

(2013) 09 CAL CK 0061
In the Calcutta High Court
Case No : C.O. No. 3398 of 2010

West Bengal State Electricity Distribution Company Limited	APPELLANT
Vs	
Smt. Madhabi Ghosh	RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2014) 1 CHN 509

Hon'ble Judges : Tarun Kumar Gupta, J

Bench : Single Bench

Advocate : Srijan Nayak, for the Appellant; Raja Saha, for the Respondent

Final Decision : Disposed Off

Judgement

Tarun Kumar Gupta, J.—This is an application under Article 227 of the Constitution of India directed against order dated 27th July, 2010 in S.C. Case No. FA/04/2010 passed by the State Consumer Disputes Redressal Commission, West Bengal under the Consumer Protection Act, 1986. The facts of the case may be summarized as follows:-

O.P. Smt. Madhabi Ghosh, wife of late Anil Chandra Ghosh, filed a complaint before learned District Forum Dakshin Dinajpur stating that she is a consumer under West Bengal State Electricity Distribution Company Limited (hereafter to be referred as Company) having service connection 18424/D and consumer No. A284567 since 2006. She all along paid electric bills in respect of said service connection. She received a notice from Divisional Manager, Dakshin Dinajpur demanding a sum of Rs. 26,921/- alleging the same to be outstanding dues in respect of service connection No. 943/D standing in the name of her husband for the period June, 2001 to April, 2005. The complainant took up the matter with the office of Divisional Manager, Dakshin Dinajpur for withdrawal of the notice. The supply of electricity, however, continued to the complainant without any interruption. Suddenly on 3rd of June, 2009 the electric connection of the complainant was disconnected by the men of O.P. Company on the ground of her

failure to make payments of the outstanding due of her husband. As the Company did not restore her electricity she filed a complaint before the District Forum alleging deficiency of service on the part of the company. After contested hearing learned District Forum allowed said complaint by an order dated 28th of October, 2009 in case No. 21 of 2009 directing the Company to effect reconnection of service connection of the complainant's electric meter within ten days from the date of communication of the order, not to realise charges for the said reconnection or any charge for disconnection effected on 03.06.2009 and to pay a compensation of Rs. 50/- and litigation cost of Rs. 500/- to the complainant.

2. Being aggrieved with said order the Company filed an appeal which was dismissed on contest by the learned Commission by the order impugned.

3. Mr. Srijan Nayak, learned counsel appearing for the petitioner Company, submits that learned courts below failed to appreciate that there was clear nexus between the present consumer Madhabi Ghosh and the erstwhile consumer her husband Anil Chandra Ghosh (since deceased) whose service connection in respect of the same premises was disconnected due to non-payment of electric bills. According to Mr. Nayak, in terms of regulation 3.4.2. of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations 2007 (hereinafter to be referred as Regulations 2007) the licensee (Electric Company) is 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 defaulting consumer and the new consumer in respect of the same premises is proved. Mr. Nayak submits that learned Commission admitted that the appellant company was able to prove the nexus between the wife i.e., the present complainant and the husband, the erstwhile consumer whose service connection was disconnected due to non-payment of electric bills. According to him, once Commission is satisfied about said nexus between the present consumer and the previous consumer there was no scope of defeating the claim of outstanding dues of the company by observing that the outstanding dues should have been claimed and recovered at the time of granting new connection by referring to Section 56(2) of the Electricity Act, 2003 (hereinafter to be referred as the Act of 2003). Mr. Nayak submits that Section 56(2) of the Act of 2003 only prescribes that the company will not be authorized to claim and to recover the outstanding electric bills from the consumer on expiry of two years from the date when such sum became first due and to disconnect the supply of electricity unless said sum was shown continuously as recoverable as arrear of charges for electricity supplied. According to Mr. Nayak said Section 56(2) of the Act of 2003 was applicable to the consumer of the electric meter in respect of which there were dues and not to consumer having separate electric connection. He further submits that lapses on the part of the employees of the petitioner company to detect the dues of the erstwhile consumer at the time of giving new electric connection to a person having nexus to the erstwhile consumer cannot be a ground for refusing the legitimate claim of the petitioner

company. In support of his contention he has referred an unreported decision of Consumer Dispute Redressal Commission, West Bengal in S.C. Case FA 208/203 wherein learned Commission permitted the company to recover the arrear dues of the father from the son who later on took electric connection in the same premises through a new electric meter.

4. I have considered the submissions made by Mr. Nayak. I have perused the order impugned, the materials lying in the record and the referred case law. There is no denial that the husband of Madhabi Ghosh had a service connection No. 943/D which was disconnected by the company for non-payment of electricity bills from June, 2001 to April, 2005 which amounted to Rs. 26,921/-. It also appears that in 2006 the wife Madhabi Ghosh obtained a new electric connection in the same premises through service connection No. 18424/D and consumer No. A284567. As the husband and wife all along resided in the same premises it was clearly established that there was nexus between the husband and the wife in terms of Regulation 3.4.2. of Regulation 2007. In terms of said Regulation 3.4.2. of the Regulation of 2007 the licensee i.e., the company is eligible to recover from the wife being a new consumer the dues of the previous and the defaulting consumer (husband) in respect of the same premises on establishing a nexus between the previous defaulting consumer and the new consumer.

5. Section 56(2) of the Act of 2003 stands in the way of recovery of arrear dues towards electricity bills from the consumer after two years from the date when such sum became first due unless such sum was shown continuously as recoverable as arrears of charges for electricity supplied. On plain reading of Section 56(2) of the Act of 2003 it is clear that it is applicable in respect of the consumer having the same consumer number and service connection. Section 56(2) of the Act of 2003 has no application in respect of the new consumer as in the present case. Had it been a case that the wife continued to use the service connection of her deceased husband having same consumer number then Section 56 (2) of the Act of 2003 could have been applied if the sum due was not shown in the electricity bills in terms of said provision.

6. Accordingly, I am of the opinion that the order impugned is not sustainable in law. However, I like to mention that as the licensee company demanded a lump sum from the present consumer and disconnected her electricity for non-payment of the same within the notice period, the licensee company should restore the electric connection of the present consumer, if not already restored, within ten days from the date of this order. The petitioner company is, however, at liberty to recover the outstanding sum of Rs. 26,921/- through the electric bills relating to the electric meter of the O.P. consumer in 36 (thirty six) equal monthly installments as per as practicable.

7. The application is accordingly disposed of.

8. No costs. Urgent photostat certified copy of this judgment be supplied to the

learned counsel of the party, if applied for.