(2020) 01 JH CK 0207

In the Jharkhand High Court

Case No : Writ Petition (C) No.1271 Of 2014

M/S. Banke Bihari Crushers & Pole Pvt. Ltd APPELLANT

Vs

Jharkhand State Electricity Board And Ors RESPONDENT

Date of Decision : 16-01-2020

Acts Referred:

Citation : (2020) 01 JH CK 0207

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : M.S. Mittal, Naveen Kumar, Varsha Ramsisaria, Zaid Imam, Mukesh Kumar Sinha, Dheeraj Kumar

Final Decision : Allowed

Judgement

1. Heard Mr. M.S. Mittal, learned senior counsel appearing on behalf of the petitioner and Mr. Mukesh Kumar Sinha, learned counsel appearing on

behalf of the respondent-JUVNL.

2. The petitioner has preferred this writ petition for issuance of direction upon the respondents to grant fresh electrical connection of 40 HP under

LTIS category for running its plant and another connection of 1KW under CS category for lights for safety purpose which was refused. Further

prayer is made for quashing the letter no.109 dated 06.02.2014, issued by the Assistant Electrical Engineer, Electric Supply Sub-Division, Govindpur,

Dhanbad by which he has asked the petitioner to pay an outstanding dues of Rs.1,43,095/- and 43,023/- respectively in respect of two connections of

one M/s Ashoka Briquette Industries so as to enable to grant electrical connection to the petitioner since the petitioner has no connection.

3. The narrow facts of this case is that there are two directors in the petitioner-

company namely Sri Brij Mohan Agarwal and Sri Deepak Goel. Sri

Brij Mohan Agarwal is one of the Directors of the petitioner company had purchased a piece of land from Bajrang Bansal by sale deed dated

12.01.2007 as contained in Annexure-1 to the writ petition. It is further stated in the aforesaid deed that Sri Bajrang Bansal had originally purchased

this land by registered deed of sale deed bearing no.4554 dated 09.09.1997 from one Smt. Usha Devi who was a proprietor of one M/s Ashok

Briquette Industries. The property in question at the time of purchased by the Director was vacant plot with a boundary wall without any structure

whatsoever. The petitioner company namely Sri Banke Bihari Crushers and pole Pvt. Ltd. was incorporated on 13.01.2011.

The petitioner company entered into a lease agreement with the owner of the land as well as one of the Director of the petitioner company, Sri Brij

Mohan Agarwala to set up a fly-ash bricks plant in the said plot and for the said purpose entered into a lease agreement as contained in Annexure-2 to

the writ petition.

The petitioner company has made a substantial investment to the extent of almost Rs.25.0 Lakhs. Thereafter, the petitioner company applied for two

electrical connections i.e. a load of 40 HP under LTIS category for running plant and another connection of 1 KW under CS category for the purpose

of putting on few lights in the night for the safety purpose as contained in Annexure-3 to the writ petition. The petitioner has also deposited the

requisite fees as required as contained in Annexure-4 to the writ petition.

All of a sudden, the petitioner company received a letter dated 06.02.2014 bearing no.109, written by the Assistant Electric Engineer, Electric Supply

Division, Govindpur, Dhanbad by which the Director of the petitioner has been asked to deposit a sum of Rs.1,43,095.00/- and Rs.43,023.00/- which

were outstanding on account of one M/s. Ashoka Briquette Industries and it was further stated that only after making the payment of the outstanding

dues the electrical connection can be given to the petitioner.

Aggrieved with the same, the petitioner has preferred this writ petition.

4. When this matter was taken up on 16.05.2014, by way of interim order passed by this Court on the fair submissions of learned counsel for the

petitioner, observed that there may not be any objection on the part of the authority of JUVNL to give fresh electric connection of 40 HP and 1 KW within ten day from the deposit of the said amount, but that deposit would be subject to result of the case, and the matter was adjourned for another

date.

5. Mr. M.S. Mittal, learned senior counsel appearing on behalf of the petitioner submits that the petitioner deposited the amount in question before the

respondent-JUVNL, thereafter, the electric connection has been provided to the petitioner company.

Mr. M.S. Mittal, learned senior counsel for the petitioner assailed the impugned letter on the ground that author of this letter has said that the

certificate proceeding is going on and if the said amount will be deposited, the electrical connection is to be provided to the petitioner.

