**(2012) 01 MAD CK 0234**

**In the Madras High Court**

**Case No :** Writ Petition No''s. 15970, 15971, 15972, 15973, 15974, 15975, 15976, 15977, 15990, 16609, 16610, 16611, 16612, 16613, 16614, 16615, 16752, 17952, 17953, 17954, 17955, 17956, 17957, 17958, 17959, 17960, 17961, 17962, 17963, 17964, 17965, 17966, 17967, 179

Dr. P.S. Sivasamy APPELLANT

Vs

Tamil Nadu Electricity Board, The Assistant Engineer, Tamil Nadu Electricity Generation and Distribution Corporation Ltd. and The Official Liquidator, High Court-Chennai RESPONDENT

**Date of Decision :** 27-01-2012

**Acts Referred:**

Companies Act, 1956 — Section 454, 454(1), 529A
Electricity Act, 2003 — Section 22, 24, 43
Electricity Rules, 1956 — Rule 2

**Citation :** (2012) 01 MAD CK 0234

**Hon'ble Judges :** V. Dhanapalan, J

**Bench :** Single Bench

**Advocate :** Rajan for Mr. S. Muthuraman, for the Appellant; A. Navaneethakrishnan, Advocate General, assisted by Mr. G. Vasudevan for TNEB for respondents 1 to 3, Mr. V. Ramesh for respondent 4 and Mr. M. Muthappan for respondents 5 and 6 in W.P. No. 20493/2011, for the Respondent

**Final Decision :** Allowed

## Judgement

Honourable Mr. Justice V. Dhanapalan

1. The proceedings of the third respondent, namely, Assistant Engineer, Tamil Nadu Electricity Generation and Distribution Corporation Ltd., Execution and Maintenance, Ondipudhur, Coimbatore-641 016, dated 09.06.2011, demanding payment of arrears of electricity consumption charges of erstwhile consumer from the petitioners in respect of various service connections at 19, Rani Gardens, SIHS Road, Singanallur, Coimbatore-641 005, are under challenge in all these Writ Petitions. Since all these Writ Petitions subsume one and the same

 

question of law, they are being disposed of in common. For the sake of disposal, let me take the facts in W.P. No. 15972 of 2011.

1.1. According to the petitioner-Sowmya, he is the owner of the immovable property bearing Plot No. 19 of Rani Gardens at Singanallur, Coimbatore. The land comprised in Survey Nos. 129/4, 152, 153 and 154/2 of Singanallur Village, measuring an extent of 7.04 acres along with a building, was owned by a limited company, namely, M/s. Raveendra Mills Ltd. The said company went on liquidation by an order of this Court dated 29.03.2001 in Company Petition No. 197 of 1996. On 12.08.2002, this Court in C.A.No. 300 of 2002 permitted the Official Liquidator, fourth respondent herein, to sell the above said assets of the company after taking over the assets and liabilities and it was published in Newspapers on 24.11.2002, pursuant to which the Official Liquidator sold the said property in public auction as per the order dated 11.02.2003 to the highest bidder M/s. Navabharath Trading Corporation, Chennai-600 032. The entire sale consideration was deposited by the said company and the Official Liquidator sold the said property to the nominee of the auction purchaser by name S. Tamilmani, son of Subbiah Ambalam, by way of a registered sale deed, dated 07.04.2004, as document No. 2064 of 2004. Subsequently, the said Tamilmani formed a layout of house sites viz., Rani Gardens by obtaining approval from the local authority at Coimbatore vide approval No. 154 of 2005 and sold out the same to individual purchasers through his power agents.

1.2. On 27.10.2006, he purchased the Plot No. 19, measuring an extent of 2307 sq.ft. from the above said Tamilmani for a valuable consideration; obtained necessary approval from the local authority and constructed a house. He also applied for a service connection to the third respondent and his building was provided with such connection, after the compliance of all requirements, such as payment of requisite fee and other charges. The service connection was provided by the respondents adhering to the rules and regulations of The Tamil Nadu Electricity Supply Code. He has no arrears of tax or charges to be paid for the said connection so far.

1.3. While so, the third respondent issued the impugned proceedings under the amended clause 17 of the Code and TNERC/SC/7-25, dated 18.03.2011, in proceedings No. A.E.E/E&M/O.Pudhur/Co.kattu/11-12/55, dated 09.06.2011, with a demand of immediate payment of a sum of Rs. 16, 577/- towards the portion of total arrears of Rs. 11, 77, 036/-, payable by the above said liquidated company M/s. Raveendra Mills Ltd. to the Board and stating that if the said amount was not paid within 15 days, the electrical service connection to the premises would be disconnected. Aggrieved over the same, the petitioner has approached this Court by way of this Writ Petition.

2. Respondents-Board have filed a counter affidavit, stating as under:

2.1. HT SC No. 162, which stood in the name of M/s. Raveendra Mills Ltd., was disconnected on 17.07.2001 for non-payment of charges of June 2001 CC Bill.

 

The termination of agreement notice was issued on 18.10.2001 and acknowledged on 21.11.2001. The notice period expired on 20.02.2002. Hence, the agreement entered with the Board was terminated and agreement closed. A sum of Rs. 11, 77, 036/- as CC arrears is to be paid by M/s. Raveendra Mills Ltd. to the Board. The said company was ordered to be wound up under the provisions of the Companies Act in C.P.No. 226 of 1999. The Official Liquidator was directed to sell all immovable property of the company by an order of this Court dated 29.03.2001. In the year 2002, the Official Liquidator was addressed by the Superintending Engineer/CBE. Electricity Distribution Circle/Metro, requesting for arrangements for paying the pending current consumption arrears of the company.

