

(1999) 08 AHC CK 0035
In the Allahabad High Court
Case No : C.M.W.P. No. 27075 of 1991

Gopal Swarup Chaturvedi

APPELLANT

Vs

U.P. State Electricity Board, Lucknow and another

RESPONDENT

Date of Decision : 23-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 All 369 : (1999) 4 AWC 3349 : (1999) AWC 3349 : (2000) 1 CivCC 82 : (2000) 2 RCR(Civil) 327

Hon'ble Judges : Lakshmi Bihari, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : S.N. Singh and R.N. Singh, for the Appellant; A.S. Kapoor, Sudhir Agarwal, S.C., for the Respondent

Judgement

Binod Kumar Roy and Lakshmi Bihari, JJ.—Whether the Electrical authorities can issue a notice for recovery of an electrical bill to a person who was already dead and whose electric connection was already disconnected much earlier than his death and a new connection was supplied in the name of his son and wife? and whether this Court will be justified to drag the petitioner, son of the deceased notices, to take recourse to representation, whose earlier representation already filed ventilating his grievances, was not being disposed of despite repeated pressing by him? are the two questions which require our adjudication in this writ petition.

2. Firstly the prayers : The first prayer is to quash the notice dated 18.9.1991 bearing Letter No. 325.3 sent by respondent No. 2 the Executive Engineer, U. P. S. E. B./Competent Authority, Allahabad (A. E. S. U.) to his father Sri P. C. Chaturvedi intimating that he is required to deposit electricity dues of a sum of Rs. 6.675.79 paise in regard to Electricity Connection No. 1000 91. Code No. 2118/0 100 by October 18, 1991. His further prayer is to restrain the respondents from initiating any recovery proceedings in relation to the amount mentioned in the Bill in question.

3. As per his averments in the writ petition and his letter dated Octobers, 1991 (Annexure-2) his case appears to this effect : (i) Electricity Connection Number in question, which was standing in the name of his father Sri P. C. Chaturvedi was surrendered by him in the year 1986 : (ii) A new connection of 3-Phase was taken in the name of the petitioner and his mother Smt. Sarla Chaturvedi, the Code Number of which was/is 922-2118-105159 and Meter No. 1012260 : (iii) The earlier connection was removed in 1987 ; (iv) His father had died on 6.6.1989 ; (v) the petitioner received the impugned notice on 22.9.1991 addressed to his father despite the fact that he was already dead and thus nullity (vi) he immediately sent a reply dated 3.10.1991 (appended as Annexure-II) which was duly received in the office of respondent No. 2 praying to cancel the notice and correct the records for the reasons stated therein (vii) he also personally met respondent No. 2 several times and explained the entire matter, but as they were found to be in hot haste to recover the amount of the bill through coercive method, hence this writ petition on the grounds, inter alia, that as the impugned notice has been Issued against his father, who had died on 6.6.1989, and thus is nullity and liable to be quashed on this ground alone and that no electricity having been consumed through the connection referred to in the notice the amount cannot be realised.

4. We do not find any counter-affidavit on the record despite the fact that as early as on 8.10.1991. at the time of acceptance of the notice by Sri A. S. Kapoor, the learned counsel appearing on behalf of the respondents, one month's, time was granted to file a counter-affidavit.

5. Mr. R. N. Singh, learned senior counsel, appearing on behalf of the petitioner, in view of the backdrop aforementioned, contended that the impugned notice being nullity, besides based on incorrect facts, be quashed by invoking the doctrine of "non-traverse" and the respondents be restrained from taking any steps from realising the amount mentioned in the impugned bill.

6. Sri Sudhir Agrawal, learned standing counsel for the U. P. S. E. B. appearing on behalf of the respondents, apparently feeling handicapped in the absence of any counter-affidavit, however, contended that in the peculiar facts and circumstances, we may direct the petitioner to file a representation at this stage before the Executive Engineer, Electricity Urban Distribution Division, Mayo Hall. Allahabad, assuring that the same will be considered and disposed of objectively and expeditiously.

7. The facts speak for themselves. Having regard to the apparent facts and circumstances which have not been cared to be countered by the respondents despite expiry of about eight years by now. and non-passing of any order on the petitioner's representation (Annexure-2). It will not be desirable to direct the petitioner to take recourse to filing of yet another representation, as suggested to by Sri Agrawal.

8. On the materials as available on the record, we have no option but to invoke

the doctrine of "non-traverse" as rightly urged by Sri Singh. Accordingly, we hold that as the petitioner's father Sri P. C. Chaturvedi having died on 6.6.1989, the notice issued to him for recovery of the amount in relation to alleged supply of electricity in June. 1991 is nullity/null and void.

9. On facts also, which stands admitted, it has to be held that there was no supply of electricity as the earlier connection was removed in the year 1987.

10. Both questions formulated by us are answered in favour of the petitioner, who is entitled to the reliefs prayed for.

11. Accordingly, we allow this writ petition, quash the impugned notice and restrain the respondents from realising the alleged electricity dues.

12. No cost as not pressed by Mr. Singh, the learned counsel for the petitioner.