He further submits that in the said letter there is neither mention about the certificate case nor there is any material on record in this regard. He

further submits that the respondent-JUVNL has filed a counter affidavit but there is no averment made about the pendency of the certificate case. He

further submits that the petitioner has also filed an application under the Right to Information Act to know as to whether the certificate case is going

on with regard to the property in question or not but no information has been provided to the petitioner under the said R.T.I. Act as yet. He further

submits that the petitioner is the new incumbent of the property in question pursuant to Annexure-1 and 2 of the writ petition.

By way of referring Clause 5.5 of the (Electricity Supply Code) Regulations, 2005 Mr. Mittal, learned senior counsel for the petitioner submits that the

said Supply Code is in favour of the petitioner wherein it provides that if the old consumer who had committed default in payment of the dues has left

the premises for good and the concerned premises has come in legal possession of a new occupant through transfer or purchase of the concerned

property and where the new incumbent is not connected with the previous owner/ occupant in any manner and applies for a re-connection the new

owner will be provided connection. For ready reference Clause 5.5 of the said regulations is quoted hereunder as:

â??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 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. But if the old consumer who had committed default in payment of the dues has left the premises for good and

the concerned premises has come in legal possession of a new occupant through transfer or purchase of the concerned property and where

the new incumbent is not connected with the previous owner/occupant in any manner applies for re-connection of the electrical line in the

same disconnected premises, in that event the distribution licensee shall be obliged to order reconnection without realization of the arrear

dues of the concerned premises from the new incumbent, as the purchaser of the premises would not be held liable to meet the liability of the

previous consumer in order to secure reconnection.â??

Mr. Mittal, learned senior counsel for the petitioner further submits that the case of the petitioner is fully covered in view of the judgment passed by

the Honâ??ble Supreme Court in the case of Isha Marbles Vrs. Bihar State Electricity Board reported in (1995) 2 SCC 64 8wherein the Honâ??ble

Supreme Court has held that incumbent over the property and the premises came to be occupied by the new comer is seeking supply of the electrical

energy by way of fresh connection, he cannot be called upon to clear the past arrear of electricity as pre-condition for the fresh connection or supply.

Mr. Mittal learned senior counsel produce the plethora of judgment on the point in question but the celebrated judgment of Isha Marbles Vrs. Bihar

State Electricity Board (supra) is sufficient to decide the matter.

6. Per contra, Mr. Mukesh Kumar Sinha, learned counsel appearing on behalf of the respondent-JUVNL submits that there is no illegality in the

impugned letter as there is an arrear with regard to the property in question. He further submits that there is no valid transfer of the property in

question in favour of the petitioner and thatâ??s why the case of the Isha Marbles Vrs. Bihar State Electricity Board (supra) will not be applicable in

the case of the petitioner. He further submits that although the JUVNL is not having a particular knowledge about the certificate case but petitioner is

liable to pay arrears. He further submits that the submission about the certificate case was also recorded by this Court in the order dated 16.05.2014

and on that ground the case of the petitioner is fit to be rejected.

Mr. Sinha, submits that now in new supply code there is provision that the new purchaser is liable to deposit the arrears of the property in question.

The (Electricity Supply Code) Regulations, 2015 Clause 5.3.3 which reads hereunder as:

â??5.3.3 Purchase of existing property: Where the applicant has purchased an existing property whose electricity connection has been

disconnected, it shall be the applicantâ??s duty to verify that the previous owner has paid all dues to the Distribution Licensee and

obtained a â??non-dues certificateâ? from him. In case such â??non-dues certificateâ? has not been obtained by the previous owner

before change in ownership of property, the new owner may approach the Distribution Licensee for such a certificate. The Distribution

Licensee shall acknowledge receipt of such request and shall either intimate in writing the dues outstanding on the premises, if any, or issue

a â??non-dues certificateâ? within 1 month from the date of receipt of such application. In case the Distribution Licensee does not intimate

the outstanding dues or issue a â??non-dues certificateâ? within this time, new connection to the premises shall not been denied on the

grounds of outstanding dues of the previous consumer. In such an event, the Distribution Licensee shall have to recover his dues from

previous consumer as per provisions of law.â??