2.2. The Official Liquidator conducted an open auction on 11.02.2003 for selling the property of the company. The offer of M/s. Navabharath Trading Corporation was confirmed. Mr. S. Tamilmani, the nominee of M/s. Navabharath Trading Corporation, purchased the property through a registered Sale Deed, dated 07.04.2004, as Document No. 2064 of 2004. Subsequently, the said Tamilmani sold out the property of land by forming a layout of house sites in the name of Rani Garden to individual purchasers.

2.3. L.T. Service No. 041-010-653 was provided to the writ petitioner on 13.12.2007 and L.T. Services were also provided to various consumers in the said property.

2.4. As per Clause 6.10 of Terms & Conditions of TNEB, in case of services which have been disconnected/dismantled for non-payment of arrears, if the services are to be availed by other parties in the same premises either by purchase or transfer or in auction or on lease basis then in such cases the services will be effected only on clearance of the dues outstanding against such disconnected/ dismantled services by the intending consumers. Hence, the petitioners are liable to discharge the liability of the erstwhile HTSC No. 162 of M/s. Raveendra Mills Ltd. to the Board/TANGEDCO.

2.5. The Current Consumption Charges arrears amounting to Rs. 11, 77, 036/- to be paid by the erstwhile HTSC 162 of the company have been apportioned and Demand Notices are issued by the third respondent to the owners of L.T. Services in the said property for payment of Rs. 16, 577/-.

2.6. As mentioned in Clause 6.10 of the Terms & Conditions of TNEB, the demand notices issued to the writ petitioners by the third respondent for recovering the old arrears of disconnected HTSC 162, M/s. Raveendra Mills, Singanallur, are in order and correct. All the petitioners have paid Rs. 8, 288/- (50% of actual due of Rs. 16, 577/- ) as per the direction of this Court and the balance 50% is due to be paid and the same may be directed to be paid by the petitioners to Board/ TANGEDCO in 10 equal instalments.

2.7. Accordingly, the respondents have prayed for dismissal of the Writ Petitions.

 

3. The fourth respondent-Official Liquidator has filed a report, stating as follows :

1. The Official Liquidator attached to this Hon''ble Court as the Liquidator of M/s. Raveendra Mills Limited (in liquidation) (hereinafter referred to as the company (in liquidation) humbly submits his report as follows:

2. The Official Liquidator submits that the aforesaid company was ordered to be would up by the orders of this Hon''ble Court dated 29.03.2001 in C.P.No. 197 of 1996 and 226 of 1999 and appointed the Official Liquidator as the Liquidator of the company in liquidation with directions to take charge of assets of the company in liquidation.

3. The Official Liquidator submits that in pursuant to the winding up order passed by this Hon''ble Court, the Official Liquidator has taken possession of all the available immovable and movable assets and effects of the Company. That pursuant to the taking possession of the said assets the Official Liquidator with the permission of this Hon''ble Court has sold the movable and immovable assets.

4. The Official Liquidator submits that the Hon''ble Court vide its order dated 11.2.2003 in Company Application No. 300 of 2002 has confirmed the sale of Land and Building and Plant and Machinery of the company in liquidation situated at No. 17 and 18, Aerodrome Road, Coimbatore-5 in favor of M/s. Navbharath Trading Corpn.Chennai-32 for a sum of Rs. 3, 00, 00, 000/- (Three Crores only) towards sale of Land and Building and Rs. 1, 35, 00, 000/- (One Crore Thirty Five Lakhs only) towards sale of Plant and Machinery totalling to a sum of Rs. 4, 35, 00, 000/- (Four Crores Thirty Five Lakhs only).

5. The Official Liquidator submits that subsequent to the sale proceeding initiated by the Official Liquidator he has taken steps to initiate the proceedings to call for the claims from the various creditors. Official Liquidator further submits that in pursuance of the orders of the Hon''ble Court dated 23.06.2003 in Company Application No. 976 of 2003, the claims from various creditors has been called for and that in response to the notice of inviting the claims, the official liquidator has received claims from the workmen creditors, secured creditors, preferential creditors and ordinary creditors.

6. The Official Liquidator submits that he has received 5 Government claims the details as follows :

Sl. No.

Claim No.

Name and Address

Amount Claimed (Rs.)

Amount paid (Rs.)

1

 

99 & 100

B. Andren Prabhu Recovery Officer Employees Provident Fund Sub Regional Office Bhavishayandhi Bhavan P.B. No. 3875, Dr. Balasundaram Road Coimbatore

31,177,40 59,835,38.

12,67,099

2

101

Manivel Commercial Tax Officer Singannallur Circle Dr. Balasundaram Road Coimbatore.

76,61,361

unpaid

3

102

K. Prasant Asst. P.F. Commissioner Officer in Charge Employees Fund Sub Regional Office, Coimbatore

82,60,391

Unpaid

4

293

The Accounts Officer Textile Committee Government of India Ministry of Textiles 978, A, Thadagam Road Coimbatore

33207

unpaid

5

294

M/s. National Engineering Company Madras (P) Ltd., Regd. Office, Kakani Towers, 1st Floor, No. 15, Khader Nawazkhan Road, Chennai 6.

19801

unpaid

Total

2,50,76,038

 

12,67,099

The Official Liquidator has received 241 workman claims and he has paid 54% adjudicated amount a sum of Rs. 1, 37, 761, 07 u/s 529A of the Companies Act, 1956.

