

(2010) 01 AHC CK 0226

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5533 of 2009

Rayana Paper Board Industries Ltd.

APPELLANT

Vs

U.P. Power Corporation Ltd. and Others

RESPONDENT

Date of Decision : 08-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0226

Hon'ble Judges : Suresh Chandra Chaurasia, J and D.P.Singh, J

Final Decision : Allowed

Judgement

S.C. Chaurasia, J.—Heard the learned counsel for the petitioner, Sri Manoj Kumar Dwivedi, learned counsel for the U.P. Power Corporation as well as Sri S.K.Gaur, learned counsel appearing on behalf of respondent no. 4.

2. The respondent no. 4, owner of an industry, had transferred a portion of its industrial land to the petitioner through the registered sale deed dated 14th September, 2006. After execution of the sale deed dated 14th September, 2006, for the purpose of possession of land in question, the respondent U.P. Power Corporation has sent a demand notice to the petitioner for payment of electricity dues to the tune of Rs. 25,36,000/ Feeling aggrieved, the present writ petition has been filed.

3. The submission of learned counsel for the petitioner is that the petitioner does not have any electricity connection and whatever electricity charges are due, it is because of consumption by the respondent no. 4 as the electricity connection was also in the name of respondent no. 4. Accordingly, the submission of the learned counsel for the petitioner is that the amount in question cannot be recovered from the petitioner since he has not utilized the electricity.

4. On the other hand, Sri Manoj Kumar Dwivedi, learned counsel for the U.P. Power Corporation has invited attention of this court towards Clause (ii) & (iii) of para 4.3 of the U.P. Electricity Supply Code, 2005 and submits that the U.P. Power Corporation has got right to recover the dues from the petitioner. For

convenience, Clause (ii) & (iii) of para 4.3 of the Electricity Supply Code, 2005 is reproduced as under:

"(ii) Before sale of a premise is made, the outstanding dues will be cleared and, in the alternative the deed to agreement/sale will specifically mention the outstanding dues and the method of its payment. "Outstanding dues" means all dues pending on a premises including late payment surcharge.

(iii) In case the no dues certificate is not obtained by the old owner, new owner before purchase of property may approach the licensee for no dues certificate, by giving the reference of the connection in said premises. The licensee shall either intimate the pending dues, if any, on the premises or issue no dues certificate within 30 working days from the date of application."

5. A plain reading of the provisions as referred to above by the respondents' counsel indicates that before transferring the land, it shall be incumbent upon the vendor to obtain a no dues certificate with regard to outstanding dues. The burden has also been put on the shoulder of the vendee to obtain a no dues certificate in case the vendor has not discharged his obligation. However, in case, if a land is purchased from the vendor who he is responsible to pay the electricity dues, without obtaining no dues certificate, then Electricity Supply Code does not contain any penal provision against the vendee.

6. The attention of the court has not been invited towards any provision of the U.P. Electricity Supply Code, 2005, which may empower the respondent U.P. Power Corporation to recover the dues from the vendee which was payable by the vendor. In the absence of any statutory provision, the respondents do not seem to have got right to recover the dues from petitioner for consumption of the electricity which were not paid by the respondent no. 4.

7. Attention of this court has been invited towards the judgment of the Hon'ble Supreme court reported in AIR 2007 Supreme Court 2, Dakshin Haryana Bijli Vitran Nigam Ltd. Vs M/s Paramount Polymers Pvt. Ltd. In the aforesaid case, their Lordships of the Hon'ble Supreme Court has observed that in case the purchaser does not pay the electricity dues which was payable by the original owner, then it shall be open for the Power Corporation not to give any electricity connection to the purchaser. Relevant portion from the Judgment of the Hon'ble Supreme Court in the case of Dakshin Haryana Bijli Vitran Nigam Ltd. (Supra) is reproduced as under :

