

(2004) 04 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 464 of 2004

Manohar Lal Agarwal

APPELLANT

Vs

Rajasthan Rajya Vidhyut Prasaran Nigam Ltd.

RESPONDENT

Date of Decision : 12-04-2004

Acts Referred:

Citation : (2004) 4 RLW 2614 : (2004) 4 WLC 262

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Vinay Jain, for the Appellant; Pawan Jangid and Ravi Bhansali, for the Respondent

Judgement

Sunil Kumar Garg, J.—The petitioner has filed the present writ petition under Article 226 of the Constitution of India on 4.2.2004 against the respondents with a prayer that by an appropriate writ, order or direction the impugned notice dtd. 13.11.2001 (Annex.5) issued by the Assistant Engineer (CSD II), Ajmer Vidhyut Vitran Nigam Ltd., Bhilwara by which a demand of Rs. 8,76,788.65 in respect of electricity connection No. 5311/10 of M/s. Bhilwara Refinery and Solvent Plant was raised against the petitioner and it was also stated in the notice dtd. 13.11.2001 (Annex.5) that in case the petitioner did not deposit the amount in question, his domestic connection No. 1708/133 would be disconnected, be quashed and set aside and respondent No. 3 (Ajmer Vidhyut Engineer (West), Bhilwara be directed to restore domestic electric connection No. 1708/133 of the petitioner.

2. The facts of the case as put forward by the petitioner are as under:-

i) That there was a company known as Bhilwara Refinery and Solvent Plant Pvt. Ltd. (hereinafter referred to as the Company in question) and that company was incorporated under the Indian Companies Act, 1956 and certificate of incorporation dtd. 18.8.1993 is Annex.2. Subsequently, the name of the company was changed to Madhuram Vanaspati and Soya Products Limited for which fresh

certificate (Annex.3) of incorporation was issued by the Registrar of Companies on 17.11.1994.

ii) Further case of the petitioner is that he was one of the Directors of the company in question.

iii) Further case of the petitioner is that the company in question had taken a electric connection bearing No. 5311/10 in the name of the Company in question (M/s. Bhilwara Refinery and Solvent Plant Pvt. Ltd.).

iii) Further case of the petitioner is that due to lack of fund and shortage of working capital, the Company in question was declared sick and therefore, it was not in a position to make payment of electricity dues as mentioned in the impugned notice dtd. 13.11.2001 (annex.5) to the tune of Rs. 8,76,788.65/- issued by Assistant Engineer (CSD II), Ajmer Vidhyut Vitran Nigam Ltd., Bhilwara.

iv) Further case of the petitioner is that Assistant Engineer (CSD 11), Ajmer Vidhyut Vitran Nigam Ltd. Bhilwara issued a notice did 13.11.2001 (Annex.5) to the petitioner stating that there is due of Rs. 8,76,788.65 in respect of electricity connection No. 5311/10 M/s. Bhilwara Refinery and Solvent Plant and the petitioner should deposit the same in his personal capacity, otherwise his domestic connection No. 1708/133 would be disconnected.

v) Further case of the petitioner is that he also filed a suit for permanent injunction before the Civil Court, Bhilwara and along with the suit, he also filed an application for temporary injunction, but through order dtd. 21.1.2004, he withdrew the suit with a liberty to file a writ petition and now this writ petition has been filed.

vi) Further case of the petitioner is that the respondents have disconnected the domestic electric connection of house of the petitioner. Hence, this writ petition with the prayer as mentioned above.

3. In this writ petition, the main submission of the learned counsel for the petitioner is that the impugned notice dtd. 13.11.2001 (Annex.5) is illegal because the amount in question in respect of electricity connection No. 5311/10 of M/s. Bhilwara Refinery and Solvent Plant cannot be recovered from the petitioner in personal capacity and therefore, threat given by the respondents that in case the ammution question was not paid, his domestic connection would be disconnected is perse illegal because he is not the consumer as the person who had taken the connection would be the consumer and thus, the Company in question would be the consumer of electric connection No. 5311/10 and since the petitioner was one of the Directors of the Company in question, he could not be held personally liable for the dues of the Company in question and the respondents should seek remedy under the provisions of Companies Act etc. etc.

4. Reply was filed by the respondents and a preliminary objection has been taken by the respondents that the petitioner has simply stated that he has filed the suit

along with the application for temporary injunction, but he has nowhere mentioned that his application for temporary injunction was dismissed by the trial court by order dtd. 16.9.2003 and further he preferred appeal against the order dtd. 16.9.2003 and the same was dismissed by the Appellate Court vide Judgment dtd. 6.12.2003 and thereafter after withdrawal of the suit, the present writ petition has been filed and thus, the petitioner has concealed material facts from the notice of this Court and the writ petition should be dismissed on this ground alone and further it has been submitted by the learned counsel for the respondents that without availing statutory remedy available to the petitioner by approaching Settlement Committee before filing writ petition, the present writ petition is not maintainable. On merits, it has been submitted by the learned counsel for the respondents that the demand was raised against the petitioner because he was director of the Company in question which was having exorbitant dues to the tune of Rs. 8,76,788.65 + interest. It has also been submitted by the learned counsel for the respondents that the demand has been raised by the respondents in consonance with the circular dtd. 30.4.1997 (Annex.R/1) and hence no case is made out and the writ petition should be dismissed.

5. Heard and perused the record.

6. Before proceeding further, circular dtd. 30.4.1997 (Annex.R/1), on which reliance has been placed by the learned counsel for the respondents is quoted hereunder:-

"Sub: Recovery of outstanding dues of the one connection from other connection (s) existing in the same name.

