

(1999) 07 AHC CK 0148
In the Allahabad High Court
Case No : C.M.W.P. No. 29604 of 1999

Harshardhan Mittal and others

APPELLANT

Vs

U.P. State of Electricity Board and others

RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79
Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958 —
Section 5

Citation : AIR 1999 All 371 : (1999) 3 AWC 2603

Hon'ble Judges : R.H. Agrawal, J; Palok Basu, J

Bench : Division Bench

Advocate : P.K. Jain and Ravi Kiran Jain, for the Appellant; S.C. and Sudhir Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Palok Basu and R.K. Agrawal, JJ.—Those who are under liability to pay lacs and lacs of rupees as dues, may be electricity dues or otherwise. try to find out some way to thwart the recovery proceedings. Provisions of law and agreement, therefore, have to be pointedly looked In to find out whether the objections are genuine or only an effort to by-pass the lawful dues.

2. Harshvardhan Mittal, Shiv Kumar Singh, Bramh Singh and Som Pal Singh are the four petitioners challenging the recovery certificates dated 4.3.1999 and 1.4.1999 for Rs. 14,12,778 and Rs. 32.04.144 respectively. (Annexures-7 and 8 to the writ petition). At the outset, it may be stated that two recovery certificates have not named the petitioners Shiv Kumar Singh, Bramh Singh and Som Pal Singh but it indicates the recovery proceedings only as against the petitioner No. 1. Harshvardhan Mittal. The objection of the learned counsel for the respondents that the impleadment of petitioner Nos. 2. 3 and 4 may be only a legal step to thwart some future proceedings may not be out of place. However, no final verdict on this issue is necessary for determining the point raised on behalf of

Harshvardhan Mittal.

3. Sri Ravi Kiran Jain, Senior Advocate for the petitioners assisted by Sri Pramod Kumar Jain has been heard in this matter at substantial length and the entire writ petition has been thoroughly scrutinised. Sri Jain placed reliance on certain provisions contained in the Indian Electricity Act, 1910, U. P. Government Electrical Undertakings (Dues Recovery) Act. 1958 and also on a decision of Hon"ble Supreme Court in S.K. Bhargava Vs. The Collector, Chandigarh and Others, .

4. Sri Sudhir Agrawal has appeared on behalf of the U. P. State Electricity Board and Sri S. C. Rai. Additional Chief Standing Counsel appearing for the opposite party Nos. 3 and 4, i.e., Tehsildar and Collector. Muzaffarnagar who are the recovery . revenue officials have been heard. It may be pointed out that the admitted position as emerging from the writ petition indicates that there was an agreement dated 23rd December. 1995. a copy of which has been filed by the petitioners as Annexure-2 to the writ petition. The first page of the Annexure indicates that the parties to the agreement are classified into two parts. The first part describes the "Supplier" which has been noted therein as U, P. State Electricity Board and the other part describes the "Consumer". In this column of consumer, the name of Sri Harshvardhan Mfttal, son of Sri S. S. Mittal, permanent resident of E. 45 and E. 50 Jashodharpur has been mentioned followed by the name M/s. Vaibhav Steel Pvt. Ltd., Jashodharpur described as a Company registered under the Companies Act through Its Director Harshvardhan. S/o Sri S. S. Mittal, permanent resident of E. 45 and E. 50 Jashodharpur. (Kotdwar). The words partnership concern/ proprietorship concern have not been cut out but since copy as filed indicates the name of the petitioner as Director. the other two descriptions shall be deemed to have been irrelevant for the purposes of this agreement which has been acted upon by the parties.

5. There are several provisions in the agreement detailed in paragraphs 1 to 20. In the end where the execution column is printed, the signature of the petitioner Harshvardhan Mittal exists showing as Director, for and on behalf of the consumer M/s. Vaibhav Steel Pvt. Ltd. It has been further mentioned in the writ petition that the petitioner Harshvardhan Mittal has resigned from the Directorship on 1.3.1997 (vide averments in para 12 of the writ petition). It has been mentioned therein that intimation to all concerned departments have been given and the name of U. P. State Electricity Board is mentioned. In para 13, it Is written that copy of the letter of information addressed to the U. P. State Electricity Board was filed as Annexure-3 to the writ petition. It may be pointed out that the letter Annexure-3 does not bear any date nor the annexure indicates as to whom it is addressed to. However, assuming that it was sent to the U. P. State Electricity Board and that it was conveyed that all the four petitioner have resigned on different dates, i.e., Shiv Kumar Singh and Bramh SIngH on 23.11.1996 and Sompal Singh and the petitioner Harshvardhan on 1.3.1997. Neither the existing agreement was cancelled. nor new connection was taken.

6. On the strength of the material noted above reliance was placed on the definitions of "Consumer" in the aforesaid two Acts and Sri Jain argued that the petitioners cannot be taken to be personally liable for the electricity charges payable for the factory/company. The definitions are quoted below for ready reference :

"In the Indian Electricity Act, 1910 :

Definition.--"Consumer" means any person who is supplied with energy by a licensee or the Government or by any other person engaged in the business of supplying energy to the public under this Act or any other law for the time being in force, and Includes any person whose premises are for the time being connected for the purpose of receiving energy with the works of a licensee, the Government or such other person, as the case may be.

