
(2011) 12 CHH CK 0010
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 6233 of 2011

M/s Bhagya Nidhi Exports Limited and another	APPELLANT
Vs	
C.G. State Power Distribution Co. Ltd. (CSPDCL) and others	RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Electricity Act, 2003 — Section 181, 181(1), 43(1), 44, 46
Limitation Act, 1963 — Section 3

Citation : AIR 2012 Chh 50 : (2012) 3 BC 138 : (2012) 1 MPHT 53

Hon'ble Judges : Sunil Kumar Sinha, J;R.S. Sharma, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—This order shall dispose of I. A. No. 1/2011, an application filed by the petitioners for grant of interim relief.

2. The petitioners have challenged the vires of Paragraph 4.15 of the Chhattisgarh State Electricity Supply Code, 2005. They have also challenged the correctness of two letters (Annexures P-1 and P-2) issued by respondent No. 1 for depositing Rs. 48,13,749/-, the amount of outstanding dues of electricity consumption against Kedia Distilleries, the earlier owner and occupier of the premises purchased by petitioner No. 1 in auction-sale, as condition precedent for supplying new temporary connection to the premises now occupied by petitioner No. 1 as an auction-purchaser.

3. Petitioner No. 1 is auction-purchaser of the assets of Kedia Distilleries (in liquidation) and presently the premises and the assets of Kedia Distilleries situated at 4D, Light Industrial Area, Bhilai are in possession of petitioner No. 1. A deed of conveyance has been registered on the name of petitioner No. 1 on 22-7-2011. After acquiring the possession of subject premises, petitioner No. 1 made an application to respondent No. 1 for grant of temporary (LT) electricity connection in the subject premises and a sum of Rs. 15,000/-, as required by respondent No. 1, was deposited by petitioner No. 1. A temporary connection

(LT) for a period of 3 months commencing from 15-5-2011 was granted to the petitioner No. 1. Petitioner No. 1 requested to extend the above connection for a further term of 3 months. On this a letter dated 10-8-2011 (Annexure P-1) demanding Rs. 48,13,749/-, existing dues against Kedia Distilleries Ltd. (in liquidation), was issued to petitioner No. 1. Another letter dated 12-9-2011 (Annexure P-2) was also issued to petitioner No. 1 slating therein that as per Clauses 4.11 to 4.16 of Electricity Supply Code, 2005 the temporary electricity connection as required by petitioner No. 1 in the said premises, i.e., 4D LIA Bhilai can be granted only after payment of above dues of Kedia Distilleries. The petitioners thereafter challenged the above two letters (Annexures P-1 and P-2) and have also challenged the vires of Paragraph 4.15 of the Electricity Supply Code, 2005. By filing I.A. No. 1/2011, the petitioners have prayed for an interim direction to respondent No. 1 to grant temporary (LT) connection to the premises of the petitioners pending final disposal of the writ petition on merits.

4. Mr. B.P. Sharma, learned Counsel appearing on behalf of the petitioners, argued that electricity is a basic need; petitioner No. 1 is an auction-purchaser through official liquidator of Kedia Distilleries; it has purchased the premises in auction-sale free from all encumbrances; therefore, imposing the condition of pre-deposit of the outstanding dues of Kedia Distilleries on petitioner No. 1 is not in accordance with law. The dues of Kedia Distilleries were time barred dues and they are not recoverable against petitioner No. 1, therefore, the provisions of Paragraph 4.15 appears to be ultra vires and a prima facie case is made out in favour of the petitioners for grant of electricity connection without demanding the earlier dues of the previous owner. Among the other judgments, he cited the judgment of *I Isha Marbles Vs. Bihar State Electricity Board and Another*,

5. On the other hand. Mr. P.K. Verma, learned Sr. Counsel appearing on behalf of respondent No. 1, opposed these arguments and submitted that there is no prima facie case in favour of petitioner No. 1, the demand raised by respondent No. 1 is in accordance with Paragraph 4.15 of the Electricity Supply Code, 2005; the case of *Isha Marbles (supra)*, is distinguishable; so long Paragraph 4.15 is on the statute book, no interim relief of above nature can be granted in favour of the petitioners. He mainly cited the decisions of *Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others*, and *Haryana State Electricity Board Vs. Hanuman Rice Mills and Others*,

6. Learned Counsel for other respondents have supported the contentions raised by Mr. P.K. Verma.

7. We have heard learned Counsel for the parties at length and have also perused the records of the writ petition.

8. In *Isha Marbles (supra)*, the Supreme Court held that "Where that premises comes to be owned or occupied by the auction-purchaser, and such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. There is no charge over the property. What

matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bonafides of the sale may not be relevant. The form of requisition relating to the contract is in Annexure VIII prescribed under Clause VI of the Schedule to the Electricity Act. They cannot make the auction-purchaser liable. It is true that it was the same premises to which reconnection is to be given. Otherwise, with the change of every ownership new connection have to be issued does not appear to be the correct line of approach as such a situation is brought about by the inaction of the Electricity Board in not recovering the arrears as and when they fall due or not providing itself by adequate deposits".

