
(2010) 01 MP CK 0058
In the Madhya Pradesh High Court

Mahila Kamla Dubey

APPELLANT

Vs

Madhya Pradesh Vidyut Mandal and Others

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Electricity Act, 2003 — Section 181, 43, 44, 47, 48

Citation : AIR 2010 MP 105 : (2010) ILR (MP) 598 : (2010) 1 JLJ 403 : (2010) 1 MPHT 493 : (2010) 1 MPLJ 612

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Gangele, J.

Petitioner has filed this petition for a direction that the respondent Nos. 1 and 2 be directed to provide electricity supply connection to the petitioner.

Petitioner purchased a residential house from respondent Nos. 3 and 4 vide registered sale-deed dated 3-12-2008. Thereafter, petitioner applied for a new electricity supply connection. Before that an electricity connection was provided to the house of respondent Nos. 3 and 4 vide connection No. 302-43-4-361544 and after computerization the service number was 302-43-4-3615443. The respondent Nos. 1 and 2 refused to grant a new electricity supply connection to the petitioner on the ground that at the time of purchase of the house by the petitioner an amount of Rs. 68,203.00 was over due on respondent Nos. 3 and 4 against the old electricity connection No. 302-43-4-361644 and until and unless the aforesaid amount be cleared by the petitioner or respondent Nos. 3 and 4, the new electricity connection could not be provided to the petitioner.

The petitioner has not disputed the aforesaid factual position that an amount of Rs. 68,203.00 was due against respondent Nos. 3 and 4 towards old electricity connection of the aforesaid house before purchase of the house by the petitioner. However, the petitioner contended that she had no information about the

aforesaid due amount and she could not be denied the facility of new electricity connection on this ground by respondent Nos. 1 and 2.

Learned Counsel for petitioner has submitted that the petitioner has a right to get a fresh electricity connection because she has purchased the house and earlier electricity connection was in the name of respondent Nos. 3 and 4 and for their liability the petitioner could not be denied the facility of new electricity connection. In support of his contentions learned Counsel relied on the judgments of Hon''ble the Supreme Court, reported in the cases of Ahmedabad Electricity Co. Ltd. Vs. Gujarat Inns. Pvt. Ltd. and Others, ; Isha Marbles Vs. Bihar State Electricity Board and Another, and the judgment of learned Single Judge of this Court in the case of Durgesh Agarwal v. M.P. State Electricity Board and Ors. 2006 MPLJ 132.

Contrary to this, learned Counsel for respondent Nos. 1 and 2 has contended that in view of Section 4.17 of the Madhya Pradesh Electricity Supply Code, 2004, hereinafter referred to as the "Code of 2004", the respondents have no obligation to provide electricity supply connection to the petitioner until and unless the dues which were over due in regard to the said premises be not cleared. In support of his contention the learned Counsel relied on the judgments of Hon''ble the Supreme Court in the case of Paschimanchal Vidyut Vitran Nigam Ltd. and Ors. v. DVS Steels & Alloys Pvt. Ltd. and Ors. 2009(2) M.P.H.T. 385 (SC) : 2009 (2) MPLJ 61 and an unreported order of this Court in the case of The Madhya Pradesh State Electricity Board and Anr. v. Durgesh Agarwal, passed on 1-7-2008 in Writ Appeal No. 323 of 2006.

The controversy involved in this writ petition is that whether the petitioner is entitled to receive a new electricity supply connection for the house which was purchased by her from respondent Nos. 3 and 4 without clearing the over due amount of electricity connection which was over due on the previous owners of the house.

It is an admitted fact that the petitioner purchased the house from respondent Nos. 3 and 4, vide registered sale deed dated 3-12-2008. At the time of registration of the sale deed an electricity supply connection, Service Connection No. 302-43-4-361544 and after computerization the service number was 302-43-4-3615443, was provided to the residential house and an amount of Rs. 68,203.00 was due against the aforesaid electricity connection.

