
(2011) 01 GAU CK 0001
In the Gauhati High Court
Case No : Writ Petition (C) No. 8 of 2000

Debdas Roy Chowdhury

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 25-01-2011

Acts Referred:

Citation : (2011) 2 GLT 530

Hon'ble Judges : Brojendra Prasad Katakey, J

Bench : Single Bench

Advocate : D.B. Sengupta, K. Majumdar and D. Dutta, for the Appellant; N.C. Paul, GA and A. Sengupta, for the Respondent

Judgement

B.P. Katakey, J.—Heard Mr. D.B. Sengupta, learned senior counsel for the Petitioner, and Mr. N.C. Paul, learned State counsel appearing for die Respondent Nos. 1 to 4. Also heard Mr. A. Sengupta, learned Counsel for the Respondent No. 5.

2. The Petitioner, by the present petition has challenged the demand of the Respondents as reflected in the duplicate passbook issued to him on 11 October 1999, for Rs. 35,524.60P towards electricity charges for the period from 2 August 1984 to 13 February 1998, and Rs. 35,064.60P as penalty for nonpayment of said amount, totalling a sum of Rs. 70,589.20P. The Petitioner has also prayed for a direction to the Respondent authorities to provide new commercial connection to the chemist shop belonging to him for which he submitted the application on 4.5.1998. A further prayer has been made in the writ petition for striking out the provision contained in clause 28 of Tripura Electricity Supply Conditions 1998.

3. It has been contended by the writ Petitioner in the writ petition that an electricity connection was provided to the Petitioner's premises in the year 1971 which was rented out to a tenant with the A/c No. 16/B3-88(A) and thereafter another domestic connection was also provided to the Petitioner in the year 1987

with the A/c No. 16/B3-88(1). According to the Petitioner, though it was his responsibility to pay the electricity charges in respect of A/c No. 16/B3-88(A), since the said connection was to the premises rented out and as per agreement the tenant was to pay the electricity charges, he was under the impression that the said charges were duly paid by the tenant. But when he received the demand notice dated 17 March 1997 for a sum of Rs. 15,001.80P for the period from 25 November 1990 to 28 September 1996 in respect of said account, he filed a representation on 9 May 1997 before the Respondent authorities requesting disconnection in the said A/c owing to the failure of his tenant to pay the electricity consumption charges. Thereafter, the Respondent authority by the communication dated 20 April 1998 informed the Petitioner about the disconnection with effect from 30 March 1998 through the meter, for which A/c No. 16/B3-88(A) was provided. By the said communication, the Petitioner was also asked to show-cause as to why action would not be taken against him for using the domestic connection for commercial purpose through the meter provided in respect of A/c No. 16/B3-88(I). The Petitioner, on 4 May 1998 had submitted the show-cause reply admitting using the domestic connection for a limited commercial purpose, i.e. for the chemist shop. The Petitioner, on 4 May 1998 had also applied for commercial connection for the shop, which, however, has not been granted. The Respondent authority, thereafter, by the communication dated 22 August 1998 rejected the contention of the Petitioner and asked the latter to pay outstanding dues payable against A/c No. 16/B3-88(A), which admittedly has not been paid till that date in spite of the demand notice dated 17 March 1997 for a sum of Rs. 15,001.80P. The electricity supply to the Petitioner's premises through A/c No. 16/B3-88(1) was also disconnected on 7 October 1999 in view of the violation of terms and conditions of Tripura Electric Supply Condition 1998(in short, Supply Condition 1998), i.e. for using domestic connection for the commercial purpose. According to the Petitioner, as the passbook in respect of A/c No. 16/B3-88(A) was with the tenant, he made an application for issuing a duplicate one, which was given to him on 11 October 1999, wherefrom he, for the first time, came to know that the aforesaid amount of Rs. 70,589.20P for the period from 2 August 1984 to 13 February 1998, inclusive of the penalty charged was outstanding. The Petitioner, on receipt of the duplicate passbook, submitted a representation before the Sub-divisional Officer (Electrical) on 20 December 1999 intimating the latter that he never received any demand of Rs. 35,524.60P, as has been shown as due in the said passbook. By said representation, the Petitioner also requested the said authority to furnish him with the break-up of the dues, which are stated to be payable by him, but such request, is yet to be acceded to. Against the said amount of Rs. 70,589.20P, an amount of Rs. 14,116/-, however, has been realized by the Respondent from the Petitioner.

4. Learned Senior Counsel, referring to the above averments made in the writ petition has submitted that in respect of A/c No. 16/B3-88(A) there was only one demand notice, that is dated 17 March 1997, for a sum of Rs. 15,001.80P

pertaining to the period from 25 November. 1990 to 28 September 1996 and no other demand notice for the amount of Rs. 35,524.60P for the period from 2nd August 1984 to 13th February 1998 as shown in the duplicate passbook has been issued and served on him. It has also been submitted that despite the representation dated 20 December 1999, the break-up of such demand has not been furnished to the Petitioner. Learned Counsel further submits that under Clause 17 of the Supply Condition 1998, bills have to be raised and delivered to the consumers and in the event the charges as demanded by such bills are not paid within the specified period i.e. within 15 days, the electricity connection is liable to be disconnected and in the instant case, had he been in default, the electricity connection would have been terminated immediately, which has not been done. It is also the contention of learned senior counsel for the Petitioner that the penalty has been imposed, as is shown in the duplicate pass book, without issuing any notice and bereft of any opportunity of being heard. No argument has been advanced by learned Senior Counsel relating to the prayer for striking out the Clause 28 of the Supply Condition 1998.

