
(2013) 09 GUJ CK 0059
In the Gujarat High Court

Case No : Special Civil Application Nos. 11197 and 11400 of 2010

Kantaben Jayantilal Radadia

APPELLANT

Vs

Paschim Gujarat Vij Co. Ltd. and Another

RESPONDENT

Date of Decision : 23-09-2013

Acts Referred:

Citation : (2014) 1 GLH 603

Hon'ble Judges : Rajesh H Shukla, J

Bench : Single Bench

Judgement

Rajesh H Shukla, J.—Both these petitions have been filed by the petitioners for the prayers that the impugned actions of the respondents of disconnecting the power supply to the petitioner on the basis of notice dated 23.07.2010 may be set aside on the grounds stated in the petition. The petitioner of Special Civil Application No. 11400/2010 is the wife of defaulter, Jayantibhai and the petitioner of Special Civil Application No. 11197/2010 is the grandson of the defaulter, Jayantibhai. The impugned notice dated 23.07.2010 came to be issued to clear the dues of Vishnukrupa Quarry Works and its partners including Jayantibhai Radadia.

2. Heard learned Counsel, Shri P.J. Kanabar for the petitioners and learned Counsel, Shri Dipak Dave for the respondent.

3. Learned Counsel, Shri Kanabar has referred to the papers and submitted that the premises for which the default has been committed are different. It was submitted that consumer connection No. 94101/00024/7 is for lighting and consumer connection No. 84101/011516/3 is the commercial connection, which have been disconnected though the petitioners are not concerned or associated with the partnership firm. Learned Counsel, Shri Kanabar referred to the notice produced at Annexure B to support his submission. He referred to the conditions of supply, other papers, affidavit filed by the respondent and rejoinder. He submitted that the premises in which the petitioners are staying is a residential premises and as occupants, they have a right to have the supply of electricity,

which cannot be disconnected due to default in payment for other premises or other connection. Learned Counsel, Shri Kanabar submitted that if the power supply to Vishnukrupa Quarry Works of which Jayantilal Radadia was a partner has committed default, it would not entitle the respondent to disconnect the power supply of the premises of the petitioners for the purpose of residential use.

4. Learned Counsel, Shri Dipak Dave for the respondent has referred to the affidavit in reply and submitted that Jayantilal Radadia, who was the consumer as a partner of Vishnukrupa Quarry Works has committed default in payment of the dues and with a view to avoid the dues of PGVSC, he has transferred his property in the name of his son and his wife. He therefore submitted that the fact that the house which has been purchased or transferred in the name of wife is in fact owned by Jayantilal Radadia and, therefore, supply has been rightly disconnected. He has submitted that as per the regulation, particularly, Regulations 4.1.11 and 6.4.7, the petitioners are not entitled for reconnection of the electricity supply till the amount due is paid. He has also referred to the past litigation in the form of Civil Suit and First Appeal Nos. 4218 & 4218 of 2007 and the execution proceedings. He therefore submitted that the present petition may be dismissed.

5. In rejoinder, learned Counsel, Shri Kanabar has also referred to the affidavit in rejoinder to support his submission. It was submitted that even if the outstanding dues are there, same could be recovered in accordance with law in execution proceeding but the supply of electricity cannot be disconnected.

6. Learned Counsel, Shri Dipak Dave referred to the additional affidavit and submitted that plot on which the residential as well as commercial connections have been obtained has been transferred fraudulently or it is a sham and fictitious transfer. He submitted that in fact, it cannot be said to be any valid transfer without any registered document or any consideration. He submitted that therefore the transfer of property having not taken place as required under the law and mere change in the name in the record of Gram Panchayat would not make any difference. He therefore submitted that the present petition may not be entertained.

