

(1996) 01 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 649 of 1996

M/s. Pilibhit Ispat (Private) Limited and Others

APPELLANT

Vs

U.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2, Order 39 Rule 2(2)

Constitution of India, 1950 — Article 226

Electricity (Supply) Act, 1948 — Section 49

Citation : AIR 1996 All 329

Hon'ble Judges : S.N. Saxena, J;B.M. Lal, J

Bench : Division Bench

Advocate : Vishal Dixit, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. SAXENA, J.—Arguments advanced on behalf of both the parties were heard at the stage of admission.

2. Petitioner M/s Pilibhit Ispat (Private) Limited is the consumer of electricity for which it had entered into an agreement with the U. P. State Electricity Board on 30-9-1994 for two years. The load was 3850 KVA for manufacture of Special/ Alloy Steel Casting with induction furnace.

3. The petitioners in this petition have prayed for the following reliefs :--

(i) issuance of a writ, order or direction in the nature of certiorari quashing the impugned order of Tehsildar/Collector, Pilibhit, dated 23-12-1995 as contained in Annexure 1 to the petition including the recovery proceedings;

(ii) issuance of a writ, order or direction in the nature of mandamus commanding the opposite parties not to initiate any recovery proceedings against the petitioners in respect of June 95 electricity bill till disposal of regular Suit No. 175 of 1995 or till further orders of Civil Judge, Pilibhit in the suit proceedings;

(iii) issuance of a writ, order or direction in the nature of mandamus commanding the opposite parties No. 3 and 4 to release the petitioner No. 2, Shri A. S.-Solanki, who is the Director of petitioner No. 1, immediately from the civil custody/ prison.

4. A raid was conducted by the Special Checking Squad of the U.P. State Electricity Board, hereinafter referred to as "UPSEB" Lucknow, which resulted in the detection of theft of electricity by petitioner No. 1 in respect of which an F.I.R. was lodged with the Police and the electric supply was disconnected. UPSEB served a show cause notice also on the petitioners for making assessment. The petitioners, however, took recourse to judicial proceedings in the Court of Civil Judge, Pilibhit by instituting Original Suit No. 113 of 1995 in which Shri Todar Mal, the then Civil Judge, Pilibhit, granted an ex-parte and interim injunction on 12-5-1995 restraining the UPSEB from recovering the amount in pursuance of the show cause notice and directing for re-connection of electric supply. The UPSEB against the said order filed F.A.F.O No.469 of 1995 before this Court, a Division Bench of which stayed the operation of the order dated 12-5-1995. The petitioners submitted a reply to the show cause notice to the UPSEB. It is not necessary here to mention all the details, as the same were not of much significance so far as the present controversy was concerned. It may, however, be mentioned that UPSEB claimed Rs.3,25,44,128/- from the petitioners in accordance with Regulation 23 (1) of 1984 against which the petitioners filed an appeal before the Board. In terms of an amicable settlement, however, UPSEB permitted restoration of the supply on payment of Rs.62 lacs which was further reduced to Rs.30 lacs plus first installment of other monthly bills and upon fulfilling the conditions, the supply was restored on 4th July, 1995.

5. The UPSEB sent a bill in the month of July, 1995 to the petitioners for the month of June, 1995 for the minimum consumption guaranteed charges, as the supply in the month of June, 1995, had remained dis-connected on account of detection of theft in the premises of petitioner No. 1. The petitioners again instituted Original Suit No. 175 of 1995 in the Court of Civil Judge, Pilibhit, seeking mandatory injunction restraining the UPSEB from realising the amount of minimum consumption guaranteed charges for the month of June, 1995, and declared that it was not liable to pay the same for the period during which the supply had remained dis-connected. The above named Civil Judge, Pilibhit on 19-7-1995 granted ex parte injunction restraining dis-connection on account of non-payment of the aforesaid minimum consumption guaranteed charges amounting to Rs. 15.46 lacs. The UPSEB filed objection against the interim injunction praying for its vacation. There was no order against the UPSEB restraining it from recovery of the minimum consumption guaranteed charges and, therefore, notice was issued to the petitioners demanding payment of Rs. 1625163.73 only from the petitioners, who, however, on 28-11-1995 applied for permanent disconnection. The UPSEB again moved an application on 5-12-1995 in Original Suit No. 175 of 1995 requesting Civil Judge, Pilibhit to recall the order dated 19-7-1995 and the same was pending decision when it issued recovery

