February 11, 2022 (Annexure P5 at page 49 of the writ petition) the inability of WBSEDCL to effect new service connection owing to alleged existing outstanding dues, excluding LPSC, of Rs.41,51,261.32p against Meter No. WBBB2177 in the name

of the Company M/s. Shree Madhav Edible Products Ltd., which is the respondent no.7 in the present writ petition. Pradip Kumar Lodha, the petitioner's father, is at present one of the Directors of the said Company.

3. In the said letter, the WBSEDCL indicated that the petitioner is to pay the outstanding charges calculated in prorated manner "on establishing nexus with the previous consumer". Challenging the said claim of outstanding dues and seeking a direction on the WBSEDCL to give the new connection to the petitioner, the present writ petition has been filed.

4. It is submitted by the petitioner that merely on basis of apprehension and conjecture of nexus, the WBSEDCL claimed the outstanding amount of the company from the petitioner de hors the law.

5. Learned counsel for the petitioner also contends that the erstwhile defaulting consumer was the respondent no.7-Company, which is a separate juristic entity having no connection with the petitioner in any manner. It is submitted that, at the relevant juncture, when he acquired the property, the petitioner's father Pradip was not a Director of the Company. It is further argued that the petitioner is the owner, by virtue of the gift deed, of R.S. Plot No. 424 and a small part (about 10 decimals) of Plot No.381. It is contended that subsequently the said plots were sub-divided and demarcated separately. Plot No.381, it is submitted, was segregated into L.R. Plot Nos.164, 169 and 497. The Company has its property on a different L.R. Plot than the petitioner. The petitioner's demarcated portion of previous R.S. Plot No.381 has been renumbered as L.R. Plot No.169, which has no nexus with the land and property belonging to the Company.

6. It is, thus, argued that in the absence of any nexus having been established by the WBSEDCL between the petitioner and the respondent no.7-Company, which is an alleged defaulting consumer in respect of a different plot, the liability to pay the outstanding dues with regard to the said defaulting meter cannot be shifted to the petitioner.

7. Learned counsel for both the parties place reliance on their respective affidavits and documents filed in Court as well as the averments of the writ petition.

8. At the outset, it would be germane to consider the relevant Clauses of the West Bengal Electricity Regulatory Commission (WBERC) Regulations governing the field with regard to the present dispute, which have been relied on by the WBSEDCL.

9. Regulation No.46, being the WBERC (Standards of Performance of Licensees Relating to Consumer Services) Regulations, 2010, is relevant on the issue. Clause 13.9 thereof stipulates 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 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/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 benefited from non-payment of the aforesaid outstanding dues by the previous consumer(s) to the licensee.

10. The next relevant Regulation is Regulation No.55, being the WBERC (Electricity Supply Code) Regulations, 2013. Clause 3.4.2 thereof stipulates that the licensee shall be eligible to recover from 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 defaulting consumer(s) and new consumer(s) in respect of the same premises is proved. The onus of proving a nexus, if claimed by a licensee, shall lie on the licensee.

11. A bare perusal of the WBSEDCL communication to the petitioner, dated February 11, 2022 shows that the only justification for claiming the outstanding dues of the default committed by respondent no.7-Company is the short phrase "on establishing nexus". On the face of it, such apprehended nexus is purely based on conjecture and surmise and does not disclose any basis whatsoever for alleging such nexus between the Company, which is a separate juristic entity, and the petitioner.

12. Merely the allegations that the petitioner's father is at present a Director of the Company and he gifted the property to the petitioner are no sufficient to establish nexus for the purpose of the Regulations.

13. It is seen from the documents produced, including relevant information from the extracts of the records of rights, that the petitioner obtained his property by virtue of a registered deed of gift dated January 8, 2015. The petitioner's property is comprised of two plots.

14. The first, that is, R.S. Plot No.424 never had any nexus with the Company at any point of time. The devolution of 99 decimals of R.S. Plot No.424 was initially from one Nemaji and Umar Mallick by virtue of a sale-deed dated July 12, 1976 in favour of Shree Ram Agarwala. The said Shree Ram, vide Transfer Deed dated July 14, 1994, sold the same to Pradip Kumar Lodha who, in turn, gifted the property on January 8, 2015 to his son, being the petitioner Akshay Lodha.

