(2008) 03 MP CK 0040

In the Madhya Pradesh High Court

Satish Gangrade and Another — APPELLANT

Vs

M.P. Madhya Kshetra Vidyut Vitran Company Limited and Others — RESPONDENT

Date of Decision : 31-03-2008

Acts Referred:
Electricity Act, 2003 — Section 24

Citation : AIR 2008 MP 211 : (2008) ILR (MP) 1678 : (2008) 3 MPHT 149 : (2008) 3 MPLJ 373

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

Petitioners have assailed the denial of Madhya Pradesh State Electricity Board contained in its letter dated 8-5-2007 marked as Annexure P-1, in respect of electric connection to auction purchasers on the ground that there were dues against the person who availed electricity in the same premises prior to auction.

Short facts giving rise to the present writ petition are that the Cent Bank, Home Finance Limited (respondent No. 4) issued a notice to auction various properties in exercise of powers under Rule 8 framed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, which included the subject flat situated in Serve Dharma Colony, Bhopal, as revealed in the advertisement marked as Annexure P-2. Petitioners being the highest bidder, purchased the said flat in open auction on 28-2-2007. A sale certificate was duly issued on 16-3-2007 and it was duly forwarded for registration to the office of Sub-Registrar, Bhopal, vide Annexure P-4, dated 16-3-2007.

Thereafter, the petitioner made application in due manner to the M.P. Madhya Kshetra Vidyut Vitran Company Limited (respondent No. 1) for grant of electric connection. Respondent No. 1 refused to grant the connection on the ground that certain dues were outstanding against the electricity connection availed in the same flat by the previous owner. Aggrieved by the same, present writ petition has been preferred on 3-7-2007.

It has been averred in the writ petition that the respondent No. 3 had published an auction notice in the newspaper for sale of the subject property to recover the loan amount under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as ''Act of 2002'' for brevity). Petitioners purchased the said flat for Rs. 1,26,000/- being the highest bidder and was granted sale certificate. Requisite charges for its registration with the office of Sub-Registrar were also deposited vide receipt dated 28-3-2007. Petitioners are entitled to obtain a new electricity connection in the purchased property and the same cannot be denied on account of dues of the previous owner. Strength has been derived by the petitioner from the law laid down by the Apex Court in the case of Isha Marbles Vs. Bihar State Electricity Board and Another, and Ahmedabad Electricity Co. Ltd. Vs. Gujarat Inns. Pvt. Ltd. and Others, .

Respondent Nos. 1 to 3 submitted their return refuting thereby the claim of petitioners. They asserted that they have a right to insist for dues of the previous owner and may deny the grant of electricity connection in the same premises until the dues are cleared. For this purpose, Rule 4.17 of the Madhya Pradesh Electricity Supply Code, 2004, has been quoted in specific in the return, which is reproduced below:

;fn miHkksDrk fdlh iwoZorhZ vuqca/k tks fd mlds uke ;k ml QeZ ;k dEiuh ftlds lkFk og iwoZ esa Hkkxhnkj] funs''kd ;k izca/k funs''kd ds :i essa lac) jgk gks ds uke esa fu"ikfnr fd;k x;k Fkk] ls ml ifjlj] tgka uohu dusD''ku dk vkosnu fn;k tkuk gS] ij fo|qr iznk; ds cdk;k ;k vU; cdk;k jkf''k gS vkSj ;g cdk;k jkf''k vuqkfIr/kkjh dks ns; gS rks vuqKfIr/kkjh }kjk vkiwfrZ dk vkosnu ij rc rd dksbZ fopkj ugh fd;k tk;sxk tc rd cdk;k jkf''k dk iw.Zk Hkqxrku ugh gks tkrk gS A fdlh O;fDr dk ,d ubZ lEifRr dk vf/k"Bkrk cuus ij ;g nkf;Ro gksxk fd vkf/kiR; xzg.k djus ds igys og iwoZ ds fo|qr fcyksa dh tkap djs vFkok vkiwfrZ la;kstu ds foPNsfnr jgus dh fLFkfr esa ifjlj ds vf/k"Bku ds ''kh"kZ igys] vuqKfIr/kkjh ds vfHkys[kks ls cdk;k jkf''k dh tkap djs vkSj ;g lqfuf''pr djs fd fcy es n''kkZ;h cdk;k fo|qr jkf''k dk fuiVku ,oa Hkkjekspu gks pqdk gS A ,sls fdlh O;fDr ds vkosnu ij ml ifjlj es iwoZ esa ;k orZeku esa LFkkfir dusD''ku ij cdk;k jkf''k dk izek.k&i= tkjh djus ds fy, vuqKfIr/ kkjh igys ls pkyw fdlh dusD''ku ds }kjk ifjlj dks fo|qr vkiwfrZ nsus ;k ifjlj esa uohu dusD''ku nsus ls euk dj ldrk gS tc rd fd vuqKfIr/kkjh dks ,slh cdk;k jkf''k dk Hkqxrku ugh gks tkrk gSA

Return was submitted on 29-8-2007. This apart, it has been stated in the return that the petitioners while making application for electricity connection, have submitted affidavits acknowledging thereby their liability to clear the dues of the previous owner. It is categorically stated that in view of Clause 4.17 (supra), the judgment of the Apex Court as well of High Court referred to in the writ petition are no more relevant and the petitioners are not entitled to the new electricity connection without paying the debts of respondent Nos. 1 to 3, which are in the nature of dues of the previous owner. It is further stated that the petitioners while purchasing the flat in the auction were knowing well that they were liable to make payment of all the outstanding against the said premises and there is no obligation on the part of the respondent-Board to provide fresh electricity connection without receiving the outstanding amount of the previous owner.