certificate for Rs. 1625163.73 from the petitioners. The Civil Judge, Pilibhit, by order dated 19-7-1995, partly allowed the application of UPSEB dated 5-12-1995 permitting it to allow permanent disconnection, but refused to recall his order dated 19-7-1995, by which he had restrained the UPSEB from disconnection the electric supply due to failure of the petitioners to pay the minimum consumption guaranteed charges.

6. On behalf of UPSEB, it was contended that the order dated 19-7-1995 of Civil Judge, Pilibhit, was wholly illegal, void and had been passed in flagrant violation of the relevant provisions governing the issuance of interim injunction in cases of like nature, as the petitioners were not required to furnish adequate security to safeguard the interest of the UPSEB. It was also contended that in view of the relevant provisions of the U.P. Zamindari Abolition & Land Reforms Act, Revenue Recovery Act, U.P. Land Revenue Act and U.P. Public Money's Dues Recovery Act, 1972, the suit of the petitioners was not maintainable and no injunction order could legally and validly be passed by the Civil Judge against the UPSEB restraining it from recovering the amount from the petitioners. It was also contended that no declaration was sought by the petitioners that the bill requiring payment of minimum consumption guaranteed charges was illegal and invalid due to which also no interim injunction restraining the UPSEB from recovering the said amount could validly be passed by the Civil Judge. It was, therefore, contended for UPSEB that the Civil Judge had passed wholly illegal and invalid interim orders, probably due to considerations other than judicial; that the Electric Inspector had got no jurisdiction to interfere with the matter and that the writ petition, therefore, was liable to be dismissed at the stage of admission.

7. The sheet-anchor of the contention of the petitioners is the pendency of the judicial proceedings in the Court of Civil Judge and the interim orders passed by him. It may be mentioned here that this writ petition, in respect of the questions involved in the civil suits, was not maintainable, unless the petitioners got the same dismissed first. The remedy under Article 226 of the Constitution of India by way of writ petition was an Extraordinary remedy which could be availed of by an aggrieved person only if he had got no effective remedy for redressal of his grievance. According to the petitioners, they already had availed the alleged regular remedy by way of civil suits and also obtained interim orders and on their own showing they had rendered themselves not entitled to maintain this petition under Article 226 of the Constitution of India. The relief claimed by them suggested that they had treated this Court as a Court, the duty of which was to put into execution the interim orders passed by the Civil Judge, Pilibhit. The petitioners lost sight of the provisions of order 39 of the Code of Civil Procedure, 1973 (Act II of 1974) which contained the remedy also if the defendants preferred to violate the interim orders passed by a competent Civil Court. Such an approach on the part of the petitioners was wholly against law and the petition was liable to be dismissed, as they already were pursuing their remedy in the court of Civil Judge, Pilibhit, even if wrongly.

8. From the above discussion, it was evident that the most important controversy between the parties was the liability of the petitioners to pay the minimum consumption guaranteed charges for the month of June, 1995 during which the electric supply had remained out, as the UPSEB had detected theft of electricity by the petitioners. For the petitioners, however, it has been coil-tended that the alleged theft was not committed by them, but it was a matter the decision of which rested upon questions of fact which cannot be decided in this petition. The legal position, however, was very clear on this question. The agreement itself contained clause (16) which entitled the UPSEB for recovery of the minimum consumption guaranteed charges for the period, if any, during which the supply had remained withheld during the subsistence of the agreement, which in this case was for two years i.e. had not expired by the end of June, 1995. It would be useful to reproduce below the relevant provision :--

"In the event of the supply being disconnected for any reason detailed in the agreement, all the money then payable by the consumer shall become due and recoverable forthwith and the consumer shall continue to pay the monthly minimum charges and the minimum guarantee, if any, for the unexpired period of the agreement."

Clause 2 of the agreement reads as follows:--

"This agreement shall be read and construed in all respects in conformity with all Provisions of the "ACTB" and the Electricity (Supply) Act, 1948. or any subsequent amendments thereof and any Rules Regulations made thereunder from time to time."

