

(2016) 08 JH CK 0154

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3057 of 2012.

**Mayur Machine Private Limited, Kolkata having its works office at
Maharajpur, Taljhari Motijharna, Sahebganj through its Director Mayur
Khushwani, R/o Maharajpur, Taljhari Motijharna, Sahebganj - Petitioner
@HASH Jharkhand State Electricity Board through i**

Date of Decision : 17-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Electricity Act, 2003 — Section 43

Citation : (2017) 1 AIRJharR 142 : (2016) 4 JBCJ 295 : (2016) 4 JCR 600 :
(2017) 1 JLJR 96

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Satish Kumar Ughal, Advocate, for the Petitioner; M/s. Rajesh
Lala, Arpit Kumar and Rohit, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Petitioner seeks fresh electrical connection in respect of the premises at plot no. 205/P, area 7.05 acres, Mauza-Motijharna, Thana-Taljhari, Rajmahal District Sahebganj in respect of which the lease has been transferred by two registered deeds of transfer dated 15.4.2011 executed between the erstwhile lessee M/s. Otan Das and Company, Partner Sri Jai Kisan of village Sindhipara, Post, Thana and District Pakur and also M/s. Jai Bharat Construction Company and the Deputy Commissioner, Sahebganj with the petitioner (Annexure-2 series). Petitioner has through sale letter executed by the vendor M/s. Jai Bharat Construction Company and M/s. Otan Das and Company dated 28.3.2011 respectively (Annexure-1 series) purchased all the plants and machineries existing at Motijharna, P.S. Taljhari, Sahebganj and taken possession thereof.

3. On presentation of application for fresh electrical connection, Annexure-3, an endorsement was made that a dues of Rs.23,72,631/- are outstanding against M/

s. Otan Das and Company and Jai Bharat Construction Company. Connection has been denied accordingly, which has compelled the petitioner to approach this Court.

4. Respondent-Board in their counter affidavit have referred to the total outstanding energy due of Rs. 23 Lakhs and odd against the said premises. They have also stated that petitioner along with his requisition form has not submitted an affidavit declaring that he is not in blood relation or nowhere concerned with the erstwhile owner. It is also contended that the Director of the present petitioner company was earlier working under M/s. Otan Das Company and there is every likelihood of their connivance to escape outstanding energy dues.

5. In the aforesaid background facts the relevant provision on the subject matter i.e., Section 43 of the Electricity Act, 2003 is quoted hereunder:-

"43. Duty to supply on request-(1)[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area where in no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation- For the purpose of this subsection," application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section(1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default".

6. The Jharkhand State Electricity Regulatory Commission has framed (Electricity Supply Code) Regulations, 2015 vide resolution dated 7th September 2015

published in the extraordinary gazette of Jharkhand on 9th September 2015, which apart from other provisions contains the procedure for providing fresh electrical connection at para A6. As per clause 6.4, the applicant is required to submit his application in the prescribed format complete in all respect and attached with all relevant documents. Clause 6.5 states that an application shall be deemed to be received on the date of receipt of all applicable charges including the security deposit in accordance with Annexure-18 of these Regulations. As per clause 6.6, the Distribution licensee shall on receipt of the application, stipulate a date for inspection of applicant's premises in mutual consultation with the applicant. Clause 6.10 relates to verification of outstanding dues in the applicant's name or the premises for which new connection is being applied for by the Distribution licensee. Clause 6.10 (a) is quoted herein below:-

"6.10 During the inspection, the Distribution Licensee shall:

(a) verify that there is no outstanding due in the applicant's name or for the premise for which the new connection is being applied for. If the applicant, 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 due 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. But if the erstwhile consumer defaulted payment of dues and left the premises for good and the concerned premises has come in legal possession of a new occupant through transfer or a decree/order of the court/ authority and who has no nexus with the previous owner/occupant in any manner, applies for connection of the electrical line in the same disconnected premises, the distribution licensee shall provide electrical connection without realisation of the arrear/ dues of the premises and he shall not be held liable to pay/ discharge the liability of the previous consumer for securing a fresh connection;

7. The Distribution Licensee/delegates of the respondent-Corporation is therefore required to take an informed decision in terms of Section 43 of the Electricity Act, 2003 and also in terms of (Electricity Supply Code) Regulations, 2015 on the question of grant of fresh electrical connection by any such applicant. In such circumstances, petitioner should approach the competent authority/respondent no.4, Electrical Executive Engineer, Jharkhand State Electricity Board, Rajmahal Division, Sahebganj with a fresh application for grant of electrical connection in the premises in question duly supported with all particulars, enclosures and requisite fees. The competent authority/ respondent no.4 would take a decision on the application of the petitioner in accordance with law within the time stipulated in the Act of 2003 and on being satisfied that the petitioner has fulfilled requirement of law as well as the (Electricity Supply Code) Regulations, 2015. As per the mandate of the Act of 2003 such decision be taken within period of 1 month from the date of receipt of such application.

8. The writ petition is disposed of accordingly. However, no observations made

herein above shall be treated as comment upon the admissibility of the petitioner's claim for fresh connection which is to be decided on all objective grounds and in accordance with law.