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**(1993) 09 PAT CK 0055**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 2397 of 1993 (R)

Najeeb Zaman

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

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**Date of Decision :** 24-09-1993

**Acts Referred:**

**Citation :** (1993) 09 PAT CK 0055

**Final Decision :** Allowed

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## **Judgement**

S.B. Sinha and Narayan Roy, JJ.—In this application the Petitioner has prayed for a direction upon the Respondents to grant electrical connection to him and for issuance of an appropriate writ for quashing the directions of the Electrical Executive Engineer vide memo No. 944 dated 21.6.1993 as contained in Annexure 7 to the writ application.

2. The fact of the matter lies in a very narrow compass.

3. Md. Qaiser Zaman, brother of the Petitioner had applied before Respondent No. 1 for grant of electrical connection and pursuant thereto an agreement dated 2.11.1978 was entered, into by and between Respondent No. 1 and the said applicant. Initially, a connected load of 35 H.P. was granted which was later on increased to 97 H.P. Another agreement was entered into on or about 9.3.1992 whereby Respondent No. 1 agreed to supply to Qaiser Zaman for running an Ice Plant with a connected load of 8 H.P. According to the Petitioner the said connections were taken by his brother in his individual capacity. On or about 9.9.1979 the Petitioner along with his other brothers" and father constituted a partnership firm for running a business of Cold Storage. According to the Petitioner all along the aforementioned Qaiser Zaman continued to treat the said electrical connection as his (sic) Allegedly, serious disputes and differences arose between the partners of the said firm. The Petitioner filed a Title Suit No. 47 of 1991 in the Court of Sub-Judge I, Ranchi for dissolution of the firm and for rendition of the account. According to the Petitioner the said Qaiser Zaman filed two applications dated 22.2.1993 surrendering his electrical connections bearing

consumer Nos. M-1324 and M-1378. He however, gave an undertaking to pay the dues which may be found payable as also other legal charges to the Respondent Board. Pursuant to the said applications, the electrical connection was disconnected on 2.3.1993. According to the Petitioner the aforementioned steps have been taken by Qaiser Zaman in a vindictive manner in order to put the Petitioner to loss. The Petitioner filed a writ petition in this Court being C.W.J.C. No. 923 of 1993 praying for a direction upon the Respondents to reconnect the aforementioned two electrical connections. The said Qaiser Zaman who was Respondent No. 4 in the said petition filed a counter affidavit opposing the prayer of the Petitioner. The Petitioner in his application has quoted paragraphs 8, 15, and 16 from his counter affidavit.

The Petitioner thereafter filed an application for fresh electrical connection in the name of Gulmarg Refrigeration on 29.3.1993. A reminder was also sent by the Petitioner on 9.4.1993. By a letter dated 15.4.1993, the Electrical Executive Engineer however, put unreasonable pre-conditions for grant of electrical connection in his favour. The Petitioner thereafter filed a writ application before this Court being C.W.J.C. No. 1513 of 1993(R). In the said writ application also Md. Qaiser Zaman raised objection. According to the Petitioner although the said objection was totally unfounded but in order to obviate hurdles the Petitioner made an application for a new electrical connection in his own name as a result whereof the aforementioned C.W.J.C. No. 1513 of 1993 (R) was disposed of by this Court by an order dated 20.5.1993 as contained in Annexure 5 to the writ application whereby the concerned authorities were directed to consider the application of the Petitioner and pass orders within three weeks. On 26.5.1993, an application was filed by Respondent No. 4 requesting him to grant a fresh connection, a copy whereof is contained in Annexure 6 to the writ application. The Petitioner by a letter dated 31.5.1993 also requested the General Manager-cum-Chief Engineer, Area Electricity Board to look into the matter as the matter was unnecessary lingering. However, by a letter dated 21.6.1993, as contained in Annexure 7 to the writ application the Electrical Executive Engineer put the following five pre-conditions for grant of fresh connection:

- (1) Documentary proof regarding his ownership/partnership or authority over the plant as two of his brothers have objected to any connection.
- (2) If there has been any partition, the same should be furnished.
- (3) The applicant may be asked to clear the dues on the premises amounting to Rs. 1,23,690.14 for connection No. M-1324 and Rs. 9,751.30 for M-1378.
- (4) The running load of the plant was 97.8 H.P. whereas applicant applied for 65 H.P. on 30.3.93 and again for 90 H.P. on 27.5.93 hence the applicant may be requested to give the project report of the plant to ascertain the load.
- (5) The licence of the Cold Storage may be asked for to ascertain the ownership and validity of licence.

4. The Petitioner replied to that letter by his letter dated 3.7.1993 which is contained in Annexure 8 to the writ application wherein he relied upon a decision of this Court in M/s. Waxpol Industries Limited and another Vs. Bihar State Electricity Board, Patna and others, . According to the Petitioner despite the fact that he had made several representations, the electrical connection has not been granted in favour of the Petitioner.

