
(2007) 07 MAD CK 0116

In the Madras High Court

Case No : Writ Petition No. 19590 of 2007

Leitner Shriram Manufacturing Ltd.

APPELLANT

Vs

Chairman, Tamil Nadu Electricity Board and Another

RESPONDENT

Date of Decision : 12-07-2007

Acts Referred:

Electricity Act, 2003 — Section 2(2), 43

Citation : AIR 2008 Mad 16

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : K. Seshadri, for the Appellant; R. Subbiah, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—The petitioner has filed this writ petition praying to quash the proceedings of the second respondent in his Letter No.

SE/CEDC/N/HT/AO/R/AS/F 1543/D 852/07 dated 29-5-2007 and consequently direct the respondents to effect supply without insisting the

payment of arrears of H.T.S.C. 1543 left over by M/s. Dyna Lamps and Glass Ltd.

2. The petitioner, an industry involved in the manufacture of Wind energy Generators, with a view to generate energy through wind, started an

industry at No. D-17, SIPCOT Industrial Complex, Gummidipoondi in Thiruvallur District. The petitioner purchased the said immovable property

in public auction conducted by M/s. Kotak Mahindra Bank Ltd. in pursuance of public notice, dated 14-2-2005 and a Sale Certificate was issued

by the Authorized Officer of the concerned Bank. As per the terms of the sale certificate, the sale of the scheduled property was made free from

all encumbrances known to the secured creditors. As such, no liability whatsoever has been attached to the property purchased by the petitioner in

the public auction sale. In order to achieve the industrial object, the petitioner applied for electricity service connection to the second respondent

after furnishing the required documents for the same. But, the second respondent in the impugned proceedings, has stated that there are certain

arrears to be paid by the previous consumer and unless the arrears left over by the erstwhile occupier of the premises is cleared, electricity supply

cannot be effected.

3. Though the petitioner insisted upon to process the application for effecting electricity supply, the second respondent has proceeded to pass the

impugned proceedings, calling upon the petitioner to clear the arrears to the tune of Rs. 17,74,829/- payable by the then Consumer, M/s. Dyna

Lamps and Glass and refused to provide electricity service connection. Therefore, challenging the above order, the petitioner has? approached the

Court.

4. Heard Mr. K. Seshadri, learned Counsel for the petitioner and Mr. R. Subbiah, learned Counsel for the respondents.

5. Learned Counsel for the petitioner has mainly contended that the petitioner is not a consumer as defined under Sub-section 15 of the Electricity

Act, 2003 and it is no way liable to pay any arrears left over by the previous consumer and it has to be collected by the second respondent from

the previous consumer only by initiating appropriate proceedings against it. Instead, the second respondent has passed the impugned proceedings

contrary to the Rules laid down under the Electricity Act, 2003 and u/s 43 of the Electricity Act, 2003, the second respondent is bound to obligate

and provide electricity connection to the petitioner industry, which he has failed to do.

6. Learned Counsel for the respondents has not disputed the facts with regard to the auction purchase and the petitioner's status not as a

consumer on the date of issuance of sale certificate. According to the learned Counsel for the petitioner, since the application as required under the

Act has been filed, the impugned proceedings cannot be sustained and the same is liable to be quashed.

7. In support of his contentions, learned Counsel for the respondents has placed reliance on the following:

(i) In Isha Marbles Vs. Bihar State Electricity Board and Another, , the Hon''ble

Supreme Court, in paragraph 63; has held as follows:

61. What we have discussed above appears to be the law gatherable from the various provisions which we have detailed out above. It is

impossible to impose on the purchasers a liability which was not incurred by them.

62. No doubt, from the tabulated statement above set out, the auction purchasers came to purchase the property after disconnection but they

cannot be "consumer or occupier" within the meaning of the above provisions till a contract is entered into.

63. We are clearly of the opinion that there is great reason and justice in holding as above. Electricity is public property. Law, in its majesty,

benignly protects public property and behaves everyone to respect public property. Hence, the Courts must be zealous in this regard. But, the law,

as it stands, is inadequate to enforce the liability of the previous contracting party against the auction purchaser who is a third party and is in no way

connected with the previous owner/occupier. It may not be correct to state, if we hold as we have done, it would permit dishonest consumers

transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lakhs and lakhs of

rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest. No doubt, dishonest consumers

cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness.

64. Factually, it appears that there is no new entity. Hence, in this case M/s. Neo Chemicals and Metal Products Pvt. Ltd. would be liable for the

past arrears.

(ii) In an unreported decision rendered in W.A. No. 646 of 2003, dated 23-2-2007, this Court has given the definition of "Dues" as hereunder:

Dues has been defined in Section 2(2), which reads as follows:

2.(2) "dues" means any such payable to the Board on account of,-

(i) electrical energy supplied; or

(ii) any remuneration, rent or other charges for hire, inspection, test, installation, connection repairs, maintenance or removal of any electric meter,

electric machinery, control gear, fittings, wires or apparatus for lighting, heating, cooling or motive power or for any other purpose for which

electricity can or may be used, or any industrial or agricultural machinery operated by electricity; or

(iii) price of any such goods as aforesaid taken on loan but not returned;

8. In the instant case, the auction purchaser and the previous owners are two different persons and the petitioner is not a person in any way

connected with the liability of the previous consumer or occupier. Therefore, as held by the Supreme Court in paragraph 62 of the judgment

referred to above, the auction purchaser came to purchase the property after disconnection, but it cannot be consumer or occupier within the

meaning of the above provisions till the contract is entered into. Thus, the auction purchaser is in no way connected with the liability of the erstwhile

occupier as he cannot be considered as a consumer or occupier at the relevant date.

I have given careful consideration to the submissions made by the learned Counsel on either side as well as the rulings of the Supreme Court as

well as this Court. Admittedly, the petitioner is not a consumer at the relevant period and there is no liability on the part of the petitioner to pay any

arrears left over by the erstwhile consumer. When there is no arrears payable by the petitioner, the second respondent is bound to follow the

provisions u/s 43 of the Electricity Act, 2003 and provide electricity supply to the petitioner industry. When the petitioner has come forward to

comply with all the requirements as contemplated under the provisions of the Electricity Act, the impugned proceedings passed by the second

respondent, is not, in any way, in conformity with the provisions laid down by the said Act and therefore, the same is quashed and the second

respondent is directed to provide electricity service connection to the petitioner industry within a period of three weeks from the date of receipt of

a copy of this order. However, this order shall not preclude the respondents from proceeding against, the defaulter.

9. With the above observation, the writ petition stands allowed. No costs. Consequently, connected M.P. No. 1 of 2007 is closed.