
(2009) 05 MP CK 0046
In the Madhya Pradesh High Court

M.P. Paschim Kshetra Vidyut Vitran Company Ltd. APPELLANT
Vs

Electricity Consumer Grievances Redressal Forum and RESPONDENT
Another

Date of Decision : 11-05-2009

Acts Referred:

COMPANIES ACT, 1956 — Section 457

Citation : AIR 2009 MP 194 : (2010) 1 JLJ 211 : (2009) 4 MPHT 495 : (2009) 3 MPLJ 351

Hon'ble Judges : R.S. Garg, J;J.K. Maheshwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.S. Garg, J.

The appellant-Madhya Pradesh Paschim Kshetra Vidyut Vitran Company Ltd., being aggrieved by the judgment dated 6-2-2009, passed by learned single Judge, in Writ Petition No. 147/2009 (Madhya Pradesh Paschim Kshetra Vidyut Vitran Company Ltd. v. Electricity Consumer Grievances Redressal Forum and Anr.) whereunder the petition filed by the present appellant challenging the correctness, validity and propriety of the order dated 20-12-2008, passed by Electricity Consumer Forum Grievances Redressal Forum in Complaint Case No. W0045608 (Order No. 507/ ECGRF/Indore/08), has been rejected, has filed this appeal u/s 2 of the Madhya Pradesh Uchacha Nyayalay (Khand Nyayapeeth ko Appeal) Adhiniyam, 2005.

The short facts necessary for disposal of the present appeal are that the petitioner-appellant is a successor-in-interest of M. P. Electricity Board. From the records it appears that on 6th February, 1991, erstwhile Electricity, Board entered into a High Tension Agreement, for supply of electrical energy, with one M/s. Quality Steel and Forgings.Ltd., Yet another agreement was entered into between the parties on 29th March, 1991 entitling the Company to draw power to the extent of 5000 KVA. It appears that the monthly bills issued to M/s.

Quality Steel and Forglngs Ltd., remained unpaid for almost about a period of seven years and, therefore, in view of the said default the supply of the power to the Company was temporarily disconnected on June 26, 1998. It also appears that the matter travelled before the Board for Industrial and Financial Reconstruction (B.I.F.R.) under the provisions of Sick Industrial Company (Special Provision) Act, 1984. On 24th April, 2000, the B.I.F.R. opined that it would be just and equitable to initiate winding up proceedings against M/s. Quality Steel and Forgings Pvt. Ltd., Accordingly, winding up proceedings were initiated against the said Company before the Calcutta High Court. The petition was entertained, admitted and Official Liquidator was appointed in the matter by the said Court. During pendency of the proceedings, the petitioner-appellant lodged claim of Rs. 6.43 crores before the Calcutta High Court against the said Company, though the claim was made before the Official Liquidator, but, in fact, it was before the High Court.

It appears that on 12th January, 2007, the Company Judge of Calcutta High Court ordered sale of leasehold rights, plant and machinery of M/s. Quality Steel and Forgings Ltd. M/s. Choudhary and Sons Forgings Pvt. Ltd., came up as successful bidders and on 12th January, 2007 the auction knocked in the favour of M/s. Choudhary and Sons Forgings Pvt. Ltd., was confirmed by the High Court in a sum of Rs. 1.00 crore. After purchase of the property, M/s. Choudhary and Sons Forgings Pvt. Ltd., transferred all the assets which were purchased by them in the auction to M/s. R.K. Ferro Alloys Pvt. Ltd. and on 9-4-2008 M/s. R.K. Ferro Alloys approached the present appellant for grant of new electricity connection. It is not in dispute before us that the property which was purchased by M/s. Choudhary and Sons for sum of Rs. 1.00 crore was sold by said M/s. Choudhary and Sons to M/s. Ferro Alloys in sum of Rs. 1.25 crores. A no objection certificate was granted by M/s. Audyogik Kendra Vikas Nigam Limited on July 2, 2008 in favour of M/s. R.K. Ferro Alloys for grant of new connection. The appellant before us refused sanction of H: T. Load Connection to M/s. R.K. Ferro Alloys for the reason that outstanding dues recoverable from M/s. Quality Steel and Foregings Ltd., were not cleared and, therefore, in accordance with Clause 4.17 of the M. P. Electricity Supply Code, 2004 ("Supply Code", for short), the application of the applicant-Company could not be entertained.