The provision u/s 529A of the Companies Act as follows :

(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company-

(a) Workmen''s duties; and

(b) Debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub section 529 pari passu with such dues,

shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

7. Hence as per the Hon''ble High Court''s order dated 21.03.2006 made in C.A.No. 286/2006 Official Liquidator has disbursed a 50% of dividend on the admitted amount to secured creditors and the workmen creditors of the company in liquidation and further by an order dated 17.08.2006 made in C.A.No. 1131/2006 the Official Liquidator disbursed a further payment of 4% dividend to all the secured creditors and workmen creditors. Therefore, a total dividend of 54% was paid to the workmen creditors and secured creditors of the company in liquidation. The details of the payment as follows :

Nature of creditors

Date of adjudication

Nature of creditors

Amount admitted in Rs.

Total amount disbursed at 54% in Rs.

Date of payment

I. Workmen creditors

Various dates

I. Workmen creditors

2,65,29,112

1,37,761,070

On various dates

 

II. Secured Creditors

Secured Creditors

1. IDBI

23.04.2004

1.IDBI

24,80,561

13,39,502

17.02.06 & 11.10.06

2.BOB

26.10.2005

2.BOB

2,44,66,766

1,32,12,054

29.03.06 & 25.10.06

3.IIBI

28.09.2006

3.IIBI

2,42,28,353

1,30,83,311

11/10/06

8. The Official Liquidator submits that subsequent to the winding up proceeding the ex-directors of the company has to file a statement of affairs as required u/s.454 of the Companies Act, 1956.

The Provisions of u/s.454 of the Companies Act, 1956

''454.(1) Where the court has made a winding up order or appointed the Official Liquidator orders, there shall be made out and submitted to the Official Liquidator for statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely:

(a) all assets of the company, stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, if any, held by the company;

(b) its debts and liabilities;

(c) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts; and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;

(d) the debts due to the company and the names, residence and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;

(e) such further or other information as may be prescribed, or as the Official Liquidator may require.

Accordingly, the ex-director of the company in liquidation furnished a details as required u/s.454 (1) (d) of the Companies Act, 1956 under Schedule-III (Loans and advances) that the company has paid a sum of Rs. 11, 98, 700/- towards TNEB Security Deposit (A copy of the Statement of Affairs is enclosed for the kind perusal).

9. That the funds position of the company in liquidation as on 31.10.2011

Cash

: Rs. 14/-

Bank

: Rs. 1, 11, 025.25

Investment

: Nil

10. In view of the aforesaid reasons the Hon''ble Court may be pleased to pass the following orders :

1. To direct the 1 to 3 respondents to return back the Security Deposit a sum of Rs. 11, 98, 700/- paid by the company prior to winding up proceedings.

2. To direct the 1 to 3 respondents to file a Form No. 66 as required u/s 151 of the Company Court (Rules), 1959, after making payment a sum of Rs. 11, 98, 700/- to the Official Liquidator High Court Madras.

3. To pass such other suitable order/s as this Hon''ble High Court may deem fit and proper and necessary in the circumstances or the case and thus render justice.

4. Respondents 1 to 3 have filed a reply by way of an additional counter affidavit, the relevant portions of which are follows :

4. I respectfully submit that when the present Writ Petitions were taken up for hearing by the Hon''ble Court on 25/11/2011, the Hon''ble Court has directed the TANGEDCO to furnish the information regarding the action taken by TANGEDCO for the report submitted by the Official Liquidator who is the 4th respondent in

 

the Writ Petitions and in compliance with the direction of the Hon''ble Court the following details are submitted:

5. I respectfully submit that the Superintending Engineer/Cbe. Elecy. distn. circle/ Metro has already addressed the Official Liquidator in his letter No. SE/CEDC/ METRO/AO/R/HTSCNO 162 DT 07/02/2002 claiming for the pending arrears from M/s. Raveendra Mills, Singanallur, Ondipudur, Coimbatore (Annexure A). It is also respectfully submitted that till date no reply has been received from the Official Liquidator to the Superintending Engineer/Cbe. Elecy. Distn. Circle/Metro/ Coimbatore and it was expected that the request of the Superintending Engineer/ CEDC/Metro is under consideration.

6. I respectfully submit that the letter addressed by the Official Liquidator as submitted by the Official Liquidator in Annexure C has not been received by the TNEB. The Superintending Engineer/Cbe. Elecy. distn. circle/Metro, Coimbat ore has addressed the Official Liquidator in the letter furnished in annexure A with the full address and no reply has been received from the Official Liquidator to that address. Therefore further action by the Superintending Engineer/Cbe. Elecy. Distn. Circle/Metro/Coimbatore was in anticipation of the reply from the Official Liquidator.

7. I respectfully submit that the Hon''ble Court on disposing the Writ Petition 20715 of 2005 filed by Mr. S. Tamilmani against the Superintending Engineer, Coimbatore Elecy. distn. Circle/Metro, Asst. Engineer/Ondipu dur/Cbe. Elecy. Distn. Circle. Metro and the Official Liquidator has ordered Tamilnadu Electricity Board to remove the Electricity poles and other structures holding the Transformer etc. within a period of 8 weeks from the date of the receipt of a copy of the order dt 05.12.2005 (Annexure D).

8. I respectfully submit that a Writ Appeal was filed by the Superintending Engineer/Cbe. Elecy. Distn. Circle/Metro and the same was dismissed by the Hon''ble Court order dated 17/03/2006 (annexure E) and in compliance to that order EB structure and poles were removed from the above mentioned property.

9. I respectfully submit that the letter dt.01.04.2005 addressed by Official Liquidator has not been received by TNEB. Hence, it is respectfully submitted that the claim affidavit in Form No. 66 was not submitted by TNEB to the Official Liquidator.