9. It was hardly necessary to emphasise that theft of electricity was a valid reason for UPSEB to stop the supply of the electricity and at the same time claim the minimum consumption guaranteed charges for the remaining period of the agreement also.

10. Shri Sudhir Agrawal learned counsel for UPSEB relied upon a decision of Hon"ble Supreme Court reported in Orissa State Electricity Board Vs. Orissa Tiles Ltd., in support of his contention that the consumer was liable to pay the minimum consumption guaranteed charges if the supply was disconnected during the subsistence of the agreement for non-payment of electricity charges for the period subsequent to the disconnection of the electricity. In this decision, the agreement fur supply of the electricity between the parties had taken place in the year 1965 for a period of five years, but the supply was disconnected in 1968 for non-payment of electricity charges and it was under these circumstances that the aforesaid decision was given by the apex Court. It fully applied to the facts of the instant case before this Court and there was no substance at all in the contention of the petitioners that the UPSEB was not entitled to claim payment of minimum consumption guaranteed charges for the month of June, 1995.

11. For the UPSEB, reliance was placed upon another decision of the Hon"ble Supreme Court reported in General Manager-cum-Chief Engineer, Bihar State

Electricity Board and Others Vs. Rajeshwar Singh and Others, wherein also it was held that the firm would be liable to pay the minimum consumption guaranteed charges unless it could be shown that the contract itself had been terminated. It was further held that the mere disconnection of the electricity supply would not amount to termination and if there was no application for restoration within seven days of disconnection, that would be deemed to be a notice for termination, and the contract would be terminated either at the end of this period of the notice or the tenure of the agreement, whichever was longer. The Hon"ble Supreme Court had considered and followed its earlier decision reported in Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, .

12. From the above discussions, thus, it was evident that petitioner No. 1, M/s Pilibhit Ispat (P) Limited was liable for payment of the minimum consumption guaranteed charges for the month of June, 1995 to the UPSEB. The recovery proceedings initiated by the UPSKB. thus, were perfectly valid and legal proceedings and the Collector and Tahsildar, Pilibhit, had got every right to arrest petitioner No.2, Shri A. Solanki in their attempt to execute the recovery certificate.

13. As observed above, the petitioners had not sought the declaration in the civil suits against the bill for non payment of the dues for which action was being taken by the UPSEB and the necessary Court fees of the said bill etc. liable to be paid in the suit had not been paid due to which it was not maintainable for mere prohibitory injunction restraining disconnection and the orders passed by the Civil Judge, Pilibhit, granting injunction in favour of the petitioners were wholly illegal and void. Shri Sudhir Agrawal for UPSEB placed reliance upon a division bench decision of this Court reported in 1995 AWC 443 Sir Shadi Lal Enterprises Ltd, New Delhi v. State of U.P., wherein it was held that in a suit of like nature, it was essential for the plaintiff to claim declaration of non-liability, which however had not been claimed by the petitioners.

14. The Civil Judge, Pilibhit, while passing the aforesaid orders had flagrantly violated the provisions of U.P. Civil Laws (Reforms and Amendments) Act, 1976, by which in sub-rule (2) of Rule 2 of Order 39, Civil Procedure Code, a proviso was inserted, the relevant portion of which reads as follows:--

"Provided that no such injunction shall be granted

(g) to stay the proceedings for the recovery of any dues recoverable as laid revenue unless adequate security is furnished and any order for injunction granted in contravention of the provision shall be void.

15. It need not be mentioned again that the amount sought to be recovered on account of the minimum consumption guaranteed charges was recoverable and land revenue and the Civil Judge, therefore, if he at all decided to grant interim injunction, should have directed for adequate security to protect the interest of the UPSEB, but he for reasons of his own. preferred to protect the interest of the

plaintiffs only by passing illegal and void orders in a suit which was not maintainable even, as already held above. The same illegality was committed by him in the earlier civil suit. It is a serious matter and requires consideration by the Court.

16. In the result, therefore, we are of the opinion that the writ petition is totally, devoid of merits and liable to be dismissed summarily at the stage of admission Ordered accordingly.

17. Petition dismissed.