

(1999) 11 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 1475 of 1997

Major Kripal Singh (Retd)

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 02-11-1999

Acts Referred:

Citation : (1999) 3 PLJR 945

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Judgement

Aftab Alam, J.—The dispute in this case relates to the refusal of the Bihar State Electricity Board to give a separate electric connection for the second floor of the building which, according to the petitioner, is used purely for residential purposes. Admittedly, the ground and the first floors of the building in question were constructed in and around April, 1992. Since then those two floors are being used as a Nursing Home, run by the wife of the petitioner, initially a portion of those two floors was also used for the residential purpose, by the petitioner and his wife. The building being used primarily as a Nursing Home, the Non-domestic (commercial) category which attracts as a higher rate under the tariff.

2. According to the petitioner in March, 1993 the construction of the second floor of the building was completed and the petitioner and his wife shifted their residence to the second floor of the building.

3. It is the case of the petitioner, that now there is a complete demarcation in the three floors of the building; the ground and the first floors are being used as a Nursing Home and the second floor as the residence of the petitioner and his wife. It is asserted on behalf of the petitioner, and not disputed on behalf of the Board, that the second floor of the building is being exclusively used for their residential purposes.

4. In those circumstances the petitioner made an application for a separate connection for the second floor of the building with a view that they may be

charged for electricity consumed in their dwelling unit at the lower rate applicable to domestic connections.

5. The Board declined to give connection as requested by the petitioner. There appears to be two main reasons behind the Board's refusal to give a separate domestic connection for the second floor of the building. The first reason is that there is a dispute regarding the electricity connection in the Nursing Home which stands in the name of the wife of the petitioner.

6. It may be noted here that the dispute arising from a bills given for the Nursing Home connection came to this Court in C.W.J.C. No. 11109 of 1993 filed by Dr. (Mrs) Asha Singh, wife of the petitioner. That writ petition was admitted by order, dated 5.8.1994 and remains pending for hearing before this Court. At the time of the admission of that writ petition the Board was directed not to disconnect the electrical line of the Nursing Home provided payments were made of certain sums specified in that order towards the disputed bill. Apparently payments were made as directed by this Court and that line was kept operational by the Board.

7. However, Mr. Mihir Kumar Jha, Learned Counsel appearing for the Board submitted that by virtue of that interim order Dr. (Mrs) Singh was not making payment of the subsequent bills raised by the Board and the Board was obliged not to disconnect the electrical connection given to the Nursing Home.

8. I am unable to appreciate the grievance made on behalf of the Board. The dispute in C.W.J.C. no. 11109 of 1993 relates to one particular bill and the interim order passed in that case simply directs the Board not to disconnect the line for non-payment of the bill coming under challenge in that case provided of course certain payments, as directed by the court, were made by the consumer. It is difficult to see how the interim order passed in that case would come in the way of the Board in raising bills, in accordance with law, for the subsequent period and in taking steps against the consumer for realising the subsequent bills.

9. From the subsequent order dated 24.2.1997 passed in C.W.J.C. No. 11109 of 1993 it further appears that in fact it was the petitioner of that case who made the grievance before the court that the Board was not accepting payments for current bills and the counsel appearing on behalf of the Board stated before the court that he would be instructing the Board for accepting payments for current bills.

10. In those circumstances I fail to appreciate the Board's grievance concerning non-payment by Dr. (Mrs) Singh of the bills raised against her Nursing Home connection during the pendency of the aforesaid writ petition before this Court.

11. Further, in my view the Board would have been well advised to make a prayer and to take steps for expeditious hearing of that writ petition so that the controversy would not have been allowed to linger on for so long.

12. Be that as it may, when it was pointed out to Mr. Jha appearing for the Board in this case that on account of any dispute concerning the Nursing Home

connection the Board may not reasonably refuse to give domestic connection for the second floor of the building which is admittedly being used exclusively for residential purposes, Learned Counsel expressed the apprehension that in case a separate connection was given for the second floor there would always be a chance of pilferage of power and electricity from that connection might be used in the two lower floors housing the Nursing Home.

13. It was then pointed out that the Board could surely insist for arrangements being made so as to check any possibility of pilferage of power from the connection given at the second floor.

