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Court : Kolkata

Decided On : Apr-26-2012

Judge : Jayanta Kumar Biswas

Appeal No. : W.P.NO.14707(W) OF 2010

Appellant : ApeluddIn Sk

Respondent : The West Bengal State Electricity Distribution Co. Ltd. and Others

Judgement :

The Court : The petitioner in this WP under art.226 dated July 9, 2010 is seeking a mandamus commanding the respondents to give him supply of electricity to his premises in question.

In para.2 the petitioner has stated that he submitted the requisite application for supply of electricity on February 15, 2008.

Case stated by him in para.5 is as follows:

“5. Your petitioner moved office of the respondent authority and came to know that in case of invisible reason the respondent no-4 failed to send any line’Section man to give effect the connection. Your petitioner personally met with the respondent no 4 and respondent no-2 to know about the fate of service connection number

they stated that due to arrear dues of elder brother of petitioner they did not able to give connection. Petitioner asked that the said brother entitled valid connection till date or not they did not say any thing for that reason petitioner made a prayer on 09.10.2009 addressing the respondent no-2 and 3 and the office of respondents accepted the same.”

The application for supply was submitted to West Bengal State Electricity Distribution Company Limited, a licensee under the Electricity Act, 2003. The licensee, though was under an obligation to decide the application within the period mentioned in s.43 of the Act, did not give the requisite decision till July 9, 2010, when the WP was brought.

By an order dated July 15, 2010 the WP was admitted. The licensee has filed an opposition dated July 15, 2011 producing therewith a copy of a letter dated February 15, 2008 stated to have been written by the petitioner to the licensee’s Station Manager concerned offering to pay outstanding energy charge, if any, for the premises in question.

Case stated by the licensee in sub-para.(c) of para.4 of its opposition is as follows:

“c). It is submitted that after receiving quotational amount from the petitioner, an inspection was carried out by the concerned Station Manager for effecting connection to his premises but in course of such inspection it was found / revealed that the premises where the petitioner is applied for new connection, there is already one existing service connection in the name of his brother being service connection no GDP/D/7320 and consumer no is D0266. The said service connection was disconnected on 26Th July, 2008 due to non payment of energy bills for the consumption months from June, 2008 to November, 2008, amounting to Rs-9028.”

The petitioner has filed a reply dated April 17, 2012. In para.8 he has said that he never enjoyed electricity that was supplied to his elder brother. He has also pointed out that it is beyond comprehension how for default on energy charge for the period from June 2008 to November 2008 the licensee could disconnect his brother’s supply on July 26, 2008. As to the letter produced by the licensee with its

opposition, he has specifically stated that he did not write the letter.

Relying on the provisions of reg.3.4.2 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2007 and reg.13.9 of the West Bengal Electricity Regulatory Commission (Standards of Performance of Licensee's relating to Consumer Services) Regulations, 2010, Mr Koley appearing for the licensee has submitted that the licensee was entitled to ask the petitioner to pay outstanding energy charge for the disconnected supply, for the petitioner's letter produced with the opposition will show that the petitioner was one of the beneficiaries of the disconnected supply.

The letter produced by the licensee with its opposition is of no consequence, for it - admittedly an extralegal document, even if it is assumed that it was written by the petitioner - could not prevail over the licensee's statutory obligation created by s.43 of the Electricity Act, 2003. Section 43 created the licensee's obligation to give the petitioner supply of electricity, because, admittedly, the petitioner is an occupier of the premises in question.

However, if the provisions of the regulations cited to me entitled the licensee to ask the petitioner to pay the outstanding energy charge for the disconnected supply, then it can be said that the licensee was justified in withholding the supply. Hence it is to be seen whether the regulations actually entitled the licensee to call upon the petitioner to pay the outstanding energy charge for the disconnected supply.

Admittedly, the petitioner applied for supply on February 15, 2008 and his brother's supply in question was disconnected on July 26, 2008. Hence I am unable to see how the provisions of reg.13.9 of the West Bengal Electricity Regulatory Commission (Standards of Performance of Licensee's relating to Consumer Services) Regulations, 2010 could be applied in 2008 when the regulations were not in existence.

The provisions of reg.3.4.2 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2007 are quoted below:

“3.4.2 The licensee shall be eligible to recover from a new and subsequent consumer(s) the dues of the previous and defaulting consumer(s) in respect of the same premises only if a nexus between the previous and defaulting consumer(s) and the 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.”

In this case the petitioner applied for supply, as already noted, on February 15, 2008. At this date his elder brother, whose supply was disconnected on July 26, 2008, was an existing consumer. When the existing supply was disconnected after the petitioner had applied for supply as an intending consumer, it is beyond comprehension how the provisions of reg.3.4.2 could be applied to the case.

The provisions apply only when an intending consumer applies after disconnection of an existing supply. Only in such circumstance the intending consumer can be considered a new and subsequent consumer. Hence the licensee could not ask the petitioner to pay the outstanding energy charge for his brother's disconnected supply for the period subsequent to his application for supply. The licensee wrongfully denied the petitioner supply of electricity.

For these reasons, I dispose of the WP ordering as follows. Within a fortnight from the date the petitioner complies with the formalities and pays charge, if any, the licensee shall give him supply of electricity to the premises in question. No costs. Certified xerox.

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