(2015) 05 JH CK 0027

In the Jharkhand High Court

Case No : Writ Petition (C) No. 808 of 2015

Kunal Bhalotia — APPELLANT

Vs

Jharkhand Urja Vikas Nigam Limited and Others — RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Electricity Act, 2003 — Section 126, 127, 135, 154(5), 43
Penal Code, 1860 (IPC) — Section 379, 411, 420

Citation : (2015) 4 AJR 184 : (2015) 2 JLJR 657

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : M.S. Mittal, Senior Advocate and Shilpi John, for the Appellant; Ajit Kumar and Saket Upadhyay, Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Chandrashekhar, J.—Seeking a direction upon the respondents to immediately grant fresh electric connection to the petitioner and for a direction to the respondents to pay penalty in terms of Section 43(3) of the Electricity Act, 2003 for their failure to provide electric connection to the petitioner within 30 days of the date of application i.e. 08.01.2015, the present writ petition has been filed.

2. The brief facts of the case are that the petitioner purchased about 3.18 acres of land belonging to M/s. Om Dayal Ingots and Steel Private Limited by registered deed of sale dated 16.04.2009 for valuable consideration and it came in peaceful possession of the land comprised in plot No. 1292 in Khata No. 42 measuring 2.68 acres, land comprised in plot No. 1327 in khata No. 1 about 11 decimals and 5 decimals of land in plot No. 1328 in khata No. 1. The land comprised in plot No. 1297 khata No. 190 about 0.34 acres in mouza- Katia, thana No. 259 PS-Chandil is also comprised in the sale deed dated 16.04.2009. The petitioner thereafter, made an application on 08.01.2015 for fresh electric connection however, no action was taken by the respondent-authority and therefore, the petitioner has approached this Court. It is stated that the

petitioner has no business connection with M/s. Om Dayal Ingots and Steel Private Limited and he is not the partner/director/managing Director of the said company.

3. Mr. M.S. Mittal, the learned Senior counsel for the petitioner refers to Clause 5.5 of the Jharkhand Electric Supply Code Regulation, 2005 and submits that the petitioner though, has purchased the concerned premises from the erstwhile owner M/s. Om Dayal Ingots and Steel Private Limited, the dues of electricity of the erstwhile owner and occupier of the concerned premises cannot be recovered from the petitioner. It is further submitted that the petitioner is a purchaser and a transferee by virtue of sale deed dated 16.04.2009 and since he was not a party to the agreement executed between the erstwhile company and the then Jharkhand State Electricity Board in his individual capacity nor he was associated with the erstwhile company as partner, manager or managing Director, the respondent-Jharkhand Urja Vikas Nigam Limited is under a duty to provide electric connection to the petitioner within one month from the date of application.

4. As against the above, Mr. Ajit Kumar, the learned Senior counsel for the respondent - Jharkhand Urja Vikas Nigam Limited submits that it is not in dispute that the petitioner is the occupier of the concerned premises on which there is huge dues of electric charges. Initially, a first information report was lodged for theft of electricity against the erstwhile owner M/s. Om Dayal Ingots and Steel Private Limited and a demand of Rs. 1,65,99,278/- was raised to the erstwhile company on account of KVA charges.

5. Before adverting to the rival contentions, the provision under Clause 5.5 of the Jharkhand Electricity Supply Code Regulation, 2005 may be noticed.

"5.5 If the applicant, in respect of an earlier agreement executed in his name or in the name of a firm or company with which he was associated either as a partner, director or managing director, has any arrears of electricity dues or other dues for the premises where the new connection is applied for and such dues are payable to the licensee, the requisition for supply may not be entertained by the licensee until the dues are paid in full. But if the old consumer who had committed default in payment of the dues has left the premises for good and the concerned premises has come in legal possession of a new occupant through transfer or purchase of the concerned property and where the new incumbent is not connected with the previous owner/occupant in any manner applies for re-connection of the electrical line in the same disconnected premises, in that event the distribution licensee shall be obliged to order reconnection without realization of the arrear dues of concerned premises from the new incumbent, as the purchaser of the premises would not be held liable to meet the liability of the previous consumer in order to secure reconnection."

6. The above regulation is in two parts. The first part contemplates a situation in which the applicant, who has made an application for grant of new electric

connection if, is a party to the agreement executed for grant of electric connection in the concerned premises either in his own name or in the name of the firm or company with which he was associated as a partner or director or managing director against which there is an arrear of electricity dues, the requisition for supply may not be entertained by the licensee until, the dues are paid in full.

7. So far as, the second part of Clause 5.5 is concerned, I find that the important expressions in the said Clause are "concerned premises" and "reconnection". The second part of Clause 5.5 contemplates a situation in which an application for grant of electric connection has been made by a new consumer in the same disconnected premises and if it is found that the person making application has come in occupation of the concerned premises through transfer or purchase and he was not connected with the old consumer in the manner provided therein, the respondent-Nigam would be under an obligation to order reconnection without realization of the arrears of dues of the concerned premises. Though, the word reconnection has been used in Clause 5.5, I am of the opinion that in case of a new consumer/new incumbent seeking reconnection, whether the application is for reconnection or for a fresh connection, it would not make any difference and no distinction can be made on the ground that the application was for grant of a new electric connection and not reconnection.

