

(2003) 01 JH CK 0061

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3276 of 2001

Rajendra Prasad Burnwal and Others

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 376

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant; A.K. Mehta and C. Prabha, for the Respondent

Judgement

Vikramaditya Prasad, J.—Heard both the sides.

2. The petitioner has filed this writ petition with the following prayers-

(i) For quashing the certificate proceeding initiated against the petitioner Nos. 1 and 2 as contained Annexure 3;

(ii) For quashing the certificate proceeding being Certificate Case No. 2/Elect. of 2000-01, Annexure 5, for realization of the energy dues against the Consumer No. ISI-00280 for the period 2/95 to 7/95 on the grounds that (i) though the power connection was disconnected as back as in 7/95. yet without submitting any fresh demand, the bill was raised in the year 2000 even for the period of 7/97, Annexure 3/2, because in Annexure 3/2 itself the line disconnected has been shown by the respondents to be as 8/95; (ii) the demand is time barred by limitation and (iii) as there is a contractual liability of paying the bills between the consumer who enters into an agreement with the Board, no such liability can be fastened with the other members of the family, even though the family is a joint one because the demand is a personal liability and cannot be charged on the joint family.

3. The short facts of the case are that the energy connection No. ISI-00280 was

given in favour of the petitioner No. 3, Mahendra Prasad Burnwal. The other two petitioners, namely Rajendra Prasad Burnwal and Surendra Prasad Burnwal, are his brothers and live in the same premises. A demand notice was received by the petitioner, Mahendra Prasad Burnwal, and he made a protest and requested the authorities for revising the same. It appears that thereafter, vide Annexure 2, the Junior Engineer was advised the followings :

"Bill of abovenoted Consumer has been made upto 7/95 but consumer is stating through Regd. Dak that line has been disconnected in April, 95. Since bill has been made for 6/95 and 7/95 for 300 units, please send the date of disconnection so that one month advance bill should be charged after the date of disconnection."

Regarding this letter, the respondent Board has said that this was a letter for the personal knowledge of the Board Officers and was not for the benefit of the petitioner.

4. The learned counsel appearing for the petitioner, with regard to the letter, said that when he went to the Junior Engineer, the Junior Engineer made over him this letter and this letter cannot be of confidential nature, rather it indicates that the petitioner had pleaded the disconnection and so protested the bill. The learned counsel appearing for the petitioner also said that in the counter-affidavit, it has not been stated regarding this letter that this is forged. Then it appears that a certificate proceeding was initiated against the petitioner, including the petitioner, Mahendra Prasad Burnwal, who was the consumer and in whose name the connection stands. Annexure 3/2 shows that they were the energy due bills rightly from 2/95 till 5/95; some arrears have been shown but in 6/95, the unit consumed has been shown to be nil; in 7/95, the unit consumed has been shown to be nil and in 8/95 D/L has shown recorded. Then further the arrears of fuel surcharge with month 7/97 has also been shown. From Annexure 4, it is found that the petitioner filed a petition before the Certificate Officer, denying his liabilities and he took a plea that the demand was barred by limitation. Annexure 5 is the order-sheets of the certificate Court. The order dated 15.6.2001. inter alia, reads as follows :

"Abhilek Me Pamatra CHR (Certificate Holder) Dwara Dayar Ke Anusar CDR Ka Bidyut Samandh Din 8/95 Me Vichedit Kiya Giya Tha."

Now in the counter-affidavit, the respondents, vide paragraph No. 5, have stated as follows :

"That on the basis of agreement between petitioner No. 3 and respondent No. 3, an Electric Connection Consumer No. ISI- 00280 was allotted since February, 1995 which was never disconnected as per the Board's records nor any intimation was given to the petitioner for disconnection of the said energy connection and hence a certificate Case No. 2/Elect. of 2000-2001 was lodged for realization of the dues without disconnection of the same."

5. This counter-affidavit has been filed on 17.6.2002. But the earliest statement given by the Board (Certificate Holder) before the certificate Court is that the line had been disconnected on 8/95. Obvious, it is that this submission made in the counter- affidavit contradicts the earlier statement given by the Board. So without going into the details of the case, considering the Annexure 3 series as also the statement made by the respondent Board before the Certificate Officer that the line was disconnected, as per their own showing, in 8/95, it is found that if the line was disconnected in 8/95 then after the period of limitation of 3 years, the amount becomes irrecoverable and for its realization, no legal recourse had been taken prior to that. With regard to the delay in filing the certificate case, it has been averred by the respondent Board in paragraph No. 13 of the counter-affidavit as follows :

"That the Certificate case was presented before the Certificate Officer on 31.7.1997 which is within three years, claim is not barred under law. That due to non-availability of the Certificate Officer, the notice u/s 7 of the UBPDR Act, 1914, cannot be issued."

The order-sheet that has been filed by the petitioner of the Court of the Certificate Officer, starts from 8.6.2001. The order dated 15.6.2001 reads as follows :

"Yeh Bad Dinank 4.8.2000 Ko Parva Nilam Patra Padadhikari Ke Nayayalaya Me Zila Nilam Patra Padadhikari Se Prapt Hua."

It is not clear from the order-sheets of the Certificate Officer as to actually on which date the certificate case had been filed. No reply has been given by the petitioner with regard to the contents made in paragraph No. 13 of the counter-affidavit that the certificate case has been presented before the Certificate Officer on 31.7.1997, Though the respondents have not annexed any documents in support of their claim, but in absence of refutation of this claim by the petitioner that the certificate case was filed before the Certificate Officer on 31.7.1997 cannot be disbelieved because it is a statement made on affidavit. If the certificate case was filed on 31.7.1997, then in that circumstances, if any due occurred in 8/95, its recovery is not barred because the certificate had been filed within the period of three years. In the aforesaid circumstances, so far the certificate proceeding against the petitioner Nos. 1 and 2 are concerned, it is quashed because they are not the consumers in the legal sense of the term and as such, no certificate proceeding can be against them. In view of the fact that the certificate proceeding, as averred by the respondents in their counter-affidavit, was lodged as back as on 31.7.1997, this matter is contentious as to whether the certificate case was presented on 31.7.1997 or it was registered on 4.8.2000. Even if it was registered on subsequent date, there can be no lapses on the part of the respondents if they have filed the certificate case in time. This matter requires examination at the appropriate level by the Certificate Officer himself.

6. In the aforesaid view of the matter, the writ petition is disposed of with the following directions :

(i) The certificate proceeding shall not continue against the petitioner Nos. 1 and 2; and

(ii) The Certificate Officer will examine the exact date of presentation of the certificate case, the date will matter but not its registration, if that was filed on 31.7.1997, the proceeding will proceed, if it is found that it has been filed after the period of limitation of three years, then the proceeding shall stand quashed.