

(2012) 10 MP CK 0164
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5386 of 2012

Rameshwar Ram Patel

APPELLANT

Vs

Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. and
Others

RESPONDENT

Date of Decision : 16-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Electricity Act, 2003 — Section 56(2)

Citation : (2012) 10 MP CK 0164

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : S.B. Mishra, with Mr. Tapendra Sharma, for the Appellant; Vivek Jain, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Shri Justice Sujoy Paul

1. The facts giving rise to this writ petition are that petitioner an employee of the State Government purchased a house by sale-deed (Annexure P/3). After getting the possession of the house, he preferred an application for grant of new electricity connection. The respondents, in turn, informed him that an unpaid electricity bill of erstwhile owner to the tune of Rs. 1,35,000/- is required to be paid by the petitioner and then only new connection can be granted to him. This action of the respondents is called in question in the present writ petition. Shri S.B. Mishra, learned senior counsel for the petitioner, submits that in the sale-deed there was a declaration by the seller that there is no outstanding amount with regard to water, electricity or other taxes. If there exists any such unpaid amount, it shall be the duty of the seller to pay the same.

2. The main thrust of the argument of learned senior counsel for the petitioner is founded on Section 56(2) of the Electricity Act, 2003 and Clause 4.17 of the M.P. Electricity Supply Code, 2004. Learned senior counsel submits that as per

Section 56(2), no amount can be claimed which is due for a period beyond two years from the date when such sum became first due. By placing heavy reliance on the words employed in Clause 4.17 viz "he was associated", it is submitted that petitioner was never associated as a Partner, Director, Managing Director, occupier or owner of the premises in question previously, and therefore, the aforesaid unpaid electricity bill cannot be thrust upon the petitioner. He relied on various judgments including AIR 2004 SC 2171 (Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd. and others), 2007 (I) MPJR 281 (Kapoor Saw Manufacturing Co. vs. M.P.S.E.B. & Ors.), 2010 (1) MPJR 612 (Mahila Kamla Dubey vs. M.P. Vidyut Mandal, Gwalior and others) and M.P. Paschim Kshetra Vidyut Vitran Company Ltd. Vs. Electricity Consumer Grievances Redressal Forum and Another, . He submits that the action of the respondents in not providing new electricity connection is violative of Article 14 and 21 of the Constitution of India.

3. Per contra, Shri Vivek Jain, learned counsel for the respondents, relied on same clause 4.17 and submits that Section 56(2) has no application in favour of the petitioner because it shows that if the amount is continuously recoverable as arrears of charges for electricity supplied, the limitation and bar in the first portion of sub-section 2 will not come for the rescue of the petitioner. By placing reliance on the electricity bill (Page 7 with the return) (Annexure R/1), it is stated that it is even otherwise well within two years and is a continuous liability on the petitioner, and therefore, Section 56(2) cannot be pressed into service in favour of the petitioner. He also relied on Haryana State Electricity Board Vs. Hanuman Rice Mills and Others, and Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, and a recent judgment of this Court in Mahila Kamla Dubey Vs. Madhya Pradesh Vidyut Mandal and Others, By placing heavy reliance on this judgment of Gwalior Bench, it is stated that this is also a case of subsequent purchaser and by considering the Clause 4.17 aforesaid, this Court opined that unpaid bills are required to be paid even by a subsequent purchaser.

4. I have heard learned counsel for the parties and perused the record.

5. The argument of learned senior counsel for the petitioner based on Section 56(2) cannot be accepted. The simple reason is that the amount as per Annexure R/1 is well within the period of two years and it is continuous in nature. Thus, a bare perusal of sub-section 2 aforesaid will make it crystal clear that impediment of recovery beyond two years will not be applicable in favour of the petitioner in the present case.

So far as interpretation of Clause 4.17 is concerned, the learned senior counsel's main thrust is on the basis of a Division Bench judgment of this Court reported in M.P. Paschim Kshetra Vidyut Vitran Company Ltd (supra). In the said judgment, Division Bench of this Court had an occasion to consider the same Clause 4.17. However, the entire discussion and analysis of this Court is in a case of a petitioner who was an auction purchaser. He purchased the property in question

from a sale by the Court. In this context and under this gaze, the Clause 4.17 was analyzed by this Court.

In Mahila Kamla Dubey (supra) this Court considered earlier judgments rendered in the cases of Isha Marbles Vs. Bihar State Electricity Board and Another, Durgesh Agarwal Vs. M.P. State Electricity Board and others, 2009(2) MPLJ (SC) 61 (Paschimanchal Vidyut Vitran Nigam Ltd. and others vs. DVS Steels and Alloys Pvt. Ltd). & ors. and Ahmedabad Electricity Co. Ltd. (supra). After considering these judgments, this Court analyzed Clause 4.17 of the Code. It was opined that at the time Isha Marbles (supra) was decided, there was no provision governing the field, but however, the Supreme Court opined in Paschimanchal Vidyut Vitran Nigam Ltd. (supra) that such regulations/provisions can be framed. After considering the legal changes, this Court opined that the Code became effective from 10.6.2004 and after that if premises is purchased by the petitioner, the Board is well within its authority to refuse new electricity connection on the ground that unpaid amount of old electricity connection is not paid. It was further held that such purchaser is not entitled to new electricity connection until and unless the outstanding amount of old connection is cleared. I am bound by this judgment wherein earlier judgments are taken note of. The Division Bench judgment in M.P. Paschim Kshetra Vidyut Vitran Company Ltd. (supra) deals with a case of an auction purchaser who purchased the property from a sale took place by the order of the Court. Thus, in different context the Clause 4.17 was analyzed. The present case is squarely covered by the order of this Court in Mahila Kamla Dubey (supra). Accordingly, I have no reason to deviate from the said judgment. Resultantly, I am unable to hold that the action of the respondents in refusing new electricity connection is bad in law and contrary to any right of the petitioner. Consequently, petition is dismissed. No costs.