(2004) 05 JH CK 0005

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2282 of 2004

Mahavir Rolling Mills — APPELLANT

Vs

Jharkhand of State Electricity Board and Another — RESPONDENT

Date of Decision : 04-05-2004

Acts Referred:
State Financial Corporations Act, 1951 — Section 28

Citation : (2005) 3 JCR 113

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.S. Mittal, A.K. Yadav and N.K. Pasari, for the Appellant; Delip Jerath, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard Mr. M.S. Mittal, learned counsel for the petitioner and Mr. Delip Jerath, learned counsel for the respondent-Board.

2. In this writ application petitioner has prayed for issuance of writ of mandamus directing the respondents to grant electrical connection to the

petitioner Unit which has been refused by the Board on the ground that there is huge electricity dues against the erstwhile owner of the said Unit

and further for quashing the letter dated 7.4.2004 issued by Chief Engineer, Jharkhand Electricity Board by which he has communicated to the

Electrical Superintending Engineer, Electric Supply Circle, Ranchi that Board is not legally bound to give connection to the petitioner until

outstanding dues are paid by erstwhile consumer M/s. Roll Well Enterprises.

3. The case of the petitioner-firm is that it has taken the Unit on lease from the erstwhile proprietor namely, M/s. Roll Well Enterprises and a lease

deed to that effect was executed by the partners of the petitioner-firm with the erstwhile firm. Immediately, after execution of the lease petitioner

applied for High Tension Connection for a contract demand of 180 KVA. On the said application the respondent-Board refused to grant fresh

connection on the ground that there is electricity dues of Rs. 43,93,019/- against the erstwhile owner.

4. Mr. M.S. Mittal, learned counsel for the petitioner submitted that respondents are not justified in not providing electric connection to the

petitioner unit on the ground of outstanding dues lying against the erstwhile owner. Learned counsel submitted that petitioner cannot be held liable

to meet the liability of the erstwhile owner to secure connection in the Unit which has been taken on lease for a period of seven years. Learned

counsel relied upon the judgment passed by this Court in the case of Bijay Kumar Tantia v. Jharkhand State Electricity Board and Ors., LPA No.

267 of 2002. Learned counsel also relied upon the decision of the Supreme Court in the case Isha Marbles Vs. Bihar State Electricity Board and

Another,

5. The admitted facts which appear from the writ petition are that the firm M/s. Roll Well Enterprises owned and possessed the Unit and was a

consumer of High Tension Electricity in the said premises. From perusal of Annexure 5 to the writ application is appears that outstanding dues

against M/s. Roll Well Enterprises reached to the tune of Rs. 43,93,019/- and a certificate case being Certificate Case No. 2/2001-02 has already

been filed by the Board for recovery of the dues and the supply of electricity was disconnected. The erstwhile consumer thereafter entered into the

so called lease agreement dated August, 2003 with the petitioner creating a lease of the premises alongwith machines, equipments, D.G. Set,

Buildings, electrical and mechanical installations etc. Copy of the lease agreement dated 11.8.2003 is annexed as Annexure 1 to the writ

application. It is interesting to reproduce some of the clause of the lease agreement, which reads as under :

The First Party will hand over the plant, machines, equipments fixtures, fittings to the Second party as it exists and on expiry of the lease period the

Second Party is bound and will hand over the all Plant, Machineries, Equipments to the First Party in good running condition.

The Rent will became payable after seven days of successful trial run of the Plant.

The First Party will ensure that the Second Party will enjoy peaceful occupation of the premises to run the business for the entire period of lease

without any objection or hindrance, interference of any kind from any one and free from any encumbrances.

The First Party has assured the Second Party that there is no liability of any kind either of Government or Private stands against the First Party in

relating to Plant machineries, equipments existing on the day. All the liabilities, if any, prior to the date of lease will be entirely of the First Party.

6. The lease agreement further reads as under :

The Second Party will take Electrical power supply connection in its own name and will be solely and exclusively liable for payment of all bills and

electrical charges.

The First Party is the owner and will remain to be owner of the landed property. Machineries, Equipments, fixtures fittings existing on this day and

put, installed, hereinafter in future. (Emphasis Given)

7. In the light of the aforesaid admitted facts I would like to first discuss the decision relied upon by the counsel for the petitioner . In the case of

Ish Marbles v. B.S.E.B., (supra), the facts of the case was that previous unit owner had the benefit of electricity supply and they borrowed loan

from the said Financial Corporation and mortgaged/hypothecated the property. The electricity arrears in relation to the premises had fallen due

since they had neglected to pay. The electricity supply was subsequently disconnected. For the recovery of the loan mortgaged properties were

brought to sale u/s 28 of the State Financial Corporation Act and the petitioner M/s. Isha Marbles became the auction purchaser and they applied

for supply of electricity for the same premises which was refused by the Electricity Board. On these facts the Supreme Court held that when the

premises come in the hand of the auction purchaser he cannot be called upon to clear its arrear.

8. In the case of Vijay Kumar Tantia (LPA No. 267/2002) the writ petitioner applied for fresh electricity connection in the premises which he

occupied as a tenant but the grant of electricity connection was refused by the Board on the ground that there are electricity dues against the

erstwhile consumer who was in occupation of the premises. The Division Bench following the ratio decided by the Supreme Court in Isha Marbles, case (supra), held that in such circumstances board cannot refuse to grant fresh connection.

9. In the instant case as noticed above, certificate proceeding has already been initiated against M/s. Roll Well Enterprises for the recovery of the

huge amount of the dues and in execution of the certificate the Unit in question including plant and machinery can be attached for auction sale. In

order to frustrate the recovery proceeding on the one hand and to continue consumption of electricity, a unit conveniently sough to be handed over

to another person in the garb of agreement of lease. This is what has been done in the instant case.

10. Curiously enough, by the lease agreement (Annexure 1) the erstwhile consumer purported to lease out all the plant, machinery, equipments,

building, fitting and fixtures in favour of the petitioner. In my considered opinion such transfer of plant and machinery together with building, fitting

and fixtures by way of lease can only be effected by virtue of registered documents after paying proper stamp duty on the total value of the assets.

Prima facie, therefore, I am of the opinion that the alleged transaction by way of lease is not a bona fide one and the ratio decided by the Supreme

Court will not apply in such type of device adopted by the consumer to defeat recovery of the legitimate dues of the Board.

11. For the reasons aforesaid, I do not find any merit in this writ application which is accordingly, dismissed.