10. I respectfully submit that as per the amendment of clause 17 of Tamilnadu Electricity Supply Code and Tamilnadu Electricity Regulatory Commission/SC 7-25 dated 18/03/2011, notices have been issued to the various LT consumers in the above mentioned property to pay the apportioned amount of Rs. 16, 577 (Rupees Sixteen thousand five hundred and seventy seven only) of the CC arrears of HTSC 162 M/s. Raveendra Mills Ltd., Ondipudur Coimbatore.

11. I respectfully submit that the letter as submitted by the Official Liquidator (Annexure C) has not been received and also it is respectfully submitted that no

 

reply has been received from the Official Liquidator to the Superintending Engineer/Cbe. Elecy. distn. circle/Metro.

12. Under these circumstances and in view of the above it is humbly prayed that the Hon''ble Court may be pleased to dismiss the above Writ Petition and thus render justice.

5. Learned Counsel for the petitioners would contend that the impugned demand of a sum of Rs. 16, 577/- made by the third respondent from the petitioners was towards arrears of the erstwhile consumer and not of the petitioners; the petitioners are subsequent purchasers of the land from the auction purchaser; the petitioners have no direct nexus with the erstwhile consumer, which was a limited company that went on liquidation and the new service connections the petitioners obtained are for their residential purpose; the Notification of the Tamil Nadu Electricity Regulatory Commission in No. TNERC/SC/7-25, dated 18.03.2011, and Clause 17 of the Code are not applicable to the petitioners, as they have no retrospective effect and, hence, the impugned order of the third respondent is ex facie illegal. He would rely on the following authorities :

(i) Isha Marbles Vs. Bihar State Electricity Board and Another,

55. In all the present cases the supply of electricity to a particular premises which had the benefit of enjoying electricity had been disconnected u/s 24 of the Electricity Act. The auction-purchasers want reconnection. The Board says no; unless and until the consumption charges in relation to that property which came to be incurred during the ownership of the previous incumbent are cleared off. Is the stand of the Board correct? The High Court, in the main judgment in Suman Packaging (CWJC No. 5358 of 1992) gives the following reasons for answering the question against the Board:

1. Section 24 stipulates discontinuance of supply of electrical energy to the consumer in respect of a sum due from him. We are afraid the High Court had not read Section 24 in conjunction with other statutory provisions though they had been noted, namely, Section 26 of the Supply Act; Section 22 of the Electricity Act and clause VI of Schedule to the Electricity Act. They clearly postulate the obligation to supply energy for such premises. At the risk of repetition we hold that the premises had enjoyed the benefit of electricity. The owner of the premises or even the occupier of the premises, as stated under Rule 2(af) of the Indian Electricity Rules, becomes liable to pay the consumption charges together with other dues. In other words, the liability is in respect of the dues of electricity which came to be supplied pursuant to the contract with the former owner. The discharge of such liability will be on such owner or occupier.

56. From the above it is clear that the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. Where that premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract

 

entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. of course, the bona fides of the sale may not be relevant.

(ii Haryana State Electricity Board Vs. Hanuman Rice Mills and Others, :

12. The position therefore may be summarised thus:

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorise the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

iii) Leitner Shriram Manufacturing Ltd. v. The Chairman, T.N. Electricity Board, 2007 (4) CTC 380 :

9. I have given careful consideration to the submissions made by the Learned Counsel on either side as well as the rulings of the Supreme Court as well as this Court. Admittedly, the petitioner is not a consumer at the relevant period and there is no liability on the part of the petitioner to pay any arrears left over by the erstwhile consumer. When there is no arrears payable by the petitioner, the second respondent is bound to follow the provisions u/s 43 of the Electricity Act, 2003 and provide electricity supply to the petitioner industry. When the petitioner has come forward to comply with all the requirements as contemplated under the provisions of the Electricity Act, the impugned proceedings passed by the second respondent, is not, in any way, in conformity with the provisions laid down by the said Act and therefore, the same is quashed and the second respondent is directed to provide electricity service connection to the petitioner-industry within a period of three weeks from the date of receipt of a copy of this order. However, this order shall not preclude the respondents from proceeding against the defaulter.

6. On the other hand, learned Advocate General appearing for the respondents-Board would contend that an amount of Rs. 11, 77, 036/- was due by M/s. Raveendra Mills as arrears of C.C. Charges; subsequent to the winding up of the company, the Official Liquidator was communicated by the Superintending Engineer, requesting to make arrangement for payment of the said arrears by a letter dated 07.12.2002; on 11.02.2003, the date on which the auction was conducted, the Official Liquidator was also informed of the arrears of C.C. Charges; in spite of the same, the arrears are not cleared to the Board; hence, the impugned demand notices are issued to the writ petitioners, who are now the owners of the premises in question, under Clause 17 of the Tamil Nadu Electricity Supply Code and TNERC Notification No. TNERC/SC/7-25, dated 18.03.2011,

 

and, therefore, the said demand notices are perfectly in order and not to be interfered with. He would cite the following decisions :

(i) Dakshin Haryana Bijli Vitran Nigam Limited v. Excel Buildcon Private Limited, (2008) 10 SCC 720 :

9. In Dakshin Haryana Bijli Vitran Nigam Ltd.1 this Court interpreted Clause 21-A of the terms and conditions of supply, distinguished the earlier judgment in Isha Marbles v. Bihar SEB2 and directed the respondent to pay a sum of rupees twenty-five lakhs with a further direction that, in the event of deposit of the amount, the supply of electricity will not be disconnected. In the present case, a sum of rupees ten lakhs has already been deposited by Respondent 1. Therefore, we direct the said respondent to deposit a further sum of rupees twenty-five lakhs with the Nigam. Out of this, rupees twelve lakhs and fifty thousand shall be deposited within three months and the balance amount shall be deposited within three months thereafter.