In view of the aforesaid refusal M/s. R.K. Ferro Alloys approached to this Court in Writ Petition No. 4414/2008, a show cause notice was issued to the present appellant, the present appellant raised a preliminary objection that the petition was not maintainable as M/s. R.K. Ferro Alloys had an alternative remedy of approaching the Consumer Forum and could even obtain an interim relief in the said proceedings. The preliminary objection was upheld by this Court and vide order dated 5th August, 2008, the petitioner of W.P. No. 4414/2008 was directed to seek its remedy by approaching the Consumer Forum. A liberty was further granted to the said petitioner-Company to make request for interim relief in the proceedings before the Consumer Forum. On September 17, 2008, the Consumer Forum stayed the refusal order dated July 18, 2008 and directed grant of new

power connection of 33 KVA System for 3300 KVA contract demand. The appellant-Company challenged the aforesaid interim orders passed by the Consumer Forum by filing W. P.No. 6337/ 2008 before this Court, as the interim directions issued by the Consumer Forum were also not being complied with by the present appellant, M/s. R.K. Ferro Alloys also filed W. P. No. 7555/2008. In both the writ petitions show cause notices were issued. In the meantime, during pendency of the aforesaid two writ petitions, vide order dated 20th December, 2008 the complaint filed by the applicant-Company was finally allowed and a direction was issued to the appellant, the said order dated 20-12-2008 was appended as Annexure P/1 in W. P. No. 147/2009 and became subject matter of challenge by the appellant. The learned Single Judge, after hearing the parties and on interpreting Clause 4.17 of Code, 2004, came to the conclusion that the opening words were not to apply to forfeit the demand and as the property was sold by the Official Liquidator under the directions of the High Court, the auction in favour of M/s. Choudhary Forgings Pvt. Ltd., would be deemed to be a sale and would be protected and under the circumstances M/s. Choudhary Forgings Pvt. Ltd.. or M/s. R.K. Ferro Alloys would not be liable to pay the earlier dues.

Being aggrieved by the said directions and observations so also the interpretation made by the learned Single Judge, the appellant-Electricity Company is before us.

Mr. Manoj Munshi, learned Counsel for the appellant after taking us through Clause 4.17 of the Supply Code, 2004, submitted that if M/s. R.K. Ferro Alloys or M/s. Choudhary Forgings were consumers and were occupier and or owner of the premises, then they would be obliged to pay the arrears which were due against the erstwhile owner and the Electricity Company is within its bounds in refusing the connection. It is also submitted that the learned Single Judge failed in not appreciating the latest judgment of the Supreme Court in the matter of Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, , so also the judgments of the Supreme Court in the matter of Ahmedabad Electricity Co. Ltd. Vs. Gujarat Inns. Pvt. Ltd. and Others, and judgment in the matter of Isha Marbles Vs. Bihar State Electricity Board and Another, . It was also submitted that sale by the Official Liquidator in a Company Petition pending before the Calcutta High Court would not fall within any of the exceptions, as provided in Clause 4.17, therefore, also the Electricity Company is entitled to recover the money and refuse connection or supply on refusal by the consumer to pay the arrears. It was also submitted that the Official Liquidator, in accordance with Section 457 of the Companies Act, is an Officer of the Court and, therefore, he would not fall under any of the clauses as enumerated under Clause 4.17 of the Supply Code, 2004. Strong reliance is placed upon paragraphs 11, 12 and 13 of the judgment in the matter of Paschimanchal Vidyut Vitran Nigam Limited and Ors. (supra).

Mr. Vivek Dalai, learned Counsel for the respondent No. 2, however, submitted that a fair reading and understanding of Clause 4.17 would make it clear that the subsequent consumer would be associated with the erstwhile owner or company