5. In this case, no counter affidavit has been filed on behalf of the Respondents but a note of arguments has been filed. It has been contended by the Respondents that a sum of Rs. 1,23,600.14 paise is outstanding dues against the firm M/s Gulmarg Refrigeration. According to the Respondents owing to dissolution of the firm, the Petitioner has filed an application for obtaining a fresh connection. It has been contended that in view of the Circular letter dated 19.1.1972, no fresh connection can be granted without recovery of the outstanding dues. It has further been submitted that from a perusal of Annexure 9 to the writ application, it would appear that an application for electrical connection was filed on behalf of another partner of M/s Gulmarg Refrigeration.

6. The Respondents have relied upon a decision of this Court dated 5.9.1991 passed in C.W.J.C. No. 1536 of 1991 (R): Isa Marbles v. Bihar State Electricity Board and Ors. The questions posed in this case are no longer res integra.

7. Clause 6 of the 1st Schedule appended to the Indian Electricity Act enjoins an obligation to grant electrical connection to any person upon requisition made in this regard but subject to the terms and conditions mentioned therein. In terms of the aforementioned provisions, the Bihar State Electricity Board which is a State within the meaning of Article 12 of the Constitution of India has a legal obligation to grant a fresh electrical connection.

8. Even in Clause II of the Circular letter dated 19.1.1972 relied upon by the Respondents it has been directed as follows:

There may be a genuine case in which the old consumer (who had committed default in payment of the dues) has left the premises for good and another person, not connected with him in any manner has come in occupation thereof and he wants re-connection. In such a case, it may neither be legal nor proper to insist on realisation of the arrear dues from him for giving reconnection. In such a case, the Assistant Engineer concerned should personally enquire into the matter and, on being satisfied regarding its genuineness submit a detailed report in regard thereto to his Superintending Engineer, through his Executive Engineer, for approval to give re-connection to the premises, without realisation of the arrear dues. The re-connection may be given in such a case, only after the approval of the Superintending Engineer has been received.

It is, therefore, clear that a distinction has to be made between an application for reconnection and an application for grant of fresh connection by a person. The Respondents have not denied or disputed that electrical connections granted in favour of the brother of the Petitioner were in his individual name. The Petitioner

also did not suppress the fact that upon constitution of a partnership firm in the name of M/s Gulmarg Refrigeration, Ice Factory was being run by it. The Petitioner further has, brought on records that his brother Md. Qaiser Zaman surrendered the electrical connection which has been accepted. The Respondents have also not denied or disputed the statements made by the Petitioner to the effect that the Petitioner's brother had undertaken to pay all legal dues and on the basis of the said undertaking the surrender of electrical connections by him was accepted.

9. It has also not been disputed that in C.W.J.C. No. 932 of 1993 (R) a counter affidavit was filed by Md. Qaiser Zaman and he resisted the prayer of the Petitioner for reconnection. In the said counter affidavit it was stated as follows:

Para 8.--That it is stated that the aforesaid writ application has been filed by the said Md. Akhlaque Zaman for direction, inter alia, upon the Bihar State Electricity Board for restoration of electrical line being consumer nos. M-1379 and M-1324 which stand in the personal name of this Respondent namely Md. Qaiser Zaman for which this Respondent entered into 3 separate agreements in his own name with Bihar State Electricity, Board being agreements dated 2.11.1978, 12.2.1981 and 9.3.1982 and accordingly since the very beginning up-to-date bills are being raised by the Bihar State Electricity Board in the personal name of Md. Qaiser Zaman (Respondent No. 4) with respect to aforesaid electrical connection namely M-1378 and M-1234 the subject matter of writ application.

Para 15.--That with respect to statements made in para 6 of the writ application, it is stated that this Respondent allowed the erstwhile M/s Gulmarg Refrigeration to use the aforesaid electrical connection for the purpose of running the Ice Factory and Cold Storage during the time when the said firm was in existence. And after dissolution of the same this Respondent also allowed his brothers to use the same for the purpose of running this business of Cold Storage as also proprietors as stated in para 4 above. The Current Bank account No. 101 with Central Bank of India was lying unoperative because of the dispute between the partners of the erstwhile M/s Gulmarg Refrigeration in which handsome money was also lying and since after the dissolution of the said firm all the four brothers agreed to make payment of electrical bills separately regarding their own use of above electrical connections and the money which was lying in the said account was obviously belonging to all the partners of the dissolved firm Gulmarg Refrigeration. As such under those circumstances the letter contained in Annexure 2 of the writ petition was issued and submitted to Central Bank of India.

Para 16.--That, with respect to statements made in para 7 of the writ application, it is stated that the above electrical connections are in the name of Md. Qaiser Zaman (Respondent No. 4) and not in the representative capacity of the dissolved firm M/s Gulmarg Refrigeration as alleged in this paragraph.

10. It is also not disputed that Md. Qaiser Zaman also appeared in C.W.J.C. No.

1513 of 1993 (R). The Respondents have also not denied or disputed that the partnership firm had been dissolved.