5. Learned Counsel for the Respondent Nos. 1 to 4 has submitted that after formation of the Respondent Corporation, Respondent Nos. 1 to 4 have nothing to do with the realization of any outstanding dues payable by any consumer.

6. Learned Counsel for Respondent No. 5 has submitted that under Clause 17 of Supply Conditions 1998, though consumers are required to pay in advance the provisional fixed charge as mentioned in the passbook, the Petitioner, in respect of A/c No. 16/B3-88(A), did not pay such charge. It has also been submitted that as it was found that the electricity charges for the period from 2 August 1984 to 13 February 1998 for an amount of Rs. 35,524.60P in respect o A/c No. 16/B3-88(A) was due and payable by the consumer, that is the Petitioner, on whose name such connection was taken, the same was mentioned in the duplicate passbook issued to the Petitioner. According to learned Counsel, the Petitioner apart from the said amount is also liable to pay the penalty for nonpayment of the bill in time. Learned Counsel, however, could not apprise this Court as to whether any demand notice apart from the demand notice dated 17 March 1997 for an amount of Rs. 15,001.80P pertaining to the period from 25 November 1990 to 28 September 1996 was issued to the Petitioner, though in the duplicate passbook it has been mentioned that an amount of Rs. 35,524.60P is due and payable for the period from 2 August 1984 to 13 February 1998, which includes the period for which the demand notice dated 17 March 1997 had been issued. Learned Counsel fairly submits that prior to imposing the penalty of Rs. 35,064.60P, no opportunity to show cause was given to the Petitioner.

7. I have considered the submissions of learned Counsel for the parties and also perused the pleadings of the parties. It appears that in respect of A/c No. 16/B3-88(A), a demand notice dated 17 March 1997 was issued to the Petitioner demanding an amount of Rs. 15,001.80P for consumption of electricity for the period from 25 November 1990 and 28 September 1996. Except the said

demand notice, the Respondents could not demonstrate from record that any other demand notice in respect of said account was issued. The Respondents also could not place anything to demonstrate that bills for the said amount were also issued to the Petitioner. The duplicate passbook, which was issued on 11 September 1999 reflects an amount of Rs. 35,524.60P as due towards the electricity consumed against said A/c pertaining to period from 2 August 1984 to 13 February 1998, which includes the period for which the demand notice dated 17 March 1997 had been issued. On receipt of duplicate passbook, the Petitioner filed a representation on 20 December 1999 seeking details of such demand, which admittedly has not been furnished to him till date. It is also not in dispute that before imposing the penalty, as shown in the duplicate passbook, no opportunity of showing cause has been given to the Petitioner.

8. The materials made available on record also reflect that out of the demand of Rs. 70,589.20P, an amount of Rs. 14,116/-has, in the meantime been realized from the Petitioner. The electricity connection vide A/c No. 16/B3-88(A) has already been snapped and connection vide A/c No. 16/B3-88(I), however, has been restored subsequently on payment of the aforesaid amount of Rs. 14,116/-, and the Petitioner was permitted to consume electricity by virtue of interim order dated 12 March 2001 passed by this Court in CMA No. 6/2000, on payment of charges at the commercial rate.

9. The Petitioner being-the consumer in respect of A/c No. 16/B3-88(A) he is duty-bound to pay the electricity charges irrespective of renting out such premises. Moreover, under Clause 17(d) of Supply Condition 1998, the consumer is required to pay in advance the provisional fixed charge every month within the fixed period as specified in the passbook supplied by the licensee. Such amount is adjustable against the bill raised for actual consumption of electricity. It also provides that the consumer is to pay such fixed charge, in case of non receipt of the bill, to avoid disconnection. The Petitioner being the consumer it was, therefore, his responsibility to pay the monthly fixed charge if he did not receive the bill, when issuance of passbook is not in dispute. However, keeping in view the facts and circumstances of this case, as the Petitioner was not supplied with break-up of charges due and payable by him, as asked for, the Respondents ought to have provided the same to him. It is also not in dispute that though the Petitioner applied for a commercial connection for his chemist shop the same has not been provided because of the dues payable in respect of A/c No. 16/B3-88(A).

10. In view of above, the present writ petition is disposed of with a direction to the Respondent No. 5 to verify again as to whether any amount is due and payable by the Petitioner in respect of A/c No. 16/B3-88(A) and if any amount is found to be due and payable, the Petitioner shall be provided with details of the same. The Petitioner, thereafter, shall pay the said amount. If the authority wants to impose any penalty for nonpayment of dues, it can do so only after giving a reasonable opportunity to the Petitioner of being heard. The Respondent No. 5,

thereafter, shall consider the Petitioner's prayer for providing the commercial connection to his business premises, subject to the fulfillment of the conditions stipulated in the Supply Condition 1998.

11. The writ petition is accordingly disposed of No costs.