

(2022) 11 CAL CK 0093
In the Calcutta High Court
Case No : W.P.A. No. 471 Of 2022

M/S. Anupriya Agro Industry

APPELLANT

Vs

West Bengal State Electricity Distribution Company Limited
And Others

RESPONDENT

Date of Decision : 21-11-2022

Acts Referred:

Citation : (2022) 11 CAL CK 0093

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Samik Ganguli, Pritam Choudhury, Abhisek Addhya, Srijan Nayak,
Rituparna Maitra

Final Decision : Allowed

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioner M/s. Anupriya Agro Industry is a sole proprietorship firm having one Bishnu Pada Das as its proprietor.
2. When the writ petitioner sought for an electricity connection for industrial purpose to open a unit on Plot No. 3224, Khatian No. – 5115, P.S. – Raghunathganj, District – Murshidabad, the West Bengal State Electricity Distribution Company Limited (WBSEDCL) intimated its inability to give such connection vide letter dated 16, 2021 on the ground that there were outstanding dues (without LPSC), totalling Rs. 1,47,809/-, being Rs. 54,418/- for Consumer ID No : 300438006 and Rs. 93,391/- for Consumer ID No : 300239058, on account of non-payment of energy bills.
3. By placing reliance on Clause 13.9 of Regulation 46/WBERC dated May 31, 2010, the WBSEDCL insists upon such payment prior to the new connection being given to the petitioner.
4. The present writ petition has been filed challenging such demand of the

WBSEDCL.

5. Upon hearing learned counsel for the parties, it transpires that three plots of land are involved in the present dispute.

6. Plot No. 3223 concerned Late Bahaddur Chandra Das, who had alleged outstanding dues of Rs. 93,391/- in respect of Consumer ID No.: 300239058 for operation of a submersible pump on the said plot.

7. In respect of Plot No. 3419, the petitioner had outstanding dues for operation of his submersible pump to the tune about Rs. 54,418/-, in respect of Consumer ID No.: 300438006.

8. Admittedly, the petitioner had paid the outstanding amount of Rs. 54,418/- in respect of Plot No. 3419. The third plot is the Plot No. 3224. It has been submitted by the WBSEDCL that there is a nexus between the petitioner and the outstanding dues left with regard to Plot No. 3223 as well.

9. Hence, the petitioner, it is argued, is liable to clear off the said dues of Rs. 93,391/- in respect of Plot No. 3223 prior to getting a new electricity connection at Plot No. 3224.

10. It is contended by the WBSEDCL that, apart from the petitioner being the son of the deceased defaulter, the petitioner has also enjoyed the benefit of such electricity connection for operating the submersible pump of his deceased father.

11. Secondly, it has been submitted that all the three plots-in-question are situated in close vicinity of each other. Allegedly, the electricity connection being given to operate anyone of the submersible pumps would also enure to the benefit of the adjacent owners.

12. The petitioner has contended that there is no nexus between the petitioner and the outstanding dues left (allegedly) by his deceased father. The plots are separate from each other and the petitioner is in no way connected with Plot No. 3223. Moreover, it is contended that the new electricity connection sought at Plot No. 3224 is intended to operate an industrial unit and not a submersible pump. It is further denied that any of the plots benefit from the electricity connection given to the other plots.

13. The relevant consideration for the present purpose is the provision of Clause 13.9 of Regulation 46/WBERC dated May 31, 2010.

14. Clause 13.9 is set out below:

"13.9 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/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 benefited from non-payment of the aforesaid outstanding dues by the previous consumer(s) to the licensee.”

15. Primarily two categories of persons have been burdened with the liability to clear off previous outstanding dues for getting a new connection for supply of electricity from a licensee as per the said Clause. The first category is a person who has in his/her name any other service connection located in the area of supply of the same licensee.

16. In the second category falls a person with whom nexus has been established with a 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 consumers to the licensee.

17. It is obvious from the language of Clause 13.9 that the licensee has to discharge its burden of proof with regard to the allegation of nexus, which is evident from the use of the expression “it is established”. In the present case, we are to examine whether any such nexus has been established by the Distribution Licensee. In any event, no such nexus has been disclosed in the impugned letter of the WBSEDCL dated December 16, 2021.

18. Inasmuch as the first category under Clause 13.9 is concerned, in view of having cleared the dues with regard to Plot No.3419 in respect of the petitioner’s own electricity connection for operating a submersible pump, it cannot be said that the petitioner, in any manner, falls within the first category envisaged in the said Clause, that is, a person in whose name any other service connection located in the area of supply of the same licensee has outstanding dues.

19. Insofar as the second category is concerned, there is nothing on record to establish that the petitioner benefitted in any manner from operation of the submersible pump by the petitioner’s father (since deceased) on the plot of land which was owned by the petitioner’s deceased father, being Plot No.3223, during the relevant period. The licensee has not alleged that Plot No. 3223 has devolved, even partially, on the petitioner after his father’s demise. Even assuming for argument’s sake that the petitioner has inherited a share in the said plot after his father’s demise, at the juncture when the outstanding dues were left, it was the petitioner’s father (since deceased) who owned the property and the electricity connection standing thereon. The purpose of such electricity connection was to run the submersible pump of the petitioner’s father. The petitioner has a separate electricity connection, for operating a submersible pump, apparently in the same vicinity, in Plot No.3419, with which the petitioner’s deceased father had no connection. As such, there is no basis to presume that the petitioner benefitted from his father’s electricity connection for running a submersible pump, despite having an independent submersible pump

at the nearby Plot No.3419.