11. Recently, a Division Bench of this Court in *Sugam Packaging Pvt. Ltd. v. Bihar State Electricity Board* C.W.J.C. No. 5358 disposed of on 22.7.1992 has held that the electrical dues are personal dues of the consumer and the same does not run with the electrical connection. It has further been held that unless a fraud is practised by a party in order to obtain a new connection for the purpose of evading lawful dues of the Bihar State Electricity Board, it is not reasonable to refuse reconnection in view of Clause 6 of 1st Schedule appended to the Electricity Supply Act. In that case, this Court has distinguished and not followed the decision of this Court in *Isa Marble's case* (supra) and followed the earlier decision of this Court in *Ram Kishore Chaudhary's case* and agreed with the decision in *M/s. Waxpol Industries Limited and another Vs. Bihar State Electricity Board, Patna and others*, . In that case this Court further noticed a decision in *Dasi Mordhwaj Cold Storage Pvt. Ltd. v. Bihar State Electricity Board and Ors.* in C.W.J.C. No. 6437 of 1992. It was held:

In our opinion, with utmost respect to the Hon''ble Judges, the approach to the question is not correct.

A transaction is presumed to be bonafide unless it is held otherwise. Whenever a transaction is held to be fraudulent the same is vitiated. A Statute cannot be interpreted on a supposition that the action of a party may be fraudulent. Further commission of a fraudulent act is an action on the part of a party. The same, thus, when proved vitiates the transaction, but the same has nothing to do for the purpose of consideration as to the power of a statutory authority.

A statute has to be interpreted keeping in view the words used therein and not on hypothesis. If a transaction is sham or collusive or fraudulent, no title in respect of the property in question passes to the transferors. There may be transactions which are entered into in order to defeat the legitimate claim of the third parties. Such, sham, malafide or bogus transactions are not transactions in the eye of law. However, unless a transaction, is held or shown to be a sham, malafide, or bogus transaction, the same must be presumed to be a bonafide one. A bonafide purchaser of a property in a Statutory sale, therefore, does not come within the purview of the illustration given by the learned Judges.

12. This Court also observed:

Further, the Bihar State Electricity Board also cannot be permitted to take advantage of its own wrong. It is bound to serve bills upon consumer every month and realise the same within the stipulated period. In case of any default, it can and should immediately take recourse to Section 24(1) of the Indian Electricity Act and take steps for realisation of its dues. If the Bihar State Electricity Board sleeps over its right and allows a defaulting party to enjoy uninterrupted supply of electrical energy resulting in mounting of arrears, it has to thank itself for it. Thus it cannot take advantage of its own wrong by suddenly

waking up from its slumber and refuse to give new electrical connection to a consumer when the owner of the premises defaulted not only in payment of electrical dues but also in payment of dues of other statutory corporation. The dues as against such a person can only be recovered from him by filing a suit unless and until a statute provides a power to realise the dues of consumer from a third party. In absence of such a statutory provisions or contract the Bihar State Electricity Board cannot do so.

There is another aspect of the matter. Under Clause VI of the Schedule of the Indian Electricity Act, a consumer is required to furnish Adequate security. The Bihar State Electricity Board can also ask for additional security as and when required.

Such securities either carry no or little interest, in *Ferro Alloys Corporation Ltd. v. A.P. State Electricity Board* reported in J.T 1993 (2). (S.C.) 85, it has been held that interest free security is really an adjustable advance payment of consumption charges. The Supreme Court noticed that normally a period of 2 1/2 month is needed for recovery of the amount before action for disconnection can be taken.

13. The law was further laid down in the following terms:

It is thus, not correct to contend that the electrical energy is supplied to an industry and not to the Company. The Industry as such is not a juristic person. The Industry has its owner and although there is no-electrical energy supplied to an unit but the unit is not a contracting party inasmuch as a unit is not a juristic person and thus capable of entering into a contract.

Further it is now also well settled that Section 24 of the Indian Electricity Act has to be construed strictly. Such an action can only be taken as a last resort. It has also been held by various courts including this Court that even if a person has two connections in the same premises, one connection cannot be disconnected for realisation of arrears of dues relating to the other connection.

Reference in this connection may be made to *John Earnest Edward and Another Vs. Rai Jogendra Chandra Ghose Bahadur*, .

Following the aforementioned decisions in relation to a telephone matter, I have held in *Chotanagpur Engg. Works v. Union of India* reported in 1987 BLT 299 that the telephone connection of a Director cannot be disconnected for non-payment of dues by a company.

In *Tanduri Chenchiah and Others Vs. The Secretary, Andhra Pradesh Electricity Board, Hyderabad and Others*, it has clearly been held that for default to pay electrical dues of a firm, the electrical connection of the partners thereof cannot also be disconnected.

Reference in this connection may be made to *Andhra Cement Co. Ltd. v. A.P. State Electricity, Board* reported in 1983 A.P. 263. These decisions therefore

indicate that power u/s 24 can be exercised only in relation to a consumer and that too in respect of Electrical Connection in question.

Section 24 of the Indian Electricity Act, so construed, cannot be held to confer any power upon the Board not to give fresh electrical connection.

14. For the reasons aforementioned, the contention of the Respondents to the effect that no new electrical connection can be given cannot be accepted. In this view of the matter, this application is allowed and the Respondents are hereby directed to grant a fresh connection to the Petitioner in accordance with law.