15. Insofar as R.S. Plot No.381 is concerned, only 10 decimals out of the entire plot was transferred to one Modern Rice Industries Private Limited by Sankar Chandra Dey on December 5, 1988. Subsequently, Modern Rice Industries, vide Transfer Deed dated November 30, 1991, sold the same to Pradip Kumar Lodha who, in turn, transferred the property on January 8, 2015 by virtue of the gift deed to the petitioner Akshay Lodha.

16. The portion of R.S. Plot No. 381 which has been transferred to the present petitioner has since been demarcated as L.R. Plot No.169 even before the

petitioner's father acquired the property. The respondent no. 7-company is the owner of a portion of the rest of R.S. Plot No. 381 but not of Plot No.169. As per the extracts of the records of rights, produced by the petitioner, apart from the petitioner Akshay, there are sixteen other co-owners of Plot No. 169, all of whom are complete strangers to the present litigation and have no connection with the respondent no.7.

17. The entire property gifted by the petitioner's father Pradip to the petitioner Akshay, was purchased by the petitioner's father by two Transfer Deeds, respectively on November 30, 1991 and July 14, 1994. The respondent no.7-Company had no connection at all with the said properties since before they were transferred to Pradip. Such properties belonged to Pradip Kumar Lodha and the company had no share whatsoever therein.

18. In fact, at the relevant juncture when Pradip acquired the properties that is in the years 1991 and 1994 respectively, he was not even a Director of the respondent no.7-Company. Hence, there is nothing on record even to hint at any nexus between the defaulter-company (respondent no.7) and the petitioner, apart from the extraneous and irrelevant circumstance that the petitioner's father is a Director in the respondent no.7-Company.

19. First, respondent no.7-Company is a separate juristic entity which is not identical with the petitioner's father in his individual capacity, even as a Director. In any event, even if a Director of a company transfers his own property to his son by way of a gift, it cannot be automatically construed that the same is to evade liability of the Company. The individual properties of the Directors are not the assets of the Company and, in any event, the petitioner's father was not even a Director of the respondent no.7-Company when he purchased the properties from third parties.

20. There does not arise any question of lifting the corporate veil in the present case, since no irregularity as such, coming within the purview of Company Law, has been alleged herein.

21. Even if it was assumed, for arguments sake, that the corporate veil was to be lifted, the petitioner's property and that of the respondent no.7-Company are located on clearly demarcated and separate plots having no identity with each other, apart from the fact that they are physically proximate. Thus, there cannot be any nexus between the petitioner (new consumer) and the respondent no. 7-company (defaulting consumer) "in respect of the same premises", as required under Clause 3.4.2 of Regulation 55.

22. Hence, there is nothing in the present case to show any nexus between the petitioner and the defaulting consumer. Nothing has been produced from the side of the WBSEDCL, even after exchange of affidavits between the parties, to establish any iota of evidence of any possible nexus between the petitioner and the respondent no.7.

23. Coming to the judgments cited by learned counsel for the WBSEDCL, the first is that of the Supreme Court, delivered in Paschimanchal Vidyut Vitran Nigam Limited and others Vs. DVS Steels and Alloys Private Limited and others, reported at (2009) 1 SCC 210. In the said landmark judgment, it was, inter alia, held by the Supreme Court that it is the duty of purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. The same principle and logic was followed by the two Division Benches of this Court, in The Assistant Engineer and another Vs. Sri Nirmal Kumar Mondal and another, reported at 2010 (2) CLJ (Cal) 450 and an unreported judgment delivered in MAT 178 of 2010.

24. It was reiterated in both the Division Bench judgments that the Distributor can insist upon fulfillment of requirements of the statutory rules which govern the conditions relating to sanction of connection of supply of electricity. If the rules are silent, it can stipulate such terms and conditions which are not arbitrary and unreasonable.

25. Both the said judgments are entirely based on Paschimanchal Vidyut Vitran Nigam Limited and others (supra), where the Supreme Court was considering the provisions of the Electricity Act, 2003 and the Electricity Supply Code. Clause 4.3, sub-clauses (g) and (h) of the said Code were discussed and relied on.