In the U. P. Government Electrical Undertakings (Dues Recovery) Act, 1958 :

"Consumer" means any person who is supplied with the energy by a Government electrical undertaking, whether for his own consumption or in connection with his business of supplying energy or otherwise."

7. Simultaneously Sri Jain canvassed strongly that the decision of the Apex Court in S. K. Bhargava (supra), had gone into the question of applicability of principles of natural justice at the time of recovery process under the Haryana Public Moneys (Recovery of Dues) Act, 1979 and held that since the petitioner in that case, namely. S. K. Bhargava should, have been afforded an opportunity, the petitioner Harshvardhan Mittal or for that matter the other petitioners should have been heard by the officials concerned who directed issuance of the two recovery certificates for Rs. 14,12,778 and Rs. 32.04.144 respectively, and their representation should have been decided because no notice of demand was served upon the petitioners.

8. In reply, it was contended that in the representation which was said to have been made by the petitioners, copy of which has been filed as Annexure-9 to the writ petition, there is not even a whisper that no notice has or had been served on them. It was argued that in fact. It virtually admits the service of notice because only thereupon they could make the representation. Such being the position, the very factual basis of the argument of Sri Jain is totally obliterated. The petitioners obviously had notice of the demand against them whereafter recovery certificates have been issued.

9. As to the contention that all the petitioners having resigned from the office of "Director", no individual liability could flow from the agreement and thus the recovery certificates were wrongly issued, it may be mentioned that recovery proceedings have been started only against petitioner Harshvardhan Mittal. therefore, this contention has to be examined only so far as he is concerned and no other.

10. Coming to the question whether the petitioner Harshvardhan against whom

the recovery proceedings have been Initiated can be proceeded against or not, the argument of Shri Jain suffers from two fallacies. Firstly, the agreement itself says that the petitioner Harshvardhan Mittal, with his parentage and address, is a consumer. Once this is so, the petitioner is the consumer. Secondly, the provisions contained in the Act, and the actual description of the "Consumer" in the statutory agreement will have to be adhered to not only for supplying electricity but also for realising the bills amounts and arrears for consuming the electricity.

11. Therefore, showing the same Vaibhav Steels Pvt. Ltd.. through Sri Harshvardhan Mittal. as Director of the Company, in the column of the "Consumer" does not in any way absolve him from being the "Consumer" within the meaning of the said agreement. If the "Company through its director" alone was to be the consumer, that alone should have been written at the relevant column. The name of the petitioner Harshvardhan Mittal has been specifically shown as an individual, in his individual capacity, as has been noted above. Thus there is no escape for Harshvardhan Mittal from this statutory agreement and liability arising therefrom.

12. It may further be pointed out that Sri Sudhir Agarwal has placed reliance on paras 13 and 18 of the agreement in order to reply to the argument of Sri Jain that petitioner Harshvardhan Mittal would not be covered by the definition of the word "Consumer" as given in the Recovery Act (quoted above). Paras 13 and 18 read as under :

" 13. Any notice by the supplier to the consumer shall be deemed to be duly given and served, if it is addressed to the consumer and delivered by hand act, or sent by registered post to the address specified in the consumer's application or as subsequently notified to the supplier.

18. That the consumer hereby further agrees to abide by the terms and conditions as stipulated in the Electricity Supply (Consumers) Regulation. 1984 formed u/s 79 of the Electricity (Supply) Act, 1948 and this agreement shall be subject to the provisions of the same. Provided that in case of any inconsistency between the terms as contained in this agreement and those in the conditions of supply, the terms of this covenant shall prevail."

It has thus been provided in para 18 that the terms and conditions of the agreement between the consumer and the supplier will prevail over certain other covenants. Therefore, the petitioner Harshvardhan is bound by the terms of the statutory agreement.

13. Sri Jain has also argued that since the new Directors have been inducted in the meantime, the Company can be proceeded with and the recovery proceedings if necessary can be taken against the company and its property and also the newly Inducted Director.

14. Sri Sudhir Agrawal on the other hand rightly argued that the petitioner

Harshvardhan is a consumer and his liability emanates from the agreement itself and it has not been disputed that arrears of the electricity charges can be realised as arrears of land revenue vide Section 5 of the Recovery Act of 1958. He further rightly argued that the petitioner's representation after having been served with the notice of demand did not lie and the Board could proceed lawfully even after the resignation of the petitioner Harshvardhan Mittal was submitted.

15. In this view of the matter, the recovery proceedings initiated against the petitioner Harshvardhan Mittal has full sanction of law and no illegality could be found therein. The decision of the Hon"ble Supreme Court in S. K. Bhargava (supra), was not against a "Consumer" and in this case since the petitioner Harshvardhan Mittal is the consumer, the ruling is not applicable at all on the facts of the case and the respective provisions are totally different.

16. The writ petition fails and is hereby summarily dismissed.