(ii) Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, :

9. Feeling aggrieved, the first respondent filed WP No. 59163 of 2006 seeking a direction to the appellant not to recover from it any dues of the third respondent. It also sought a consequential direction to the appellant to refund the sum of Rs 8, 63, 451 with interest at 12% per annum. The High Court by order dated 14-5-2007 allowed the said writ petition and directed the appellant to refund the sum of Rs 8, 63, 451 with interest at the rate of 6% per annum from the date of payment. The High Court was of the view that the amounts said to be due by the third respondent were secured by a bank guarantee furnished by the third respondent, and therefore there was no need to retain any amount from the purchasers of the sub-divided plots. The said order is challenged in this appeal by special leave.

Whether the supplier can recover the electricity dues from the purchaser of a sub divided plot?

10. The appellant submitted that if a consumer disposed of its premises, or any portion thereof, without clearing the dues in regard to the electricity supplied to its premises, any transferee seeking a fresh electricity connection or supply of electricity to the premises will have to clear the electricity dues of the previous occupant. The appellant referred to sub-clauses (g) and (h) of Clause 4.3 of the Electricity Supply Code, which is extracted below:

4.3. (g) Where the property has been legally sub-divided, the outstanding dues for the consumption of energy on such premises, if any, shall be divided on pro rata basis.

(h) A new connection to such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises is duly paid by the applicant. Licensee shall not refuse connection to an applicant only on the ground that, dues on the other portion(s) of such premises have not been paid, nor shall the licensee demand record of last paid bills of other portion(s) from such applicants." The appellant submitted that similar provisions existed in the relevant regulations of the Board even before the said Code came into force.

11. The supply of electricity by a distributor to a consumer is "sale of goods". The distributor as the supplier, and the owner/occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor-in-title or possession, as the amount payable towards supply of electricity does not constitute a "charge" on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises in the absence of any contract to the contrary.

12. 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 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 fulfilment 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.

7. I have heard the Learned Counsel for the parties and given my thoughtful consideration to their submissions. I have also gone through the voluminous records, coupled with the authorities cited.

8. Originally, the land comprised in Survey Nos. 129/4, 152, 153 and 154/2 of Singanallur Village, measuring an extent of 7.04 acres along with a building, was owned by a limited company, namely, M/s. Raveendra Mills Ltd. The said company went on liquidation by an order of this Court dated 29.03.2001 in Company Petition No. 197 of 1996. On 12.08.2002, this Court in C.A.No. 300 of 2002 permitted the Official Liquidator, fourth respondent herein, to sell the above said assets of the company after taking over the assets and liabilities and it was published in Newspapers on 24.11.2002, pursuant to which the Official Liquidator sold the said property in public auction as per the order of this Court, dated 11.02.2003, to the highest bidder M/s. Navabharath Trading Corporation,

 

Chennai-600 032. The entire sale consideration was deposited by the said company and the Official Liquidator sold the said property to the nominee of the auction purchaser by name S. Tamilmani, by way of a registered sale deed, dated 07.04.2004, as document No. 2064 of 2004. Subsequently, the said Tamilmani formed a layout of house sites viz., Rani Gardens by obtaining approval from the local authority at Coimbatore vide approval No. 154 of 2005 and sold out the same to individual purchasers, viz., the writ petitioners herein.

9. The writ petitioners purchased the plots of the said layout from the said Tamilmani for a valuable consideration, obtained necessary approval from the local authority and constructed houses. They also applied to the third respondent for service connections and their houses were provided with the said connections, after the compliance of all requirements, such as payment of requisite fee and other charges. The service connections were provided by the respondents adhering to the rules and regulations of The Tamil Nadu Electricity Supply Code. The writ petitioners have also no arrears of tax or charges to be paid for the said connections. Be that as it may, the third respondent issued the impugned proceedings under the amended clause 17 of the Code and TNERC/ SC/7-25, dated 18.03.2011, in proceedings No. A.E.E/E&M/O.Pudhur/ Co.kattu/11-12/55, dated 09.06.2011, with a demand of immediate payment of a sum of Rs. 16, 577/- towards the portion of total arrears of Rs. 11, 77, 036/-, payable by the above said liquidated company M/s. Raveendra Mills Ltd. to the Board and stating that if the said amount was not paid within 15 days, the electrical service connections to the premises would be disconnected. The said act of the third respondent has provoked the writ petitioners to file these Writ Petitions.

10. Under the circumstances, the question that arises for consideration in all these Writ Petitions is, whether the subsequent purchaser/third party is liable to pay the dues of arrears of Current Consumption Charges, left unpaid by the original or erstwhile consumer ?

11. For deciding the above question, let me first examine the provisions viz., Clause 6.10 of the Terms & Conditions of Tamil Nadu Electricity Board and Clause 17 of the Tamil Nadu Electricity Supply (Amendment) Code, 2011, based on which the impugned demand notices have been issued. The said provisions read as under :

Clause 6.10 :

6.10. The Board will refuse to supply electricity to an intending consumer who has defaulted in payment of dues to the Board in respect of any other service connection held in his name.

In case of services which have been disconnected/dismantled for non-payment of arrears and if the services are to be availed by other parties in the same premises either by purchase or transfer or in auction or on lease basis then in such cases the services will be effected only on clearance of the dues outstanding against such disconnected/dismantled service by the intending consumers.

Clause 17 :

17. In clause 17 of the Principal Code, after sub-clause 8 and the entries relating thereto, the following sub-clause shall be inserted, namely,-

9 (a) In case of service connections in a premises, which have been disconnected/ dismantled for defaults in payment of dues whatsoever and if such service connections are to be reconnected or new service connections are to be obtained by other persons in such premises either by purchase or transfer or lease basis, the Distribution Licensee shall reconnect such service connections or effect new service connections as the case may be, in such premises only after payment of dues attributed to such premises by the applicant.

