

(2002) 11 JH CK 0047

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 4740 of 2002

Laxmi Nath Metal Industries

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Electricity (Supply) Act, 1948 — Section 78

Citation : AIR 2003 Jhar 61 : (2002) 50 BLJR 2405

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Ajit Kumar and D.K. Pathak, for the Appellant; A.K. Mehta and C. Prabha, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The question of refusal to grant fresh electrical connection on the ground of non-payment of dues of erstwhile owner/occupant of a premises, stands decided by a number of decisions of this Court and the Supreme Court. In spite of the same, the Assistant Electrical Engineer (A.E.E. for short), Mango, Jamshedpur having refused to grant fresh electrical connection on the ground of dues against erstwhile owner/occupant, the petitioner has challenged such noting of the officer dated 16th July, 2002, as made on his application dated 11th July, 2002, which reads, as follows :--

"The connection of M/s. Bharuka Industries (Anubhav Steel) is disconnected since long (6/2000) on heavy dues. Lakshmi Nath Metal Industries has purchased the plot of Anubhav Steel which has electric dues. Hence no formalities for fresh connection can be accepted as per Board's Rules.

Sd/- 16-7-2002 A.E.E./Mango"

2. It is not in dispute that the wife of the proprietor of petitioner namely Smt. Manju Singhania purchased the premises, in question, from M/s. Bharuka Industries Pvt. Ltd. by a registered sale deed dated 11th July, 2001, vide

Annexure-1. Thereafter, the proprietor of petitioner applied and deposited the requisite forms Annexure-2. The connection having not given the petitioner moved before this Hon''ble Court in W.P.(C) No. 3384 of 2002, wherein this Court, vide order dated 19th June, 2002 allowed the counsel for the petitioner to withdraw the writ petition with liberty to file duly filled up appropriate application before the concerned authority for obtaining electrical connection in the premises in question.

3. The Supreme Court in the case of *Isha Marbles v. Bihar State Electricity Board*, (1995) 2 SCC 648, held that where premises comes to be owned or occupied by a purchaser, when such purchaser seeks supply of electric energy, he cannot be called upon to clear the past arrears as a condition precedent to supply. There is no charge over the property. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. The bona fides of the sale may not be relevant. The Board cannot make the subsequent purchaser liable to pay the dues of erstwhile owner/occupant, though in the same premises fresh connection is to be given. However, such said cannot affect the right of the Board to recover its dues. The Supreme Court further held that it is impossible to impose on the purchasers a liability which was not incurred by them. Though the purchaser purchase the property after disconnection, but they cannot be "consumer or occupier" within the meaning of the provisions under the Electricity Act till a contract is entered into.

4. In another case of *Smt. Rekha Gupta v. Bihar State Electricity Board*, reported in 1999 (3) BLJR 222, the Patna High Court while discussed the different provisions of the Indian Electricity Act, 1910, held that though the Electricity Board has monopoly in supply of electric energy. It has statutory obligations to supply it and hence its action vis-a-vis person asking for it as per law must pass the test of fairness and reasonableness. The liability to pay the electrical dues is the personal liability of the contracting party and the same cannot be enforced against third party, as it is a personal contract. The right of third party is not affected by distinction of mode of purchase, one by registered sale deed and another by auction purchase unless it is proved that the transaction is sham. A bona fide purchaser of properties having no connection with erstwhile consumer cannot be denied electricity connection and Section 24 of the Indian Electricity Act, 1910 does not apply in such cases. Reliance was placed on Supreme Court's decision in *Isha Marble* (supra).

5. This Court in the case of *Softbytes Computers, Ranchi v. B.S.E.B.*, reported in 2001 (1) JCR 284 (Jhar), in a similar case, while directed the Board to grant electrical connection in favour of the petitioner of the said case immediately, observed that no refusal can be issued, except, by reasoned order, if any relationship is found between the applicant and the erstwhile meter holder against whom amount is found to be outstanding.

6. The stand taken by the J.S.E.B. is to be rejected outright. Merely because the

petitioner has its own unit adjacent to presently purchased unit which are divided by a common compound wall, cannot be a ground of rejection nor such ground can be relied upon to suggest that the erstwhile owner/occupant is applying for fresh electrical connection to evade the liability.

7. In the aforesaid background, the respondents having failed to show any relationship between the proprietor of petitioner or his wife who purchased the land, in question with the earlier owner/occupant of the premises nor there being any other evidence to suggest that the erstwhile owner/occupant is asking for fresh connection in different name, the note of rejection dated 16th July, 2002 as made by the A.E.E., Mango on the application of the petitioner at Annexure-4 is set aside.

8. The respondents are directed to give fresh electrical connection in favour of petitioner within seven days from the date of receipt of requisite application and fees.

9. However, this order will not stand in the way of the Board to recover the outstanding dues from erstwhile meter holder/occupant for which a proceeding is stated to have already initiated.

10. The writ petition is allowed with the aforesaid observations and directions.