

**(2012) 07 CAL CK 0215**

**Calcutta High Court**

**Case No:** Writ Petition No. 18360 (W) of 2011

M/s. Rajesh Ispat Pvt. Ltd.

APPELLANT

Vs

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

RESPONDENT

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**Date of Decision:** July 6, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Electricity Act, 2003 - Section 43

**Hon'ble Judges:** Jayanta Kumar Biswas, J

**Bench:** Single Bench

**Advocate:** Manju Manat and Mr. Bajrang Manat, for the Appellant; Sumit Panja, M. Sarkar, for the licensee Ms. Ruma Sikdar and Ms. T. Dasgupta, for the official liquidator, for the Respondent

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**Judgement**

Hon'ble Mr. Justice Jayanta Kumar Biswas

1. The petitioner in this WP under art.226 dated November 9, 2011 is questioning a decision of West Bengal State Electricity Distribution Company Limited (in short WBSEDC), a licensee under the Electricity Act, 2003, dated September 02, 2011 (WP p.55). The relevant parts of the decision dated September 02, 2011 are quoted below:-

You have been approached to our Borjora Customer Centre on 28.03.11 for an Industrial Connection with contract demand of 10.23 KVA at the premises located at Mouza Saharjora JI. No. 9, Plot No. 2609 & 3138(Part), PS. Barjora Dist. Bankura.

In this connection please be noted that the said premises belongs to M/s. Kero Rajendra Monolithics Ltd., one of the disconnected De-centralised Bulk consumer under Regional Office, Bankura. As per our available records there lies outstanding dues to the tune of Rs. 20,72,577.00(Rupees twenty laks seventy two thousand five hundred seventy seven only) against the said disconnected bulk consumer.

Under the above you are requested to arrange to pay the said outstanding dues at this end so that the new Industrial connection, as applied for, may be effected at the aforesaid premises.

2. Kero, referred to in the decision, was a de-centralized bulk consumer of West Bengal State Electricity Board (in short WBSEB). By an order dated December 06, 2004 it was wound up. The Official Liquidator took possession of its assets.

3. For recovery of energy charge left unpaid by Kero, WBSEB instituted an MS No. 5 of 2005 in the Court of the Civil Judge (Sr. Divn.), Bankura. During pendency of the suit the Government of West Bengal issued a notification dated January 25, 2007 in exercise of power conferred by sub-s.(4) of s.138 of the Electricity Act, 2003.

4. A Scheme was notified for providing and giving effect to the transfer and vesting of all properties and all interests, rights and liabilities of WBSEB in the State Government and revesting thereof by the State Government in WBSETC and WBSEDC with all other properties, interests, rights and liabilities of the State Government and for determining the terms and conditions on which such transfer or vesting or revesting would be made.

5. The MS filed by WBSEB was decreed exparte on March 26, 2007. On April 05, 2007 WBSEDC lodged a claim with the Official Liquidator on the basis of the decree. Then an EC No. 1 of 2008 was instituted for executing the decree.

6. During pendency of the EC process for sale of Kero's assets commenced. The petitioner participated at the auction and emerged as the highest bidder. Its offer was accepted and by an order dated October 01, 2010 the sale in its favour was confirmed. It was given possession of Kero's assets.

7. After taking possession of Kero's factory premises the petitioner applied to WBSEDC for supply of electricity on April 13, 2011. For some time WBSEDC and the petitioner remained engaged in correspondence and ultimately WBSEDC gave the decision dated September 02, 2011 that it would give supply of electricity only if the petitioner paid the energy charge left unpaid by Kero. Feeling aggrieved the petitioner filed this WP.

8. Ms. Manot appearing for the petitioner has submitted that the petitioner having no nexus with Kero, the erstwhile consumer, could not be called upon to pay the energy charge left unpaid by Kero.

9. She has relied on the provisions of s.43 of the Electricity Act, 2003 and r.3.4 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2007; and the decisions in [Isha Marbles Vs. Bihar State Electricity Board and Another](#), [Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others](#), and [Haryana State Electricity Board Vs. Hanuman Rice Mills and Others](#), .

10. Mr. Panja appearing for the respondents has argued as follows. The petitioner had knowledge of the energy charge left unpaid by Kero. Hence as the successful bidder at the auction sale it not only acquired Kero's assets, but inherited its liabilities as well. This is the petitioner's nexus with Kero, the erstwhile consumer. Hence WBSEDC was justified in asking it to pay the outstanding energy charge as a precondition for supply.

11. In para.21 of the WP the petitioner has categorically asserted that it had no nexus whatsoever with Kero, the erstwhile consumer of WBSEB.

12. In sub-para.(iv) and (v) of para.3 of its Affidavit-in-Opposition dated December 20, 2011 WBSEDC has stated that no law entitled it to say that only if energy charge left unpaid by Kero was paid it would give the petitioner supply; and that in view of its grim financial health it only requested the petitioner to pay the energy charge left unpaid by Kero, because settlement of its claim by the Official Liquidator would take a few years.

13. It is, therefore, evident that WBSEDC demanded the payment not in exercise of any right conferred on it by any provision of law, contract or instrument.

14. Curiously WBSEB instituted the MS against Kero after the Company Court passed the winding up order dated December 06, 2004. The exparte decree dated March 26, 2007 was passed against a company in liquidation. Validity of the decree is not to be examined in this WP. Suffice is to say that the decree could not and did not create any right of WBSEDC to claim any energy charge left unpaid by Kero from the petitioner.

15. I am unable to see how the petitioner's knowledge, if any, of the energy charge left unpaid by Kero could create its liability to clear the dues, if it emerged as the successful bidder at the auction. The Company Court selling Kero's assets did not put a condition that the petitioner would be liable to pay energy charge left unpaid by Kero, the company in liquidation. The nexus claim is misconceived. The petitioner is not liable to pay the dues. For these reasons, I set aside the impugned decision, allow the WP to this extent and direct WBSEDC to give the petitioner supply of electricity to the premises in question, within four weeks from the date other conditions and requirements are complained with. No costs. Certified xerox.