Provided that in case such premises have legally been sub-divided, the outstanding dues attributed to such premises shall be divided in proportion to the area covered by that sub-division. A new service connection to any of such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. The Distribution Licensee shall not refuse connection to an applicant of such sub-divided premises only on the ground that dues attributed to the other portion(s) of such sub-divided premises have not been paid, nor shall the licensee demand record of last paid bills of such other portion(s) from such applicants.

(b) The authorised officer of the licensee may permit such applicant to pay the outstanding dues in instalments and to avail the service on payment of 40% of the total arrears outstanding including BPSC in addition to the charges for reconnection of such service connections or effecting new service connections. The balance 60% of the outstanding dues shall be collected in 10 monthly instalments.

(c) In case an intending buyer of a premises requests for the details of electricity charges due from the owner/occupier of the premises to the distribution licensee, the distribution licensee shall provide such details on payment of the charges as stipulated in the order of the Commission on non-tariff related miscellaneous charges for the time being in force.

12. An in-depth analysis of Clause 6.10 would make it clear that the Board can refuse to supply electricity to an intending consumer who has defaulted in payment of dues to the Board in respect of any other service connection held in his or her name. Further, in case of services which have been disconnected/ dismantled for non-payment of arrears and if the services are to be availed by other parties in the same premises either by purchase or transfer or in auction or on lease basis then in such cases the services will be effected only on clearance of the dues outstanding against such disconnected/dismantled service by the intending consumers.

13. In order to make the above provision applicable, the consumer must be

 

intending. In the case on hand, I say, the writ petitioners are not intending consumers, which means, they are not the consumers in anticipation. They have already got the service connections to the premises in question by paying the requisite fee and other charges applicable at that time and they have been in enjoyment of the connections for a long time and, therefore, they have to be construed as current or incumbent consumers. Moreover, they have not defaulted in payment of dues to the Board in respect of any other service connections held in their names. In fact, they are the first time consumers. When, according to the respondents, there were dues to the tune of Rs. 11.00 lakhs and odd towards current consumption charges in respect of the premises in question, it is not known to this Court why the authorities slept over the matter at the time when the applications were submitted to them by the writ petitioners for new service connections and not demanded the outstanding dues at that time, when the clause specifically provides that in such cases the services will be effected only on clearance of the dues outstanding against such disconnected/dismantled service by the intending consumers. Surprisingly, even this available clause, which was to be invoked by the Department at the relevant point of time, is not reflected in the impugned demand notices. Instead, the demand notices are issued, merely invoking Clause 17.

14. Clause 17 speaks to the effect that in case of service connections in a premises, which have been disconnected/dismantled for defaults in payment of dues whatsoever and if such service connections are to be reconnected or new service connections are to be obtained by other persons in such premises either by purchase or transfer or lease basis, the Distribution Licensee shall reconnect such service connections or effect new service connections as the case may be, in such premises only after payment of dues attributed to such premises by the applicant. This Clause also provides that in case such premises have legally been sub-divided, the outstanding dues attributed to such premises shall be divided in proportion to the area covered by that sub-division and a new service connection to any of such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. This Clause further indicates that the authorised officer of the licensee may permit the applicant to pay the outstanding dues in instalments and to avail the service on payment of 40% of the total arrears outstanding including BPSC in addition to the charges for reconnection of such service connections or effecting new service connections and the balance 60% of the outstanding dues shall be collected in 10 monthly instalments.

15. The above Clause is very categoric that reconnection of disconnected/ dismantled service connections or new service connections to the premises in default of payment of dues shall be made only after payment of such dues attributed to such premises by the applicant. It means, only subject to payment of arrears of dues in respect of disconnected/dismantled service connections, reconnection or new service connections, as the case may be, shall effected to the premises thereof. Though this Clause is akin and benevolent to Clause 6.10

 

above, it cannot be put into operation in respect of the service connections of the writ petitioners, as it has come into being only on 18.03.2011, by not having any retrospective effect. In other words, in the present case, as the new service connections have already been effected to the premises of the petitioners way back in the year 2006, the question of invoking this Clause to the cases on hand, in my standpoint, does not arise at all. It is trite that any law, act, order, rule or regulation shall be only prospective unless it is expressly stated therein that it has retrospective effect.

16. Candidly speaking, the whole controversy in this case can be ascribed to two factors viz., (i) error of the Company Court and (ii) inaction of the Official Liquidator and also the Department. I definitely say this, because, on 11.02.2003, when the Company Application C.A.300 of 2002 in C.P.No. 226 of 1999 was taken up for disposal by the Company Court, the following order was passed :

This Company Application coming on this day before this Court for hearing in the presence of Mr. J. Nithyanandam, Estate Assistant for Official Liquidator, High Court, Madras, the applicant herein, and Mr. Badrinarayana for M/s. Sampathkumar Associates, Counsel for Respondents 2 and 3, Mr. S. Murali for M/s. Rangarajan Prabhakaran, counsel for the respondent, Mr. Arulmurugan for Mr. R. Krishnaswamy the tenderer, Mr. J. James for M/s. Navabharath Enterprises the tenderer and Mr. O.M. Prakash for M/s. Ramalingam Associates for Kothandaraman the tenderer and upon reading the Judge''s Summons, Report of the Official Liquidator, High Court, Madras filed herein, and the counter affidavit of Mr. C. Ramesen filed in court on 28.6.2002, further Report of the Official Liquidator on 19.7.2002, Report of the Official Liquidator, High Court, Madras filed in Court on 27.9.2002, the affidavit of Mr. S. Vaidyanathan filed in Court on 23.1.2003 and other connected papers filed herein, and this Court having observed that there is a statutory liability for payment of charges to the Electricity Board to the tune of Rs. 11, 00, 000/- (Rupees Eleven Lakhs only) and property tax to the Municipal Corporation, Coimbatore to the extent of Rs. 5, 00, 000/- (Rupees Five Lakhs only) it is ordered as follows :