It has been observed that some of the consumers do not deposit the outstanding dues of RSEB. Their connections are disconnected, but still Board's dues are not paid by them. The same consumer takes electric connection in another premises without clearing the outstanding dues of the earlier connection and enjoys the facility of connection. As a result of this, the outstanding dues of the Board goes on increasing day by day.

The matter was discussed in the WTM meeting held on 17.3.1997 and it was decided that the outstanding dues of electric connection in the name of a person can also be debited in the account of other existing and running connections of the same person anywhere in the State if any. The elaborate, if a person has taken a connection in Jhotwara (Jaipur) and dues are outstanding against that connection even after disconnection and if the same person is having another connection in Vidhyadhar Nagar, (Jaipur) (same or any other category) in his name, the outstanding dues of the disconnected connection at Jhotwara can be debited in the bill of the running connection of the same person in Vidhyadhar Nagar with a view to recover the outstanding dues of the Board.

The above instructions should be followed by all concerned in the interest of recovery of outstanding dues of the Board."

7. A bare perusal of the circular dtd. 30.4.1997 (Annex.R/1) reveals that recovery of dues from one connection from other connection can be made if two bills are in the same name. In the present case, there was electric Connection No. 5311/10 in the name of the Company in question i.e. M/s. Bhilwara Refinery and Solvent Plant from which an amount of Rs. 8,76,788.65 was due, but threat was given to the petitioner on the ground that if the aforesaid amount outstanding against the company in question was not deposited, his domestic connection No. 1708/133 which was in the personal name of the petitioner would be disconnected. This, in respect of Electric connections No. 5311/10, the consumer is the company M/s Bhilwara Refinery and Solvent Plant Pvt. Ltd. while in respect of Electric connection No. 1708/133, the consumer is the petitioner himself in his personal capacity.

8. In my considered opinion though petitioner might be one of the Directors of the Company in question, but identity of the petitioner in respect of domestic connection No. 1708/133 is altogether different one and even if the language of circular dtd. 30.4.1997 (Annex.R/1) is taken into consideration, it cannot be said that the aforesaid two connections No. 5311/10 and 1708/133 were in the name of same persons and this being the position, the amount due in respect of account No. 5311/10 standing in the name of the Company in question cannot be recovered from the petitioner in his personal capacity.

9. Apart from this, this Court is of the opinion that unless there is finding that the Director of the Company in question is personally liable, the dues of the company in question cannot be recovered from the petitioner in personal capacity.

10. So far as preliminary objection regarding concealment of material fact is concerned, it may be stated here that the petitioner had admitted the fact that he filed a suit for permanent injunction along with the application for temporary injunction, but after withdrawal of the suit, he had filed the writ petition.

11. There is no dispute on the point that the application filed by the petitioner for temporary injunction was dismissed by the trial court vide order dtd. 16.9.2003. There is no dispute on the point that he has nowhere mentioned in the writ petition that his application for temporary injunction was rejected by the trial Court vide order dtd. 16.9.2003 and further he has not mentioned the fact that appeal against the order dtd. 16.9.2003 was also dismissed vide order dtd. 6.12.2003.

12. There is also no dispute on the point that when the writ petition was filed, the suit filed by the petitioner for permanent injunction had already been withdrawn vide order dtd. 21.1.2004 and therefore, to say that the petitioner is pursuing two remedies parallel cannot be accepted. Since the petitioner has mentioned the fact of filing of civil suit in the writ petition, therefore, if he has not mentioned that the application for temporary injunction was rejected by the trial court vide order dtd. 16.9.2003 and appeal against the order dtd. 16.9.2003 was dismissed by the appellate Court vide order dtd. 6.12.2003, it would not

lead to the conclusion that he had suppressed the material facts and simple because he has not mentioned these facts, the writ petition cannot be dismissed merely on that ground. At the time of filing of the writ petition, had the suit would have been pending, the position would have been different. Thus, this preliminary objection raised by the respondents stands rejected.

13. So far as submission that the matter may be referred to the Settlement Committee for redressal of the dispute is concerned, it may be stated here that if there was a dispute arising between the Electricity Board and consumer in respect of any electric connection, then the dispute should have been resolved first as per the terms of the agreement between the Consumer and the electricity Board, But in the present case the dispute is not between consumer and the Electricity Board because consumer of electric connection No. 5311/10 is the company M/s, Bhilwara Refinery and Solvent Plant and not the petitioner. Had there been a dispute between the company in question and the respondents, the matter would have been referred, but there position in different one as dues of the company in question are being recovered from the petitioner in his personal capacity and therefore, the present case is not a case which should be referred to the Settlement Committee.

14. For the reasons mentioned above, it is held that amount of Rs. 8,76,788.65 outstanding against the company M/s. Bhilwara Refinery and Solvent Plant in respect of electric connection No. 5311/10 would not be recovered from the petitioner in his personal capacity and thus the impugned notice dtd.13.11.2001 (Annex.5) issued by Assistant Engineer (CSD II), Ajmer Vidhyut Vitran Nigam Ltd., Bhilwara is per se illegal and deserves to be quashed and set aside and this writ petition deserves to be allowed.

For the reasons mentioned above, the present writ petition is allowed and the impugned notice (Annex.5) dtd. 13.11.2001 issued by Assistant Engineer (CSD II), Ajmer Vidhyut Vitran Nigam Ltd. Bhilwara is quashed and set aside so far as present petitioner is concerned and if the domestic electric connection of the petitioner (Account No. 1708/133) has been disconnected the respondent No. 3 (Ajmer Vidhyut Vitran Nigam Limited through Assistant Engineer (West), Bhilwara) is directed to restore the domestic electric connection of the petitioner (Account No. 1708/133).