either as a Partner, Director or Managing Director or as occupier and or owner of the premises only then Clause 4.17 shall apply. According to him, undisputedly, M/s. Choudhary Forgings was not at all associated with M/s. Quality Steel and Forgings Ltd., therefore, Clause 4.17 would not apply. It is also submitted that the sub-clauses appended to Clause 4.17, in fact, are examples and those are not conclusive for all practical purposes. It is submitted that a mandate has been issued against the supplier that releasing of new connection shall not be refused by the distribution licensee in the five subclauses referred to in Clause 4.17 but that does not mean that beyond these five clauses every consumer would be liable to pay the dues which are to be paid by the erstwhile owner or occupier. Placing reliance upon the judgment of the Supreme Court in the matter of M/s. Isha Marbles (supra) and Ahmedabad Electricity Co. Ltd. (supra), it is submitted that where a party proposes to purchase the property in a court auction or any other auction free from all other encumbrances then such transaction is protected and assuming clause 2 does not provide that such protection would be available to an auction made by the Official Liquidator then too a proper interpretation would extend a protection in favour of a purchaser who purchases the property in a court auction or court sale. It is also submitted by him that the Official Liquidator undisputedly, is an Officer of the Court and if the Court directs him to sell or auction the property and the property is transferred free from all encumbrances and it is shown that the auction purchaser was never associated with the defaulter then Clause 4.17 shall not come in the way of the said purchaser In claiming a new connection. It is submitted by him that the judgment delivered by the learned Single Judge does not call for any interference.

For proper appreciation of the dispute between the parties, a perusal of Clause 4.17 of the Supply Code, 2004 is required to be gone through. It reads 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 or as occupier and or owner of the premises, 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. However; release of new connections shall not be refused by the Distribution Licensee in following cases:

- (i) If the lease deed is cancelled by the State Govt. on account of any reason and allocated to a new party/consumer then the new party/consumer shall not be required to pay the energy dues of erstwhile consumer.
- (ii) If the property is attached and sold by the Income Tax Department/ Commercial Tax Department or such other Govt. Departments for recovery of their dues, then the new purchaser shall not be required to pay the energy dues of erstwhile consumer.
- (iii) If the Financial Institutions created under the State Act/Central Act attach

and sale property for recovery of their dues, then the purchaser shall not be required to pay the energy dues of erstwhile consumer.

(iv) On vacation of Govt. Quarter/Flat on transfer of an employee leaving arrears of energy charges, new occupant shall not be required to pay the energy dues of erstwhile consumer.

(v) If there is a specific order from a Court for non-recovery of arrears outstanding on the premises.

A fair understanding of Clause 4.17 would make it clear that if the consumer, in respect of an earlier agreement executed in his name or in the name of firm or company with which he was associated either as a Partner, Director or Managing Director or as occupier and or owner of the premises has any arrears of electricity due or other due 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.

The endeavour of the learned Counsel for the appellant was to convince us that the word "consumer" is to be read with an occupier and or owner of the premises. The submission, in fact, is that any consumer who is occupying the premises or is owner of the premises as on today would be answerable to discharge the earlier liability. In our considered opinion, the submission made by the learned Counsel for the appellant is based on misinterpretation of Clause 4.17 of the Supply Code, 2004.

The word "consumer", in our considered opinion, is to be read in juxtaposition with the word "earlier agreement" so executed and the association of the demanding consumer should be shown with the erstwhile firm or company as a Partner, Director or Managing Director or as occupier and or owner of the premises.

We would be justified in reading the agreement by saying that if the present consumer in relation to the earlier agreement was associated with the firm or company either as a Partner Director or Managing Director or as occupier and or owner of the premises then he would not be entitled to a new connection unless the earlier liability is discharged. The word "with which he was associated" are not ornamental words. The said words qualify a Partner, Director or Managing Director or an occupier or owner of the premises of the firm or company which earlier had the agreement in us name. The reason behind putting Clause 4.17 is to put a check on the dishonesty which may be exhibited by the Partner, Director or Managing Director who after finding that the a great amount of money is to be paid refuse to pay the money and thereafter transfer the property in favour of some Director, Managing Director or Partner. Clause 4.17 would also show that if a person was occupying the premises or was owning the premises had some association with the earlier firm or company and again makes an application for grant of a fresh connection, then such person would not be entitled to get a fresh connection because at that point of time the Company can always ask him that

he being an associate of the defaulter firm or company, he would not be entitled to a fresh connection.