1. That, the offer of M/s. Navabharath Trading Corporation, Chennai 600 033 for Rs. 3, 00, 00, 000/- (Rupees Three Crores only) in respect of land and building belongs to M/s. Raveendra Mills Limited, Coimbatore (in liquidation) situated at Nos. 17 & 18, Aerodrome Road, Singanallur, Coimbatore, and for Rs. 1, 35, 00, 000/- (Rupees One Crore and Thirty Five Lakhs only) in respect of plant and machinery belonging to M/s. Raveendra Mills Limited Coimbatore (in liquidation) lying at Nos. 17 & 18, Aerodrome Road, Singanallur Post, Coimbatore, be and are hereby accepted.

2. That, M/s. Navabharath Trading Corporation Chennai -32 be and is hereby directed to pay property tax to the extent of Rs. 5, 00, 000/- (Rupees Five Lakhs only) in addition to the sale price of Rs. 4, 35, 00, 000/- (Rupees Four Crores and Thirty Five Lakhs only) in all a sum of Rs. 4, 40, 00, 000/- (Rupees Four

 

Crores and Forty Lakhs only) in respect of both items.

3. That, M/s. Navabharath Trading Corporation Chennai-32, be and is hereby directed to pay 25% of the sale price within a period of thirty (30) days from 11.2.2003 and to pay the balance of 75% of the sale price within a period of sixty (60) days, thereafter.

4. That, the Official Liquidator, High Court, Madras be and is hereby directed to return the Earnest Money Deposits given by other Companies.

5. That, the Official Liquidator, High Court, Madras, be and is hereby directed to execute the sale deed in favor of M/s. Navabharath Trading Corporation, Chennai-32 or their nominee on deposit of entire amount by M/s. Navabharath Trading Corporation, Chennai-32.

6. That, the Earnest Money Deposit made by M/s. Navabharath Trading Corporation, Chennai-32, shall be forfeited, if the payments are not made as mentioned in clauses (L) (3) and above, and

7. That, M/s. Navabharath Trading Corporation, Chennai-32, do and is hereby permitted to visit the property in question after giving due notice to the Official Liquidator, High Court, Madras.

17. Though the said Court observed that there was a statutory liability for payment of charges to the Electricity Board to the tune of Rs. 11, 00, 000/- and property tax to the Municipal Corporation, Coimbatore, to the extent of Rs. 5, 00, 000/-, it had committed a blatant error in ordering Rs. 5, 00, 000 alone towards property tax to Municipal Corporation, Coimbatore, in addition to accepting the offer of M/s. Navabharath Trading Corporation, Chennai, for Rs. 3, 00, 00, 000/- in respect of land and building belonging to the said company in liquidation and Rs. 1, 35, 00, 000/- in respect of plant and machinery, ignoring the statutory liability of Rs. 11, 00, 000/- of the company to Electricity Board. It was very unfortunate. Be that as it may. this Court is at a loss to understand as to what made the Official Liquidator, who was managing the affairs of the company in liquidation, to keep mum even on noticing such a faux pas committed by the Company Court, by not bringing the matter either to the notice of the said Court for a clarification or taking the same on appeal or even making TNEB as a party to the litigation. Had he been alert enough, this imbroglio would not have arisen. Even otherwise, either he or the auction purchaser ought to have incorporated in the deeds of sale appropriate clauses making the purchasers/writ petitioners responsible for clearing the electricity dues of the erstwhile consumer, namely, the company in liquidation, in the event they are made liable. It is also not done.

18. Similar is the position of the officials of the Department. As could be seen from the records, pursuant to the winding up of the company, the Official Liquidator, on 11.07.2003, had issued a notice in the newspapers, calling for claims from the creditors in respect of the company in liquidation. Thereafter, on 01.04.2005, the Official Liquidator also wrote a letter to the Assistant Engineer,

 

Singanallur Electricity Board, Coimbatore, calling upon him to file a claim affidavit in Form 66 for the amount due to the Board by the company in liquidation. In spite of the same, there was no action from the Department-officials.

19. It may be true, that on 07.12.2002, the Superintending Engineer, Coimbatore Electricity Distribution Circle, had written a letter to the Official Liquidator requesting him to settle the amount due to the Department in respect of the company in liquidation. But, by simply writing such a letter, the Department cannot wash its hands, especially when a huge amount of arrears is due to it. It is not known to this Court as to why the Department distanced itself from responding either to the notice of the Official Liquidator in the newspapers, dated 11.07.2003, or to his letter dated 01.04.2005. The lackadaisical attitude of the officials of the Department in pursuing the matters of money, which is crucial for survival and services of the Department, is to be highly deprecated.

20. While it is one thing to say that it is the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises as held by the Supreme Court in Paschimanchal Vidyut Vitran Nigam''s case cited above, the purchasers like the writ petitioners are not expected to make an enquiry from the Board so as to know whether any dues are outstanding to the Board from the previous owner nor is it possible for the purchasers to find out the personal liability of the debtor is another, as held by a Three Judge Bench of the Supreme Court in Isha Marbles'' case, cited supra.