7. Learned Counsel, Shri Dipak Dave has referred to and relied upon following judgments:- Additional Secretary to the Government of India and Others Vs. Smt. Alka Subhash Gadia and Another, , Municipal Board, Pratabgarh and Another Vs. Mahendra Singh Chawla and Others, , Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir and Others, , Oswal Fats and Oils Limited Vs. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others, , Prestige Lights Ltd. Vs. State Bank of India, , K.D. Sharma Vs. Steel Authority of India Ltd. and Others, , Ramesh Chandra Sankla Etc. Vs. Vikram Cement Etc., , Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, , The Executive Engineer and Another Vs. Sri Seetaram Rice Mill, , Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, , Surjit

Singh Vs. Mahanagar Telephone Nigam Ltd., , Hinsa Virodhak Sangh Vs. Mirzapur Moti Kuresh Jamat and Others, , S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, ."

8. He has also referred to and relied upon the orders passed by this High Court in Letters Patent Appeal No. 399 of 2011 dated 25.08.2011 and Special Civil Application No. 13934/2010 dated 08.02.2011.

9. In view of these rival submissions, it is required to be considered whether the present petition can be entertained or not.

10. As it transpires, Jayantilal Radadia is the defaulter as a partner of Vishnukrupa Quarry Works, which has to pay dues of the firm and the electric connection is granted to the partnership firm. However as it transpires, plot of 300 sq.mtrs. was purchased by Jayantilal Radadia by sale deed from Suribhai Bavabhai and had constructed the residential premises. Admittedly this premises have been entered into the record of panchayat in the name of two petitioners herein. Therefore, moot question is whether the action of the respondents herein could be sustained or not. It has to be considered with reference to two relevant aspects such as:--

(i) Whether in case of default by a person, who is a consumer regarding one electric line then other electric connection in the name of said consumer could be disconnected?

(ii) Whether the electric supply could be disconnected in respect of a residential premises of other persons merely because they are close relatives i.e. wife and son on the ground of such default in payment regarding other electric connection?

11. The submissions have been made by both sides at length. Learned Counsel, Shri Dipak Dave has referred to long list of judgments and the Regulations regarding supply including the Regulations 4.1.11 and 6.4.7. Though he has made strenuous efforts with emphasizing on the word "any" used in the Regulations to support his submission that it would mean that power supply could be disconnected for any other premises of the consumer, if he has defaulted in respect of even other connections. It is required to be mentioned that Rule 443 of the Telegraphic Rules specifically empowers such disconnection of another telephone line of same consumer in case of default for one line, which is not the case herein. Reliance placed by learned Counsel, Shri Dipak Dave on the Regulations and the conditions of supply may be in purported exercise of statutory provisions of law but there is no such specific Rule which empowers the respondent-Company to disconnect the power supply of the consumer for default in payment in respect of another line or connection. The submissions which have been made referring to the aspect of transfer of premises, would not have much relevance inasmuch as whether the residential premises have been transferred genuinely or it is only an entry made in the record of the panchayat, the fact remains that it is a residential premises occupied by the petitioners, who are wife and son - close relatives of the defaulter. Admittedly the execution proceedings

are initiated and recovery could be made in accordance with law in those proceedings. Therefore the moot question is whether as a licensee having monopoly, the respondent-Company arbitrarily misused the power to disconnect the electricity supply of a residential house, which is a separate connection to enforce such recovery by such pressurizing tactics. Answer has to be in negative. It is required to be mentioned that law with regard to the fundamental rights including the right to life enshrined in Article 21 of the Constitution of India has been developed over a period of time which provides for not merely animal existence or mere existence but right to live with dignity. A useful reference can be made to the observation made by the Hon''ble Apex Court in a judgment in case of Samatha Vs. State of A.P. and Others, , more particularly, para. Nos. 76 and 78. In the said judgment, it has been observed as under:--

Therefore, right to life enshrined in Article 21 means something more than mere survival of animal existence. The right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a men''s life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment - social, cultural and intellectual - without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed by Article 21.