26. Clause 4.3(g) stipulates 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.

27. Clause 4.3(h) provides 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.

28. However, there is nothing in the said judgment to indicate that a similar provision as that in the WBERC Regulations, fixing the burden on the distribution licensee to establish nexus between the new applicant and the defaulting consumer, was considered by the Supreme Court.

29. In fact, the Electricity Code is not applicable in terms in the present case, in view of the WBERC Regulations being in operation. Moreover, the principle regarding sub-divided property, as laid down in Clauses 4.3 (g) and (h), is not attracted here since Pradip (father of the petitioner) purchased the entire property much prior to the alleged default being committed by the respondent no. 7-Company and the demarcation into separate L. R. Plots occurred even prior thereto.

30. In fact, both the Supreme Court and the Division Benches of this Court held that if there are rules and regulations in place, governing the supply of electricity, the same have to be followed. However, it was clearly observed that such rules and regulations shall be followed only if the terms and conditions thereof are not arbitrary and unreasonable. That apart, in the said case, there

was an undertaking on the part of the first respondent, by payment of an amount in pursuance of the undertaking as a condition for obtaining fresh connection, and the Supreme Court held that the said party was estopped from claiming the amount back.

31. It was also observed by the Supreme Court in Paschimanchal Vidyut Vitran Nigam Limited and others (supra), as a rider to the proposition that it is the duty of the purchaser/occupants of premises to satisfy themselves that there are electricity dues before purchasing/occupying a premise, that they 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. Even if we look at the issue in the present case from the perspective of the petitioner's father, at the time when the property was acquired, particularly in 1991 and the rest in 1994, the L.R. records had already come into force then. Hence, it was not a portion of the plot owned by the Company but an independent and demarcated separate plot, being L.R. Plot No.169, which was gifted out of the original land comprised of R.S. Plot No.381. Insofar as R.S. Plot No.424 is concerned, the same was never a part or parcel of any property of which a portion was owned by the respondent no.7-Company. Both the properties were individual properties of Pradip and the Company, that is, respondent no.7, had no connection whatsoever in its capacity as an independent juristic entity with the said properties at all.

32. The additional factor that has to be considered is that Pradip was not even a Director of the Company at the juncture when he acquired the properties prior to donating them subsequently to the petitioner.

33. Again, in the gift deed executed in favour of the petitioner, it is clearly mentioned that the transfer was free from any encumbrance, etc.

34. Scrutinizing the relevant Regulations in the instant case, we clearly find that the question of demanding outstanding dues of a previous defaulting consumer only arises if the purchaser or subsequent occupier has had a nexus with the previous consumer or benefited from non-payment of the outstanding dues. In the present case, the petitioner could not have benefited in any manner from the Company making the default. Even his father, Pradip, being merely a Director and having no entitlement over the assets of the Company, never had any nexus with the said default.

35. Clause 3.4.2 of Regulation 55 clearly provides that the onus by proving a nexus, if claimed by a licensee, shall lie on the licensee and the outstanding dues can be claimed "only" if a nexus between the previous and defaulting consumer and the new consumer "in respect of the same premises" is proved. Let alone proving any such nexus in respect of the same premises, the Distribution Licensee averred in its communication dated February 11, 2022 that "on establishing nexus" the petitioner would be liable to pay the outstanding dues, without any specific allegation of nexus at all. Hence, there has arisen no

question at any point of time of the WBSEDCL discharging his onus or proving any sort of nexus between the petitioner (new consumer) and the respondent no.7-Company (previous defaulting consumer). Thus, the claim of outstanding dues, of whatever quantum, allegedly left by the defaulting respondent no.7-Company from the petitioner (new consumer) cannot be justified in any manner whatsoever. Hence, the said claim of outstanding dues has to be set aside.

36. Accordingly, W.P.A. No.21120 of 2022 is allowed, thereby setting aside the claim of alleged outstanding dues in respect of the purported default committed by the respondent no.7-Company from the petitioner and directing the WBSEDCL to give a new electricity service connection to the petitioner, as per the petitioner's application for such purpose, as expeditiously as possible, positively within four (04) weeks from compliance of all formalities by the petitioner. It is reiterated that the petitioner shall only have to comply with the other requirements as per law for getting the said electricity supply; however, the WBSEDCL shall not at any point of time claim the alleged outstanding dues of respondent no.7-Company from the petitioner in any manner whatsoever.

37. There will be no order as to costs.

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