21. In the decision relied upon by the Learned Counsel for the petitioners in Hanuman Rice Mills'' case, cited above, the Apex Court held that electricity arrears do not constitute a charge over the property and, therefore, in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier. It was also held therein that where the statutory rules or terms and conditions of supply, which are statutory in character, authorise the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

22. In this case, as already stated above, though Clause 6.10 authorised the respondents to collect the arrears due by the previous owner at the time of issuing fresh connections, they obviously failed to do so. Therefore, the failure of the Board to recover the dues at the appropriate time is certainly a pointer to be put against it. As such, the action of the Board to recover the dues of the erstwhile consumer from the current owners of the premises at this distant point of time, in my viewpoint, is ill-timed.

23. Though in the case of Isha Marbles, cited above, it is held by the Supreme Court that where the premises comes to be owned or occupied by the auction-

 

purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply, the said decision can be distinguished with another decision of the Apex Court in Paschimanchal Vidyut Vitran Nigam Limited''s case wherein it has been held that the Board 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, as, in this case, there is a provision to that effect vide Clause 6.10. But, it has to be resorted to only at the time of effecting supply and not at a later point of time, which too after affording service connections.

24. Even in the case in Paschimanchal Vidyut Vitran Nigam Limited, a question arose for consideration before the Supreme Court as to, whether the supplier can recover the electricity dues from the purchaser of a sub-divided plot ? In that regard, the Supreme Court held that the supply of electricity by a distributor to a consumer is "sale of goods". The distributor as the supplier and the owner/ occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor-in-title or possession, as the amount payable towards supply of electricity does not constitute a "charge" on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises in the absence of any contract to the contrary. However, in that case, the said legal position was not made applicable, stating that when the purchaser of a premises approaches the distributor seeking a fresh electricity connection to his premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity.

(emphasis supplied).

25. The decisions relied upon by the learned Advocate General in Dakshin Haryana Bijli Vitran Nigam Limited v. Excel Buildcon Private Limited and Paschimanchal Vidyut Vitran Nigam Limited v. DVS Steels and Alloys Private Limited were the cases of disconnections and the intending consumers had voluntarily paid a part of the amount to the Board to obtain fresh electricity connections and, in those circumstances, the Supreme Court ruled in favor of the Board. However, in the present cases, the amount is paid by the writ petitioners under protest without prejudice their right to claim refund that too pursuant to an order of this Court subject to the outcome of the writ petitions, for not disconnecting the already extant connections. Therefore, the decisions relied upon by the Board are not of any help to it.

 

26. The respondents, without making claim before the Official Liquidator at the appropriate time and without insisting on payment of arrears of consumption charges from the intending consumers, namely, the writ petitioners as per Clause 6.10 of the terms and conditions of the Board at the time of issuing new service connections, have issued the impugned demand notices after a long lapse of time i.e., more than a decade. Therefore, the said action of the respondents is hit by laches as well. In this context, all that I can say is, there is no use of crying over the spilt milk.

27. The entire layout of house sites was developed by the auction purchaser of the land sold by the Official Liquidator, as per the orders of this Court in C.A.No. 300 of 2002. The petitioners are subsequent purchasers from the auction purchaser and they are in no way liable for any arrears of the erstwhile consumer of electricity. Though the respondents are empowered by Clause 6.10 to collect the arrears of the erstwhile consumer from the intending consumers, the same is not properly acted upon. Therefore, the petitioners are bona fide consumers of electricity.

28. Notwithstanding that the Official Liquidator has filed a report stating that a sum of Rs. 11, 98, 700/- is lying with the Board paid by the company prior to winding up towards Security Deposit and the Board may be directed to return the same and file Form No. 66 for claim, it cannot be done, the reason being, that, as has been noticed from the records, the original liability of the company to the Board was Rs. 23, 75, 736/- and the claim of the Board to the tune of Rs. 11, 77, 036/- was arrived at only after deducting the Security Deposit of Rs. 11, 98, 700/- from the total dues. this Court is also not in a position to direct the Official Liquidator to pay the dues to the Board in view of the fact that, at present, the amount remaining with the Official Liquidator is only Rs. 1, 11, 025/-, as per his report, after disbursement of the claims of the creditors of the liquidated company.

29. Electricity Service Connection is a basic amenity for every citizen to possess for the purpose of living and, hence, disconnecting the same without any valid reason will amount to failure on the part of the authorities in discharging their statutory duties and functions. Therefore, the act of the third respondent in issuing the impugned demand notices against the petitioners in these cases is vitiated by law. Accordingly, the impugned orders are set aside and the Writ Petitions allowed. No costs. Consequently, the connected M.P. Nos. 1 and 2 of 2011 are closed.

30. Since the writ petitioners have paid 50% of the impugned demand as per the direction of this Court subject to the outcome of the Writ Petitions for not disconnecting their service connections, now that the Writ Petitions are allowed, the Board is directed to refund the said amount to the petitioners within a period of eight weeks from the date of receipt of a copy of this order.

31. Even as this Court is pained to notice the loss occurred to the Board of a

 

considerable amount, it is left with no other option but to allow the Writ Petitions, in view of my findings as above. However, in order to see that such things shall not recur in future, the Secretary to Government, Union of India, Ministry of Corporate Affairs, is directed to conduct an enquiry into the role played by the Official Liquidator during the period in question as regards my observations in the foregoing paragraphs and take necessary action thereon, if necessary. Likewise, the Chairman, Tamil Nadu Electricity Board, first respondent herein, is also directed to find out the possible measures to recover the amount which may include from the officials responsible for the loss, for their act of dilly-dallying and take action against them, if he so desires. Following my direction in the preceding paragraph, Registry is directed to forward a copy of this order to the Secretary to Government, Union of India, Ministry of Corporate Affairs, ''A'' Wing, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi-110 001, for taking necessary action.

 