12. Further, a useful reference can also be made to the observation made by the Hon''ble Calcutta High Court in a judgment in case of Molay Kumar Acharya Vs. Chairman-cum-Managing Director, W.B. State Electricity Distribution Co. Ltd. and Others, , where it has been observed as under:--

For the foregoing reasons, the petitioner has the right to claim Electricity as an Occupier u/s 43 of the Electricity Act 2003. Consequently this Court however, makes it very clear that whatever observations have been made in this judgment are only to be construed and interpreted in the context of the petitioner''s right to have electricity so long as he remains in possession of the property in question because no one, in the modern days can survive without Electricity, and therefore, the right to Electricity is also a right to life and liberty in terms of Article 21 of the Constitution of India.

13. Therefore in these days, electricity is a necessity and the person cannot be deprived of his right to get basic necessity like electricity in residential house merely because there is a default committed by a close relative regarding payment of the dues for another electric connection or line. Word "consumer" has to be also considered as to who is the consumer and a person, who occupies the premises, would be a consumer. Blacks Law Dictionary defining the words "Occupier" and "Occupant", which is relevant for this purpose. An occupant is one who is in the enjoyment of a thing. It also suggests a person in actual occupation. It is required to be mentioned that in cases, whether the premises of the landlord has been occupied by a tenant, any such attempt to cause harassment by the landlord by non-payment of charges, tenant is permitted to have a separate connection as a consumer. On the same analogy, even if the

default is committed by somebody for his commercial premises or connection, the electric connection for the premises occupied by a close relatives cannot be disconnected in such a manner. The submissions which have been made by learned Counsel, Shri Dave that they are entitled to disconnect without any supporting source or power cannot be accepted and are misconceived. In other words, when there is no provision in the statute or Rules made thereunder, any such disconnection would be illegal. It is required to be mentioned that for one default of a consumer for one line, another line or connection could not be disconnected and, hence, such exercise of power could be termed as arbitrary and without jurisdiction. Therefore assuming that the transfer of residential premises in the name of son or wife are not effective or valid and de facto the supply or connection in the residential premises is in the name of same defaulter even then, the disconnection of the residential premises which is a separate line or connection cannot be made as sought to be canvassed. In other words, the disconnection of the electric supply to the residential premises occupied by the petitioners in purported exercise of power is not justified when there is no specific Rule or Authority providing for disconnection of the power supply of the residential premises for the default in case of another commercial line or connection. Again as stated above, when the Rule or the conditions of supply or the Regulation do not specifically provide for such power, reliance placed by learned Counsel, Shri Dave on the word "any" would mean any connection is reading into such Regulation, which is not provided. The provision of such Regulation or the conditions of supply has to be read in the background and in context of the relevant facts and one word cannot be read in isolation to justify any exercise of power. Therefore the reliance placed by learned Counsel, Shri Dave on various Authorities or pronouncement of the Hon'ble Apex Court cannot support his submissions. Therefore, the present petition deserves to be allowed. However, it will be open for the respondents to proceed in accordance with law for the recovery of outstanding amount of dues against Jayantilal Radadia or partnership firm but it does not justify such disconnection of the electricity supply of a residential premises. With the above observations and directions, both petitions stand allowed. The impugned action of disconnection of supply on the basis of the notice dated 23.07.2010 is hereby quashed and set aside. The respondents are directed to reconnect the power supply to the petitioner bearing Nos. 84101/00024/07, 84101/0156/03 and 84101/01515/5 of Special Civil Application No. 11400/2010 and Nos. 84101/01051/0, 84101/01052/8, 84101/0417/7 and 84101/0616/4 of Special Civil Application No. 11197/2010 forthwith. Rule is made absolute.

FURTHER ORDER

After the order was pronounced, learned Counsel, Shri Dipak Dave has requested for the stay of the operation of the order to enable his client to approach the Higher Forum. The request is granted and the time is extended upto 10th October, 2013 with a clear understanding that no further extension shall be granted as one of the properties is a residential premises where there is no

electricity supply as stated by learned Counsel, Shri Kanabar.