The Madhya Pradesh Electricity Regulatory Commission has made a Code, named as "Madhya Pradesh Electricity Supply Code, 2004" in exercise of powers conferred by Section 43(1) read with Section 181(1), Section 44 read with Section 181(1), Section 47(1) read with Section 181(1), Section 47(4) read with Section 181(w), Section 47 (2, 3 and 5), Section 48(b), Section 50 read with Section 181(2 x) and Section 56 of the Electricity Act, 2003 (No. 36 of 2003), Section 9 (j) of Madhya Pradesh Vidyut Adhiniyam, 2000 (No. 4 of 2001) and all other powers enabling it in that behalf and the draft of the same having been

previously published in the Official Gazette as required u/s 181(3), to govern supply and retail sale of electricity by the licensees and procedures thereof, the powers, functions and obligations of the licensees and the rights and obligations of consumers, and matters connected therewith and incidental thereto. Section 4.17 thereof prescribes that if any arrears of electricity dues or other dues for the premises where the new connection is applied the requisition for supply may not be entertained by the licensee until the dues are paid in full. The relevant provision is as under:

4.17. If the consumer, 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. In case of a person occupying a new property, it will be the obligation of that person to check the bills for the previous months or, in case of disconnected supply, the amount due as per the licensee's records immediately before his occupation and ensure that all outstanding electricity dues as specified in the bills are duly paid up and discharged. The licensee shall be obliged to issue a certificate of the amount outstanding from the connection that was installed or is installed in such premises on request made by such person. The licensee may refuse to supply electricity to the premises through the already existing connection or refuse to give a new connection to the premises till such outstanding dues to the licensee are cleared.

From the aforesaid statutory provision, it is clear that the petitioner has to clear the arrears of electricity dues of the premises where the new connection has been applied. The analogous provision to the aforesaid provision has been considered by the Hon^{ble} Supreme Court in *Paschimanchal Vidyut Vitran Nigam Ltd. and Ors. v. M/s. DVS Steels & Alloys Pvt. Ltd. and Ors.* 2009(2) M.P.H.T. 385 (SC) : 2009 MPLJ 61, where the Hon^{ble} Supreme Court has held as under:

9. 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.

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 fulfillment 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.

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 Clause 4.3 (g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor. 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.

The question raised by the petitioner in the present petition has already been answered by Hon"ble the Supreme Court. However, the learned Counsel relied on the judgment of the Hon"ble Supreme Court reported in *Isha Marbles v. Bihar State Electricity Board and Anr.* (supra), where the Hon"ble Supreme Court has held that the new electricity connection cannot be refused to a consumer on the ground that the earlier dues with regard to same premises were not cleared by the erstwhile owner of the premises. However, the Hon"ble Supreme Court has based that judgment on the peculiar facts of the case because at that time there was no law framed by the Electricity Board to the effect that a new connection could not be granted to a consumer if the earlier dues of the premises were not cleared after the consumer purchased the house from the previous owner. The

relevant observation of the Hon'ble Supreme Court are as under:

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 that if it is held as above then 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.

Hence, the judgment cited by the learned Counsel for the petitioner is not applicable in the present case. Learned Counsel further relied on the judgment of the learned Single Judge of this Court in the case of *Durgesh Agarwal v. M.P. State Electricity Board and Ors.* (supra). The aforesaid judgment was delivered by the learned Single Judge in regard to facts of the case where the provisions of the Madhya Pradesh Electricity Supply Code, 2004 were not applicable. This has also been observed by the learned Single Judge in Para 6 of the order, which is as under:

6. As far as applicability of the M.P. Electricity Supply Code, 2004, is concerned the said Code came into force with effect from 10-6-2004 and in all the three petitions the premises were purchased by the petitioner well before the said date and the connections were also sought for and refused before the said date. As the said Code does not have any retrospective effect, the said Code does not apply in any of the cases.

Hence, this judgment is also not applicable in the present case and the petitioner cannot get any benefit on the basis of the findings recorded in the aforesaid judgment.

Looking to the aforesaid facts of the case, I do not find any merit in this petition. It is hereby dismissed. No order as to cost.