So far as five sub-clauses are concerned, in our considered opinion, the said clauses are simple examples which issue a mandate against the Electricity Supply Licensee. Clause (i) simply refers to a situation where a lease deed is cancelled by the State Government on account of any reason and the property is allocated to a new party. The reason behind that is that if the lease deed is cancelled and the property is transferred to a third party who is not associated with the defaulter then the new party/consumer shall not be required to pay the energy dues. In fact, clause (i) is in accordance with the earlier judgments of this Court and the judgments of the Supreme Court. Clause (ii) provides that connection would not be refused if property is attached and sold by Income Tax Department/Commercial Tax Department or such other Government Departments for recovery of their dues then the new purchaser shall not be required to pay the energy dues of erstwhile consumer. In the present matter, though the Income Tax Department or Commercial Tax Department or other Government Departments have not sold or auctioned the property but the question would be simple that protection flowing from clauses (i) and (ii) so also from clause (iii) which relates to sale and auction by financial institutions created under the State Act/Central Act would provide a protection to a sale by the Court. Undisputedly, the property has been auctioned and sold by the High Court under its powers, as conferred upon every Company Court. When the Court transfers the property free from all encumbrances then irrespective of any clause contained in 4.17 of the Supply Code, the property would stand transferred free from all encumbrances.

True it is, that in accordance with Section 457 of the Companies Act, the Official Liquidator is an Officer of the Court but it is not to be forgotten that every Official Liquidator works under the directions and dictates of the High Court. The Official Liquidator can invite the bids, but ultimately he has to place everything before the Court for confirmation. Once the bid is accepted and sale is confirmed by the High Court in its Company Jurisdiction and the property is transferred free from all encumbrances, then the principles flowing from sub-clauses (i), (ii) and (iii) would certainly provide a solace and extend protection in favour of the purchaser who purchases the property under an assurance from the Court that the property is being sold to him free from all encumbrances.

So far as the question that subclause (i) to Sub-clause (v) appended to Clause 4.17 are exceptions or examples is concerned, a fair reading of these subclauses would make it clear that those are not conclusive but are only in form of examples to issue a mandate against the Electricity Company that at least in such cases they should not impress upon recovery of the dues which were to be recovered from the erstwhile owner. The mandate issued for some of the cases are not to be understood as final and conclusive nor all other cases which do not come under such mandate can be rejected. A fair appreciation of said clauses

would make it clear that Madhya Pradesh Electricity Supply Code, 2004 proposes to protect the actions taken by the Government, its Departments and the Financial Institutions. If a protection is provided to an action and/or auction by the Government, Tax Department and the Financial Institutions then the principles providing such protection have to be applied to the Court sales also. In our opinion, the learned Single Judge was not unjustified in holding that the protection which is applicable to the sales made by Income Tax Department, Commercial Tax Department or other Government Department or by Financial Institutions or in case of cancellation of the lease deed and allocation of the property to a third party, should be applied in full force to a sale effected by the Court.

So far as the judgment in the matter of Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, is concerned, paragraphs 11, 12 and 13 read as under:

11. 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 (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 dues 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 fulfilment 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 the Electricity Supply Code are necessary to safeguard the interests of the distributor.

The Supreme Court in the said matter clearly observed that a transferee of the premises or a subsequent occupant or premises with whom the supplier has no privity of contract, cannot obviously be asked to pay the dues of his predecessor-in-title for possession, as the amount payable towards supply of electricity does not constitute "charge" on the premises. According to the Supreme Court, 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 Supreme Court was of the opinion that 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. In paragraph 12, the Supreme Court in no ambiguous terms observed that if there are any statutory rules governing the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfilment of the requirement of such rules and regulations. According to the Supreme Court, if the Rules are silent, the supplier can stipulate such terms and conditions as it deems fit and proper to regulate its transaction and the rules. However, according to the Supreme Court, so long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, Courts will not interfere with them. We have already held that Clause 4.17 does not gag the mouth of a subsequent purchaser. According to us, he would always be entitled to say before a supplier company that he having been purchased the property in a Court sale or auction, he would not be liable to pay the dues which were recoverable against the erstwhile owner because he has purchased the property free from all encumbrances and is/was never associated with the earlier consumer.

The Supreme Court in the matter of Ahmedabad Electricity Co. Ltd. AIR 2004 SC 2171 (supra) following the judgment in Isha Marbles (supra), a Judgment by Three Judges and observed that if the purchaser has no connection with the erstwhile owner and he applies for the grant of connection for supply of the electricity then such connections are to be deemed as fresh connections. Clause 4.17, in fact, is a translated action of the Judgment of the Supreme Court.

In our opinion, the learned Single Judge was not unjustified in providing a protection to the purchaser who had purchased the property in the Court sale/ Court auction and had shown that he was never associated with the earlier consumer and in holding that the electricity company would not be entitled to

recover the dues which were recoverable from the erstwhile owner/ the company which is now under liquidation.

We find no reason to interfere in the matter. The appeal is dismissed with costs quantified at Rs. 10,000/-.