Mr. Mittal, learned senior counsel for the petitioner has denied the argument of Mr. Sinha on the ground that this new code is not retrospective in

nature and submits that the Clause of 5.5 of old code is saved there in the new (Electricity Supply Code) Regulations, 2015 as Clause 6.10 which

reads hereunder as:

â??6.10 During the inspection, the Distribution Licensee shall:

(a) verify that there is no outstanding due in the applicantâ??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 dues or other dues for the premises where the new

connection is applied for an 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, applied for connection of the electrical line in the same disconnected premises, the distribution

licensee shall provide electrical connection without realization of the arrear/dues of the premises payable by the erstwhile consumer, from

the subsequent transferee of the premises and he shall not be held liable to pay/ discharge the liability of the previous consumer for securing

a fresh connection;

(b) fix the point of supply, the place where the meter and MCB etc. shall be installed and layout of the service line, in consultation with the

consumer;

Provided that the service line shall be laid at an accessible location and the meter shall be fixed outside or at the entry point of the premises

in such a manner that it is protected from elements like rain, etc. and is easily accessible without getting the premises unlocked or opened

for this purpose;

(c) record the correct full address of the premises, if not provided in the application form, note down landmarks near the property and the

pole number from where service connection is proposed to be given and consumer number of the neighbors or nearest consumer;

(d) verify the load/demand, purpose of usage of electricity and consumer category as indicated in the application form; and

(e) verify all other particulars mentioned in the application form, as required.â??

7. Having heard the learned counsel for the parties this Court finds that no liability of the predecessors-in-title can be imposed on the present petitioner

as it has been held by the Honâ??ble Supreme Court in the case of Isha Marbles Vrs. Bihar State Electricity Board (supra) wherein paragraph 61,

62 and 63 which reads hereunder as:

â??61. What we have discussed above appears to be the law gatherable from the various provisions which we have detailed out above. It is

impossible to impose on the purchasers a liability which was not incurred by them.

62. No doubt, from the tabulated statement above set out, the auction-purchasers came to purchase the property after disconnection but

they cannot be â??consumer or occupierâ?? within the meaning of the above provisions till a contract is entered into.

63. We are clearly of the opinion that there is great reason and justice in holding as above. Electricity is public property. Law, in its

majesty, benignly protects public property and behoves 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, if we hold as we have done

above, 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.â?? (Emphasis Supplied)

The aforesaid judgment has been rendered by the Honâ??ble Supreme Court which is binding upon the JUVNL. This Court finds that in spite of the

demand by the petitioner under the R.T.I. there is no disclosure of any certificate proceeding by the JUVNL. Mr. Mukesh Kumar Sinha, learned

counsel for the respondent-JUVNL has also not been able to specifically point out about the certificate case. The Clause 5.5 of the said Regulations is

also in favour of the petitioner. In view of the above facts and submissions, no liability of the predecessor-in-title can be imposed upon purchaser of

the property particularly when no such liability has been accepted by the subsequent purchaser.

The argument of Mr. Sinha, learned counsel for the respondent-JUVNL is also not acceptable by this Court as the new code is not in retrospective in

nature and Clause 5.5 is saved as Clause 6.10 of the new Code.

As a cumulative effect of the aforesaid facts, reasons and judicial pronouncements, no liability of the predecessor-in-title can be imposed upon the

petitioner for payment of electricity dues and therefore, if there is no other objection for grant of fresh electricity connection to the petitioner,

respondents are hereby liable to provide the fresh electricity connection to the petitioner. The connection has already been provided to the petitioner in

view of the interim order dated 16.05.2014 after depositing of the disputed amount in question of the arrears of bill which was subject to the writ

petition.

8. In view of the above observations, the impugned order as contained in Annexure-5 to the writ petition dated 06.02.2014 cannot be sustained in the

eye of law, accordingly, quashed. As the amount was deposited by the petitioner subject to the result of this writ petition and in view of the facts that

the petitioner has succeeded in this writ petition, the JUVNL is liable to refund the amount of Rs.1,43,095.00/- and 43,023/- respectively to the

petitioner within a period of eight weeks from the date of receipt/production of a copy of this order.

9. Accordingly, the writ petition stands allowed and disposed of.

10. This judgment will not be an impediment to the JUVNL to realize the amount in question from the erstwhile owner.