"3. On 27.11.2001, the appellant Company decided to incorporate a term in the Terms and Conditions of Supply of electrical energy by providing that in cases where a consumer had defaulted in paying electrical charges and there had been a consequent disconnection of supply, no fresh connection in respect of the premises would be given to a purchaser unless the purchaser cleared the amount that was left in arrears by the consumer whose undertaking had been purchased. It is seen that the first respondent applied for a connection on 1.1.2002. The appellant Company took the stand that unless the first respondent paid the

amount of outstanding against M/s L.L.C. Steels Pvt. Ltd, the prior consumer, no fresh connection could be given to the first respondent. Since the first respondent was not willing to comply, the application of the first respondent was rejected. The first respondent thereupon filed a Suit, Civil Suit No. 23 of 2002 in the Court of Civil Judge(Senior Division), Faridabad, seeking to restrain the appellant Company from interfering with the use of generators by the first respondent for generating electricity for its use and for a mandatory injunction directing the appellant Company to give a fresh electric connection to the first respondent without insisting on the clearing of the dues of the prior owner of the premises. Even while the suit was pending the first respondent filed a Writ Petition....."

4.....Though, it was stated that electricity is public property and law, in its majesty, benignly protects public property and it behoves everyone to respect public property, since the law, as it stood, was inadequate to enforce the liability of the previous contracting party against the auction purchaser who was a third party and was in no way connected with the previous owner/occupier, the liability could not be enforced against the purchaser or the clearing off of the earlier dues made a condition precedent for grant of a fresh connection. The answer of the appellant Company to argument based on this ratio of *Isha Marbles* (Supra) was that on 27.11.2001, the appellant Company had incorporated a specific term in that regard and in the Terms and Conditions of Supply, and since there was no infirmity or invalidity attached to such a condition, the ratio of the decision in *Isha Marbles*(supra) would not enable the first respondent to ignore the condition specifically inserted in exercise of statutory power and consequently, no relief could be granted to the first respondent unless that condition was also fulfilled by the first respondent."

8.....It is seen that the above amendment was also formally notified on 11.2.2002. As we see it, a transferee of ownership or of right of occupancy of a premises to which electrical connection had been given, is given option to enjoy the service connection already granted by paying the outstanding dues, if any, to the appellant and apply for transfer of service connection and obtain the same by executing a fresh agreement and furnishing a fresh security Sub Clause(b) provides that reconnection or new connection shall not be given to any premises where there are arrears on any account to the appellant unless the arrears are cleared in advance, It has to be noted that reconnection is related to the premises and arrears again is related to the premises. The amount remitted by the transferee towards the arrears are to be adjusted against the dues from the previous consumer, But it is provided that if meanwhile the appellant is enabled to recover the amount from the transferor or consumer, the amount remitted by the transferee consumer is to be refunded, but without, interest. SubClause (c) provides that provisions contained in sub clauses (a) and (b) of clause 21 A shall be applicable to an existing consumer also where defaulting amount exists against the premises occupied by such consumer."

9. In view of the above and keeping in view the provisions contained in Clause (ii) & (iii) of para 4.3 of the Electricity Supply Code, 2005, it appears that though the respondents have got right to withdraw the electricity connection existing in the name of the original owner or decline to grant any new electricity connection to the purchaser, but, the outstanding electricity dues may not be recovered from the purchaser. In the absence of violation of Clause (iii) of the said Code, the option rests in the hands of the respondents not to grant a new electricity connection till the amount is paid by the original owner or by the purchaser. In the absence of any enabling provisions, the U.P. Power Corporation does not seem to have got right to recover the dues which were liable to be paid by the original owner.

10. In view of the above, we are of the view that the citation of the recovery dated 30th May, 2009 issued against the petitioner seems to be an act lacking jurisdiction. The respondents have got right to recover the dues only from the original owner in accordance to law.

11. It has been brought to the notice of this court that already the matter is pending before the Electricity Ombudsman where the respondent no. 4 has submitted a representation disputing the electricity charges, hence, also no recovery could have been made from the petitioner with regard to the electricity charges in question, which are liable to be paid by the respondent no. 4.

12. In view of the above, the writ petition is allowed. The impugned citation of recovery dated 30th May, 2009 is quashed with a liberty to the U.P. Power Corporation to proceed ahead against the respondent no. 4 in accordance to law.