14. Mr. Jha then, after making deliberations with the officials of the Board has filed today a supplementary counter affidavit in this case. In paragraph 5 of the supplementary counter affidavit, conditions are made on which the Board would be willing to give a separate domestic line for the second floor of the building. There are five conditions which are enumerated in sub paragraphs (a) to (e) of paragraph 5 of the supplementary counter affidavit. Sub-paragraph (a) relates to the laying out of a separate wiring from the meter, exclusively for the second floor, ensuring that the wiring was absolutely separate, having no link or connection with the existing network of electric lines through which power was being used for Nursing Home; conditions in sub paragraphs (b) and (c) are incidental to the condition (a) and there should be no objection in accepting these three conditions.

15. Sub paragraphs (d) and (e) of paragraph 5 of the supplementary counter affidavit lay down further conditions as follows:

(d) The petitioner without any demure or protest in case it is detected by the authorities of the Board that the power from domestic connection has been allowed to be used for the Nursing Home connection in the name of his wife or for any other purposes except his own domestic connection will be liable to pay the entire tariff of the total units consumed and shown in his domestic connection at the commercial rate plus penal charges as provided under clause 16.9 of the tariff right from the date of connection till the date of detection.

(e) The entire existing dues on the commercial connection in the name of the wife of the petitioner for the Nursing Home will have to be cleared before a new domestic connection is given in the name of the petitioner either by the wife of the petitioner or by the petitioner. This is necessary because the power to the existing second floor in which the petitioner is desirous to have a new domestic connection is being availed from the commercial connection of the Nursing Home and therefore it is not a case of new connection altogether rather a segregation and separation of existing connection. The Board in such a case cannot allow a new connection without clearance of the existing dues on the same premises which in any event belongs both to the petitioner as well as his wife.

16. These two conditions once again raise a point of conflict between the parties.

17. On hearing counsel for the parties and on a due consideration for the matter, I am of the view that the conditions enumerated in sub paragraphs (d) and (e) are quite unwarranted and untenable in law. What is said in sub-paragraph (d) is quite obvious and the Board does not require any undertaking from the petitioner in that regard. In case any theft or pilferage of electricity is detected in future it is needless to say that the rights and liabilities of the Board and the consumer will be governed by the statutory provisions as contained in the Act, the rules and the tariff in force at that time.

18. So far as the condition in sub paragraph (e) is concerned, as noted above, a dispute relating to the Nursing Home connection is pending in this Court. As far as I have been able to gather the dispute relates to the demand made in a particular bill and the High Court had not given any direction in that case concerning the bills raised by the Board subsequent to the disputed bill. In case the Board feels that Dr. (Mrs.) Singh, the petitioner in that case, was not making payments of subsequent bills raised by the Board without any reasonable cause it is always open to it to take actions against her as may be permissible in law.

19. So far as the liability in respect of the Nursing Home connection is concerned Dr. (Mrs) Singh will be liable for that and the Board is free to proceed against her for realisation of the dues in accordance with law but the payment of the dues of the Nursing Home connection cannot be made a precondition for giving a domestic connection on the second floor of the building.

20. It may be stated here that Mr. Jha in support of the conditions at paragraph 5(e) relied upon the Supreme Court decision in Calcutta Electric Supply Corporation Limited Vs. N.M. Banka and Another, and in Isha Marbles Vs. Bihar State Electricity Board and Another, . He also relied upon a decision of this Court in C.W.J.C. No. 4107/99 (Krishna Kumar Boobna vs. Bihar State Electricity Board & Ors; date of disposal 1.10.1999).

21. In my view none of those decisions apply to the facts of this case. In the decisions cited by Mr. Jha there were admitted dues against the consumer. In this case there is one bill, a dispute arising from which is pending before this Court and in case the Board is not taking any steps for realisation of the bills for the subsequent period it has no one else but to thank itself for its self assumed helplessness. This writ petition is, therefore, disposed of with the direction that in case the petitioner fulfills and satisfies the conditions as laid down in sub paragraphs (a) to (c) of paragraph 5 of the supplementary counter affidavit, to the complete satisfaction of the Electrical Executive Engineer, Urban Division, Gaya, the Electrical Executive Engineer will pass necessary direction for giving a separate domestic connection in the second floor of the building.