8. In Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, AIR 2009 SC 647 : (2008) ELR 756 : (2008) 12 JT 672 : (2009) 1 SCC 210 , the Hon''ble Supreme Court has observed as under:

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.

13. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to Clauses 4.3(g) and (h) of the Electricity Supply Code are necessary to safeguard the interests of the distributor.

14. We do not find anything unreasonable in a provision enabling the distributor/ supplier to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may."

9. From the materials brought on record, it appears that a criminal case was lodged vide, Chandil PS Case No. 99/08 on 05.06.2008 for offence under Section 379, 411 and 420 IPC and under Section 135 of the Electricity Act, 2002 on the allegation of theft of energy and for causing loss of Rs. 5,41,00,000/- to the Electricity Board. A demand of Rs. 1,65,99,278/- on account of KVA charges was also raised by the Electricity Board. On the basis of the inspection report dated 04.06.2008 a provisional bill for Rs. 5,46,26,665/- was issued on 07.06.2008 and the final assessment under Section 126 of the Electricity Act, 2003 was made on 30.07.2008 whereby, a final bill for Rs. 64,97,165/- was issued. The final bill however, was revised and a bill for Rs. 90, 45,600 was issued to M/s. Om Dayal Ingots and Steel Private Limited. The company challenged the order of the revised final assessment order vide Appeal No. 8 of 2008 and the appellate authority vide order dated 26.11.2008 reduced the final bill to Rs. 37,75,200/-. It is not in dispute that M/s. Om Dayal Ingots and Steel Private Limited deposited an amount of Rs. 45,22,800/- before filing an Appeal under Section 127.

10. The learned Senior counsel for the petitioner thus, submits that in so far as,

liability determined against M/s. Om Dayal Ingots and Steel Private Limited, is concerned, the said liability has been satisfied by making payment of Rs. 45,22,800/-. Per contra, the learned Senior counsel for the Jharkhand Urja Vikas Nigam Limited submits that the civil liability would be determined by the Special Court in terms of Section 154(5) and since the civil liability of the erstwhile owner is yet to be determined finally, the respondent-Jharkhand Urja Vikas Nigam Limited is entitled in law to put conditions for grant of fresh electric connection.

11. In so far as, demand on account of KVA charges is concerned, it is not in dispute that M/s. Om Dayal Ingots and Steel Private Limited approached VUSNF vide Case No. 58 of 2006 challenging the legality of the demand of Rs. 1,65,99,278/- and the Forum ruled in favour of the consumer. Against order dated 18.07.2007 passed by VUSNF the then Jharkhand State Electricity Board preferred appeal before Ombudsman and the same was dismissed vide order dated 25.01.2008. Today, the learned Senior counsel for the petitioner tenders a copy of order dated 30.04.2015 in W.P. (C) No. 1945 of 2008 and batch cases and submits that the writ petitions filed by the Board (now Nigam) against order of Ombudsman have been dismissed. M/s. Om Dayal Ingots and Steel Private Limited was respondent in WP(C) No. 1772 of 2008. It is thus, submitted that in so far as, the demand of Rs. 1,65,99,278/- on account of KVA charges is concerned, it also has been wiped out by virtue of decision of this Court.

12. It is thus, noticed that in so far as, the provisional assessment/provisional bill/final bill for causing loss to the respondent-Nigam is concerned, M/s. Om Dayal Ingots and Steel Private Limited has paid the amount assessed by the assessing officer as modified by the appellate authority. Further, the demand raised on account of KVA charges has been held not justified and the issue is concluded by the judgment of this Court in W.P(C) No. 1945 of 2008 and batch cases. Clause 5.5 of the Jharkhand Electricity Supply Code Regulation, 2005 empowers the respondent- Jharkhand Urja Vikas Nigam Limited to insist on payment of electricity dues on the concerned premises if the subsequent occupier was a party to the previous agreement for supply of electricity connection or if the present occupier was associated with the previous occupier in his capacity as a partner or manager or managing director. A counter-affidavit has been filed in the present proceeding however, it has not been disputed by the respondent-Jharkhand Urja Vikas Nigam Limited that petitioner was not a party to the earlier agreement for supply of electric connection to M/s. Om Dayal Ingots and Steel Private Limited. It is also not disputed that the petitioner was not associated with previous occupier namely, M/s. Om Dayal Ingots and Steel Private Limited in any manner whatsoever. Section 43 of the Electricity Act, 2003 casts a duty upon the distribution licensee to provide electric connection to a consumer within one month of the date of application. The Electricity Act, 2003 is a special enactment which contains special features. One of the special features in the Act is a duty upon the distribution licensee to provide electric connection to a consumer within one month of the application. Keeping in view the mandate

of Section 43 of the Electricity Act, 2003, I am of the opinion that the respondent-Jharkhand Urja Vikas Nigam Limited is not justified in not granting electric connection to the petitioner on the ground of alleged dues of M/s. Om Dayal Ingots and Steel Private Limited. Accordingly, the respondent No. 2 is directed to issue necessary order within a period of four weeks. It would be open to the respondent No. 2 to require production of documents and/or to require the consumer to fulfill other conditions contained in the Regulation/Tariff Order.

13. The writ petition is disposed of, in aforesaid terms.