(2015) 12 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

Case No : 645 of 2011

DR. INDRAJIT SINGH SHERGIL — APPELLANT

Vs

PUNJAB STATE ELECTRICITY BOARD & ORS. — RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Constitution of India, Article 226 - Power of High Courts to Issue certain writs

Citation : 2016 1 CPJ 374

Hon'ble Judges : V.K. Jain

Advocate : Sanjeev Kumar Varma, Adwaita Sharma, Junaid Nahvi

Judgement

1. The petitioner and his father purchased a property measuring 662 sq. yds. bearing Khasra No. 2205 Min in Amritsar vide sale deed dated 30.05.2002 for running a hospital. On 25.09.2002,

they applied for a temporary electricity connection depositing a sum of Rs. 14,600/-. The respondent Punjab State Electricity Board required him to deposit a sum of Rs. 54,204/-, that being the amount outstanding against five electricity connections which were taken by the previous occupants of the property purchased by the petitioner and his father. The petitioner deposited the aforesaid amount of Rs. 54,204/- but filed a complaint seeking refund of the said amount.

2. The complaint was resisted by PSEB primarily on the ground that as per the terms and conditions of supply, they were entitled to recover the dues of the previous occupants before sanctioning a new connection to the petitioner.

3. The District Forum vide its order dated 21.12.2004, directed the respondent PSEB to refund the amount of Rs. 54204/- alongwith interest on that amount @ 9% per annum.

4. Being aggrieved from the order passed by the District Forum, the respondent approached the concerned State Commission by way of an appeal. The concerned State Commission allowed the appeal filed by the respondent and set

aside the order of the District Forum. Being aggrieved, the complainant is before this Commission by way of this revision petition.

5. The only question which rises for consideration in this case is as to whether the respondent was entitled to insist upon payment of the dues against previous connections installed in the property before sanctioning a new connection in the name of the complainant/petitioner. Clause IX of the application form which the complainant/petitioner had submitted for taking connection reads as under: " ix. There is no defaulting amount/theft case/pending court case of the board against my/our above premises."

It would thus be seen that the respondent board had taken a decision to grant fresh connection only on being satisfied that there was no dues against any connection granted in the premises on which a new connection is sought. This would mean that it had decided not to release any fresh connection in a property unless the previous dues, if any, in respect of other connections provided in that property had been paid. The payment of dues outstanding against the previous connections installed in the same property therefore was a condition for supply of electricity against a new connection. The petitioner/complainant submitted the application form with the aforesaid declaration thereby making a false statement to the effect that there were no dues against the property in which new connection was sought. Since actually there were dues against the connections previously installed in the said property, the respondent rightly insisted upon the payment of the said dues before approving the new connection in favour of the petitioner/complainant.

The respondent had demanded the aforesaid dues from the complainant vide demand letter dated 03.09.2002 informing him that the said amount was due against the previous connections provided in the property.

6. It is contended by the learned counsel for the petitioner that in the absence of a statutory rule/regulation, the respondent Board was not entitled to recover the dues against the previous

connections from the complainant as a pre-condition of sanctioning a new connection in his name. In support of his contention, he relies upon the decision of the Hon''ble Supreme Court in Isha Marbes Vs. Bihar State Electricity Board (1995) 2 SCC 648.

7. The issue involved in this case however, is squarely covered by the subsequent decision of the Hon''ble Supreme Court in Paschimanchal Vidyut Vitran Nigam Ltd. Vs. DVS Steels & Alloys (P) Ltd., (2009) 1 SCC 210. The following legal preposition enunciated by the Hon''ble Supreme Court in the above referred case is pertinent for the purpose of this revision petition: 10. But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply 8 of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of

the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.

11. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the 9 property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor. We do not find anything unreasonable in a provision enabling the distributor/supplier, to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may.

8. It would thus be seen that even if there is no statutory rule/regulation prohibiting the distributor from recovering the dues against the previous connections before releasing a new connection in the same property, it can insist upon payment of such dues as a condition for supply of electricity to the new consumer. It is only where the statutory rule or regulation prohibit it from doing so that the Board cannot insist upon payment of the dues against the previous connection, before releasing the new connection in the same property.

9. In the case before us, though there is no statutory rule or regulation either permitting the respondent board to recover the dues against previous connections in the same property or prohibiting it from doing so. Therefore, it could have taken an administrative decision and made it a condition of supply of electricity to release new connection only if the dues against the previous

connections have been paid. As observed by the Hon''ble Supreme Court, in the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the 9property and move on to another property. The very fact that the application form required the consumer to declare that there were no dues against any previous connection clearly shows that it was a condition of supply of electricity to the new consumer that the previous dues against any connection in the same property shall be paid before a new connection was released. The respondent therefore, was entitled in law, to recover the said dues before releasing the fresh connection in favour of the complainant/petitioner.

10. During the course of hearing, the learned counsel for the petitioner drew my attention to clause no. 30.13 of the regulations framed by Punjab State Electricity Regulatory Commission vide notification dated 29.06.2007. The said regulation prohibits the respondent Board from requiring payment of the dues of a previous occupier from the next occupier of the premises though it can refuse to supply energy to the defaulting consumers at a new premises until he pays the amount due against the previous connection installed in the premises occupied by him. A perusal of this regulation would show that it came into force only on 01.01.2008. The petitioner/complainant having taken electricity connection much earlier in September 2002, the aforesaid regulations are clearly inapplicable to his case. There is no material on record to show existence of any statutory rule or regulation in September 2002 prohibiting the respondent Board from recovering the dues of the previous connections taken by an earlier occupier before granting a new connection to a new occupier of the premises.

11. For the reasons stated hereinabove, I find no merit in the revision petition and the same is accordingly dismissed, with no order as to cost.

