

(2008) 08 OHC CK 0109

In the Orissa High Court

Case No : Writ Petition (C) No. 5378 of 2007

Krishna Chlorate Pvt. Ltd.

APPELLANT

Vs

North Eastern Electricity Supply Company of Orissa Ltd.
(NESCO) and Others

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) CLT 903 Supp : (2009) 1 OLR 472 Supp : (2008) OLR 903 Supp

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Advocate : S.S. Das, K. Behera, S. Modi, S.S. Pradhan and A. Mohanty, for the Appellant; N.R. Rout and Pami Rath for O.P. Nos. 2 and 3, P.K. Mohanty, D.N. Mohapatra, J. Mohanty and P.K. Nayak for O.P. No. 1, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioner, which is a Private Limited Company registered under the Companies Act, 1956, has sought for a direction to the opposite party No. 1 provide power supply to the Petitioner's unit and to quash the letter under Annexure-3 issued by the Executive Engineer of the opp. party No. 1 to the Petitioner-company.

2. M/s. A.B.S. Spinning Orissa Ltd. (in short "ABBSSOL"), which was a wholly owned subsidiary company of the Industrial Development Corporation of Orissa Ltd. (IDCOL)- opposite party No. 2, was wound up by the order of the Company Judge. The winding up proceeding was initiated on being referred to by the BIFR under the provisions of the Sick Industrial Companies (Special Provisions) Act, as there was no chance of revival of the said Company. Pursuant to order passed by the Company Judge, the opposite party No. 2 floated tender notices for the sale of the three Spinning Mills. Various parties participated in the tender process. After a long drawn legal battle, M/s. Rajshree Vanijya Private Ltd. and/or its nominees were found to be the highest bidders to purchase all the three

Spinning Mills of ABSSOL in an auction sale held in Court. The present Petitioner is one of the nominees of M/s. Rajshree Vanijya Private Ltd. By order dated 08.09.2006 passed in Company Act Case No. 4 of 2002 and Misc. Case No. 73 of 2006, the Company Judge has directed the opposite party No. 2 to deliver possession of the three units of ABSSOL to M/s. Rajshree Vanijya Private Ltd. and/or its nominees being the highest bidder in the auction conducted by the Company Judge in open Court. The said order of the Company Judge was challenged by one M/s. Ruhatiya Spinners Pvt. Ltd. before the Division Bench of this Court in COA No. 8 of 2006. The Division Bench in its appellate side, by judgment dated 22.12.2006 dismissed the appeal and the highest offer of Rs. 15.65 crores of M/s. Rajshree Vanijya Private Ltd. and/or its nominees and the order dated 08.09.2006 passed by the Company Judge remained unaltered. Again by order dated 05.01.2007, the Company Judge in Misc. Case No. 1 of 2007 directed that the unit of Aska Spinning Mills be transferred in favour of M/s. Rajshree Vanijya Private Ltd. and M/s. George Distributors Pvt. Ltd. The unit of Baripada Spinning Mills was directed to be transferred in favour of M/s. Rajshree Vanijya Private Ltd. and M/s. Krishna Chlorate Pvt. Ltd. Similarly the unit of Sonapur Spinning Mills was directed to be transferred in favour of M/s. Rajshree Vanijya Private Ltd. and M/s. Phiroja Vinimoy Pvt. Ltd. Pursuant to the above orders, the Baripada Spinning Mill unit was handed over to the Petitioner by the opposite party No. 2. As no deed of conveyance was executed, the Petitioner moved the Company Judge for appropriate direction and the Company Judge by order dated 09.03.2007 directed the IDCOL to execute the document and deed of conveyance in favour of the purchaser, as early as possible, preferably within a period of two week without including therein any clause or restriction restraining the purchasers from offering the properties transferred in their favour, as security in favour of any Financial Institution or Bankers Association for generating funds. Since despite the above order, no deed of conveyance was executed in favour of the Petitioner, so far as Baripada Spinning Mill is concerned, the Petitioner moved the Company Judge once again and by order dated 13.04.2007, the Company Judge again directed the Collector take effective steps for facilitating transfer of the property in favour of the purchasers and for execution of the deed of conveyance within a period of two weeks.

3. The present dispute arose, when the Petitioner was all set to run the Baripada Spinning Mill, it informed the opposite party No. 1 about the order of the Company Judge and as per the agreement between opp. party No. 2 and the Petitioner-Company, the Petitioner-Company has no liability for any debts and liabilities of the vendor, which are to be discharged by the vendor, as on the date of transfer. The Petitioner-Company requested the opposite party No. 1 for issuance of feasibility report for 500 KVA Contact Demand out of 1500 KW connected load. It also mentioned about the existence of infrastructure and the urgency of requirement of power to run the Spinning Mill and the Petitioner-Company being urgently in need of power to run the Mill, it applied for a temporary connection for a period of one month to the opposite party No. 1.

When the matter stood thus, the opposite party No. 1 vide its letter under Annexure-3 informed the Petitioner as hereunder:

With reference to the subject cited above, in the said context, we regret to inform you that NESCO has to revoke a sum of Rs. 6,99,61,283/- from the Baripada Spinning Mill. We understand from your letter that you have taken over the possession of the said Unit from IDCOL. You may be aware that NESCO is a loss making company and not in a position to write off such a huge arrear dues. Hence, it is difficult on our part to give power supply unless our arrear dues are recovered in full.

Please note that we have already taken up the matter with IDCOL to recover the arrear dues and at the same time, we also request you to arrange to take necessary steps to clear our dues.

Inconvenience caused to you in this matter is highly regretted.

Being aggrieved by the action of the opposite party No. 1 in not supplying the electricity to the unit of the Petitioner, the Petitioner has approached this Court under Article 226 of the Constitution for the reliefs, as stated above.

4. After issuance of Rule the opposite parties have entered their appearance through their respective counsel and a counter affidavit has been filed by the opp. party No. 1 only.

5. The Petitioner-company in the sale conducted by the Company Judge has purchased the spinning mill unit of ABSSOL, which is the wound up company, at Baripada.

6. In respect of the purchaser of the Sonapur Unit, W.P.(C) No. 15474 of 2007 was filed by the said purchaser seeking similar relief as has been sought for in the present writ petition.

7. This Court in its judgment delivered today in writ petition, i.e., W.P.(C) No. 15474 of 2007, after analyzing the facts and law involved in the said case, has allowed the same by quashing the letter under Annexure-3 to the said writ petition, which is a similar letter like Annexure-3 in the present writ petition. This Court has further directed the opp. parties 1 to 4 in the said writ petition, the licensee, i.e., the WESCO and its officials to give supply of electricity to the purchased unit of the Petitioner therein, on fulfilling all other conditions, within a period of one month from the date of communication of the said order and such supply cannot be denied on the ground that arrear amounts are due against the previous consumers, i.e., the company, which has been wound up.

8. The facts involved in the present case are exactly similar to the facts of the case in W.P.(C) No. 15474 of 2007 and the ratio of the said judgment squarely applies to the facts of the present case also.

9. In view of the above, the letter dated 19.4.2007 under Annexure-3 is quashed and the opp. party No. 1 herein is directed to give supply of electricity to the

purchased unit of the Petitioner on fulfilling all other conditions within a period of one month from the date of communication of this order and such supply cannot be denied on the ground that arrear amounts are due against the previous consumer, i.e., ABSSOL, which has been wound up.

10. The writ petition is accordingly allowed. There shall be no order as to costs.