
(2023) 04 TEL CK 0052
In the Telangana High Court
Case No : Writ Petition No. 5396 Of 2023

Rahmath Banu

APPELLANT

Vs

State Of Telangana And 3 Others

RESPONDENT

Date of Decision : 17-04-2023

Acts Referred:

Electricity Act, 2003 — Section 2(15)

Citation : (2023) 04 TEL CK 0052

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. In this Writ Petition, the petitioner is seeking a Writ of Mandamus declaring the action of respondent No.3 in rejecting the release of new service connection to the petitioner against the Registration No.NR90423819507, dated 07.02.2023 as illegal, arbitrary and in violation of the provisions of the Electricity Act, 2003 and consequently to direct the respondents to set aside the rejection order and release new service connection of 1000 Watts applied vide Registration No. NR90423819507, dated 07.02.2023 and to pass such other order or orders in the circumstances of the case.

2. Brief facts leading to the filing of the present Writ Petition are that the petitioner claims to have purchased 131 Square Yards of land situated at Municipal No.19-2-213/13/A, Chandulal Baradari, Hyderabad from Mrs. Mohammedi Begum, W/o Mohd. Qadeer Ahmed vide Registered Sale Deed bearing No.145/2023, executed on 13.01.2023 at the Sub-Registrar Office, Dhood Bowli, Hyderabad. Thereafter, the Petitioner had made an application for providing electricity connection vide Registration No. NR90423819507 on 07.02.2023. However, the same was rejected on the ground that the dues of the previous owner are not paid and therefore, new service connection cannot be given unless dues to an extent of Rs.23,00,000/- are paid which are pending in respect of seven (7) individual OSL services in the said premises. Challenging the

same, the present Writ Petition is filed.

3. Learned Counsel for the petitioner submits that the petitioner is a bonafide purchaser who has paid the sale consideration for the property and that she has conducted due diligence before the purchase of the property. He submits that the respondents have not raised any bills for electricity connection against the previous owner and therefore, the respondents cannot now insist or require the petitioner to make payment of the consumption charges of the previous owner. He further submits that, since the respondents have not raised the bill, they are not entitled to recover the same from the subsequent owners. In support of this contention, he places reliance upon the judgment of the Hon'ble Supreme Court in the case of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla Civil Appeal No.1672 of 2020, dt.18.02.2020.

4. On a query from the Bench as to whether the petitioner is willing make payment of the dues of consumption charges proportionate to the extent of her holding, the learned counsel for the petitioner submitted that the petitioner is not willing to pay the dues of the previous owner.

5. The learned Standing Counsel for the respondents, on the other hand, relied upon the averments made in the counter affidavit and submitted that the respondents have raised a demand against the previous owner, who then had approached the Consumer Grievance Redressal Forum and the Forum, vide Orders dt.26.09.2022, held that the back billing issued by the respondents prior to the date of inspection is not in accordance with law and the same is liable to be set aside. It further held that the respondents are entitled to claim the dues under HT Category by clubbing the services into single service for the total consumption from the inspection date i.e., 10.12.2020 and further that the bills of all services are still being issued under LT Category even though the services were to be clubbed from the date of inspection and the respondents were therefore permitted to club the bills and a single bill raised.

6. The learned Standing Counsel submitted that the respondents have complied with the directions of the Consumer Grievance Redressal Forum and have clubbed all 7 connections and final demand of Rs.22,86,385/- has been raised. It is submitted that the bill has been raised for the period from 10.12.2020 to August, 2022. It is stated that the said amount has not been paid till date. The learned Standing Counsel submitted that as per the clause 5.9.6 of the General Terms and Conditions of Supply, on termination of service of a consumer, an applicant is treated as a fresh application for the purpose of giving supply to the same premises when applied for and service connection shall be provided if there are no dues over the previous service connection. Further as per Clause 8.4 of the General Terms and Conditions of Supply, the seller of the property shall clear all dues and on failure to do so, the respondent company may refuse to supply electricity to the premises through the already existing connection or refuse to provide a new connection. He submitted that the Hon'ble Supreme Court in the

case of Telangana State Southern Power Distribution Company Limited and another V/s. Srigdhaa Beverages (2020) 6 SCC 404 has held that electricity dues are statutory in character under the Electricity Act and as per the terms and conditions of supply, they cannot be waived. It is submitted that the respondents are therefore entitled to take required steps to recover the dues by refusing to provide a new service connection until the dues are paid.

7. The learned counsel for the petitioner, however, placed on record the copy of the demand notice dt.27.12.2022 which was pasted on the wall of the petitioner's property.

8. Having regard to the rival contentions and the material on record, this Court finds that the previous owner of the property has not been made party to the present Writ Petition and therefore, the Writ Petition fails on this account itself. As per Section 2(15) of the Electricity Act, 'consumer' means any person who is supplied with electricity for his own use by a licensee or the Government and includes any persons whose premises are for the time being connected for the purpose of receiving electricity. It is noticed that the petitioner is not a consumer of the respondents and it is the previous owner of the property who was the consumer. Therefore, the respondents would have to issue notice to its consumer, i.e., the previous owner of the property and the bill can also be raised on the previous owner of the property in whose name the service connection was given. As per the copy of the notice which is supposedly pasted on the premises of the property Vide letter dt.27.12.2022, the consumer was due of Rs.23,96,966/-. Therefore, it is clear that the demand has been raised against the previous owner of the property and the petitioner being the successor-in-interest is also liable for any of the liabilities of the previous owner. Therefore, it cannot be argued that the petitioner is not responsible for the dues of the previous owner.

9. The judgment of the Hon'ble Supreme Court in the case of Telangana State Southern Power Distribution Company Limited and another V/s. Srigdhaa Beverages ((2020) 6 SCC 404 supra) makes it clear that the Electricity dues are statutory in character under the Electricity Act and as per the terms and conditions of supply, they cannot be waived and cannot partake the character of dues of purely contractual nature.

10. In the judgment of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla (Civil Appeal No.1672 of 2020, dt.18.02.2020 supra), the Hon'ble Supreme Court has further held that the obligation to pay the arrears of consumption of electricity would arise when the bill is issued by the licensee company quantifying the charges to be paid.

11. In this case, the previous owner of the property against whom the bill or demand is raised is not made a party to this Writ Petition and therefore there is no averment confirming or contradicting the statement of the respondents in the counter affidavit that the final bill has been raised.

12. In view of the same, this Court is of the opinion that the dues of the previous owner cannot be waived and the successors-in-interest of the said property are liable to make payment of the consumption charges of the previous owner proportionately to the extent of their holding if their application for a new service connection was to be considered by the respondents.

13. Therefore, the writ petition filed by the petitioner is dismissed giving liberty to the petitioner to make payment of the arrears proportionately to the extent of her holding and if such payment is made, the respondents are directed to consider issuing fresh service connection to the petitioner.

14. Pending miscellaneous petitions, if any, in this Writ Petition shall also stand dismissed.