9. In *Paschimanchal* (supra), it was held that "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 a "charge" on the premises". It was further held that "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 due 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. 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. Provisions similar to Clauses 4.3 (g) and (h) of the Electricity Supply Code are necessary to safeguard the interest of the distributor".

10. In *Haryana SEB* (supra), after due discussion the Supreme Court summarized the points in issue in following manner, in Para 12, that:--

12. The position therefore, may be summarized thus:--

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity to demand from the

purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser."

11. In Haryana SEB (supra), the judgment rendered in Isha Marbles (supra), was taken note by the Supreme Court. The Supreme Court also look note of Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers (P) Ltd., (2006) 13 SCC 101 as also M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, and many other judgments and the legal position was summarized as above. Paragraph 4.15 of the Code, 2005 provides that "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, has any arrears or electricity dues on the premises for which the new connection is applied 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. In case of a person occupying a new property, it will be the obligation of that person to check the bills for the previous months or, in case of disconnected supply, the amount due as per licensee's records immediately before his occupation and ensure that all outstanding electricity dues as specified in the bills are duly paid up and discharged. The licensee shall be obliged to issue a certificate of the amount outstanding from the connection that was installed or is installed in such premises on request made by such person". The above Code of 2005 was made by "Chhattisgarh Stale Electricity Regulatory Commission" in exercise of powers conferred by Section 43 (1) read with Section 181(1), Section 44, Section 46 read with Section 181(1). Section 47 (1) read with Section 181 (v), Section 47 (4) read with Section 181 (w). Section 47(2), (3) and (5), Section 48 (b) and Section 50 read with Section 181 (x) and Section 56 of the Electricity Act, 2003 (No. 36 of 2003) and the Electricity (Removal of Difficulties) Order, 2005 issued by the Ministry of Power. Government of India on 8-6-2005. There is no dispute that it has statutory effect. Mr. Sharma has argued that the above provisions of Paragraph 4.15 are ultra vires because they provide a way to recover even a time barred dues against a third party for which the subsequent owner was not legally liable. Other grounds have also been raised. The Supreme Court held in above decisions and concluded in Haryana SEB (supra), that the previous arrears do not constitute a charge over a property and in general law a transferee of the premises cannot be made liable for the dues of the previous owner/occupier, but if statutory rules or terms and conditions of supply, which are statutory in character, authorize the supplier of electricity to demand such dues from the purchaser claiming reconnection or fresh connection of electricity, the arrears due by the previous owner can be recovered from the purchaser. Therefore, so long Paragraph 4.15 is prevailing in the Code, 2005, the demand made by respondent No. 1 cannot be held to be illegal or arbitrary and merely on account of challenge to the above provisions of the Supply Code, interim directions as prayed for in I.A. No. 1/2011 cannot be issued in favour of the petitioners.

12. Mr. Sharma has also argued that the subject dues against Kedia Distilleries are time barred dues, therefore, they are not payable to the licensee and as such the demand raised in the two letters are unjustified, even if the provisions of Paragraph 4.15 are there. He cited the decisions of Modern Industries Vs. Steel Authority of India Ltd. and Others, and State of Kerala and Ors Vs. V.R. Kalliyankutty and Anr,

13. In Modern Industries (supra), the Supreme Court held that the word "due" has variety of meanings, in different context it may have different meanings. In V.R. Kalliyankutty (supra), it was held that an amount "due" normally refers to an amount which the creditor has a right to recover. Wharton in Law Lexicon defines "due" as anything owing; that which one contracts to pay to another. There is no reference in this definition as well as in the definition in Black's Law Dictionary, 6th Edn., p. 499 to a time-barred debt. In every case the exact meaning of the word "due" will depend upon the context in which that word appears. The argument of Mr. Sharma appears to be founded on provisions of law limitation. In Punjab National Bank and others Vs. Surendra Prasad Sinha, also referred to V.R. Kalliyankutty (supra), the Supreme Court held that the rules of limitation are not meant to destroy the rights of the parties. Section 3 of the Limitation Act only bars the remedy, but does not destroy the right which the remedy relates to. Though the right to enforce the debt by judicial process is barred u/s 3 read with the relevant article in the Schedule, the right to debt remains. The time barred debt does not cease to exist by reason of Section 3. Only exception in which the remedy also becomes barred by limitation is that the right itself is destroyed. In Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur, it was observed that a debt may be time-barred, it would still be a debt due. Though the remedy may be barred, a debt is not extinguished. Therefore, a right to enforce the debt by judicial process may be barred, but that right can be exercised in any manner other than by means of a suit. As held in V.R. Kalliyankutty (supra), for example, a creditor's right to make adjustment against time-barred debts exists. Therefore, this argument advanced by Mr. Sharma, does not appear to be acceptable.

14. I. A. No. 1/2011, therefore, fails and the same is accordingly dismissed.