20. In any event, the prospect of Bishnu Pada Das, the proprietor of the petitioner-firm, of having inheriting his father's property or a portion therein cannot be a deciding factor in the present dispute, since the petitioner could not have inherited anything from his father during the latter's lifetime, which is the relevant period during which the outstanding dues accrued in respect of Plot No. 3223.

21. Inasmuch as the second limb of Clause 13.9 is concerned, it is obvious from the language thereof that mere nexus with a previous consumer of any property or a portion thereof would cast the liability of being charged the outstanding dues calculated in a prorated manner from the new applicant. However, in order to establish "nexus", there has to be a reasonable proximity between the new applicant and the defaulting previous consumer vis-à-vis the default committed. In the present case, however, the WBSEDCL has failed to establish any nexus whatsoever vis-à-vis the outstanding charges left by the petitioner's deceased father with the petitioner, during the entire relevant period when the said dues allegedly accrued. Just because the petitioner is the son of the previous defaulter of a different plot of land, it cannot automatically be presumed that the petitioner was hand-in-glove with his father or enjoyed any benefit from the default. The connection at Plot No. 3223 was admittedly taken for operating a submersible pump and not residential purpose. The said pump was being used for agriculture. At the relevant time, during which the defaults accumulated, there was no nexus between the petitioner and the said meter, nor has it been established that the petitioner benefitted from the said default in any manner.

22. Inasmuch as Plot No.3224 is concerned, which is the subject matter of the instant writ petition, sufficient documents have been annexed to the affidavit-in-reply of the petitioner to show that the petitioner has a registered sale deed and has recorded his name in the records of rights with regard to the said plot. Moreover, the nature of the said plot bearing Plot No.3224 was converted from 'Aman' to 'Karkhana', that is, from agricultural to industrial purpose. Thus, the argument of the WBSEDCL that the petitioner had obtained any benefit from the submersible pump of his deceased father, which was used for agriculture, to operate the newly established industrial such unit, is not credible.

23. Although the WBSEDCL has alleged that the submersible pumps standing on the said plots cater to the adjacent properties as well, such a logic would defeat the purpose of the petitioner having a separate electricity connection for his submersible pump in Plot No.3419 and seeking a new electricity connection for operating his industrial unit at Plot No.3224 in the first place.

24. Moreover, there is nothing on record to establish such allegation, even prima facie, from the end of the WBSEDCL.

25. Hence, there is nothing on record to indicate that the petitioner has/had benefitted from non-payment of the outstanding dues by the previous consumer

of Plot No.3223 that is, his deceased father.

26. Thus, there is no substantiated basis for the claim of the WBSEDCL that the petitioner is liable to pay such outstanding charges of his deceased father in respect of Plot No.3223 for getting a new electricity connection at Plot No.3224.

27. The only thread which might link the petitioner with the outstanding charges left by his father is if the petitioner has been or is, at present, benefiting from non-payment of the outstanding dues by his father in respect of Plot No.3223. However, in view of the above discussions no such link could be established in the present case, since the petitioner has a separate electricity connection for operating his submersible pump in respect of Plot No.3419 and there is nothing produced by the WBSEDCL even to show prima facie that the petitioner has a nexus with the outstanding dues payable for Plot No.3223.

28. As such, in view of no nexus being established by the WBSEDCL between the petitioner and the outstanding dues left by his father at Plot No.3223, the claim of prior payment of Rs.93,391/- for Consumer ID No: 300239058 in respect of Plot No.3223 cannot but be negated.

29. The only outstanding dues, even as per the allegation of the WBSEDCL, to the tune of Rs.54,418/- in respect of the petitioner's Consumer ID : 300438006 has already been cleared by the petitioner.

30. Hence, the claim of the WBSEDCL for payment of outstanding dues by the petitioner prior to giving a new electricity connection for running its industrial unit at Plot No.3224 cannot but be set aside.

31. However, there is no premise to the challenge of the petitioner to the provisions of Clause 13.9 itself, since no patent illegality or unconstitutionality of the said provision has been argued or established by the petitioner.

32. As a result, W.P.A. No.471 of 2022 is allowed, thereby setting aside the Demand Letter dated December 16, 2021 whereby the WBSEDCL pleaded their inability to effect a new service connection at the petitioner's premises being Plot No.3224. The WBSEDCL is directed to give a new industrial electricity service connection to the petitioner at Plot No.3224, subject to compliance of all other formalities by the petitioner, however, without insisting upon prior payment of the alleged outstanding dues of Rs.93,391/- for Consumer ID No: 300239058. Such connection shall be given by the WBSEDCL to the petitioner as expeditiously as possible, preferably within three weeks from the compliance of all formalities by the petitioner.

33. There will be no order as to costs.

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