Right of the Electricity Board to recover the dues from auction-purchaser while entertaining an application of the latter to obtain a fresh electricity connection, came up for consideration before the Apex Court in the case of Isha Marbles (supra), which was heard with certain other identical matters. Hon''ble Supreme Court after taking into consideration various provisions of the Electricity Act, observed:

56. From the above, it is clear that the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. Where that premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bonafides of the sale may not be relevant.

The form of requisition relating to the contract is in Annexure VIII prescribed under Clause VI of the Schedule to the Electricity Act. They cannot make the auction-purchaser liable. In the case of Isha Marbles we have already extracted the relevant clause wherein the consumer was asked to state his willingness to clear off the arrears to which the answer was in the negative. Therefore, the High Court has rightly held that the auction-purchaser, namely, "the writ petition before us is ready and willing to enter into a new contract (sic and) that the auction-purchaser does not intend to obtain the continuance of supply of electrical energy on the basis of the old agreement". It is true that it was the same premises to which reconnection is to be given. Otherwise, with the change of every ownership new connections have to be issued does not appear to be the correct line of approach as such a situation is brought about by the inaction of the Electricity Board in not recovering the arrears as and when they fall due or not providing itself by adequate deposits.

What we have discussed above appears to be the law gatherable from the various provisions which we have detailed out above. It is impossible to impose on the purchasers a liability which was not incurred by them.

In the return, it has been stated that the petitioners while making application for new electricity connection have submitted affidavits acknowledging thereby the liability to clear the dues of previous owner. This contention is also not impressive in view of Isha Marbles case (supra).

Although, the decision of Isha Marbles case has been doubted later on by the Apex Court in the case of Ahmedabad Electricity Co. Ltd. (supra), but it is with reference to reconnection and not of fresh connection. Since in the instant case, this Court is concerned with a fresh connection in favour of the auction-purchaser, the decision of Isha Marbles case (supra) stands nowhere diluted. Astonishing fact came up before this Court at the time of arguments that Clause 4.17 of the M.P. Electricity Supply Code, 2004, stood substituted by the following Clause w.e.f. 11-8-2006:

4.17. If the consumer, in respect of an earlier agreement executed in his name or in the name of a firm or company with which he was associated either as a Partner, Director or Managing Director or as occupier and or owner of the premises, has any arrears of electricity dues or other dues on the premises where the new connection is applied for and such dues are payable to the licensee, the requisition for supply may not be entertained by the licensee until the dues are paid in full. However, release of new connections shall not be refused by the Distribution Licensee in following cases:

(i) If the lease deed is cancelled by the State Govt. on account of any reason and allocated to a new party/consumer, then the new party/consumer shall not be required to pay the energy dues of erstwhile consumer.

(ii) If the property is attached and sold by the Income Tax Department/ Commercial Tax Department or such other Govt. Departments for recovery of their dues, then the new purchaser shall not be required to pay the energy dues of erstwhile consumer.

(iii) If the Financial Institutions created under the State Act/Central Act attach, and sell property for recovery of their dues, then the purchaser shall not be required to pay the energy dues of erstwhile consumer.

(iv) On vacation of Govt. Quarter/Flat on transfer of an employee leaving arrears of energy charges, new occupant shall not be required to pay the energy dues of erstwhile consumer.

(v) If there is a specific order from a Court for non-recovery of arrears outstanding on the premises.

By virtue of Sub-clause (iii) of the substituted clause, release of new electricity connection cannot be legally denied by the respondents to the petitioners who have purchased the property on account of sale having been effected by respondent No. 4 (which happens to be a financial institution) for recovery of its dues. No strength is required to be derived even from the case of Isha Marbles (supra). Impugned letter-cum-order contained in Annexure P-1 is absolutely unsustainable in the light of the aforesaid substituted Clause 4.17 of the MP. Electricity Supply Code, 2004. Accordingly, it is held that Annexure P-1 being in flagrant violation of Clause 4.17 (supra), is highly illegal and arbitrary and is not sustainable in law. Accordingly, the same is, hereby, quashed.

Shri Hemant Shrivastava, learned Counsel for the petitioner strongly contended that respondent Nos. 1 to 3 have not committed merely illegality but have acted in gross dereliction of duties, inasmuch as, they have denied the electricity connection to the petitioners in utter disregard of existing Clause 4, 17. Petitioners having purchased the subject flat for residential use in February, 2007 are without any electricity connection on account of highly obstinate attitude of the respondents. Petition having been submitted in the month of July, 2007, has been opposed by the respondents without even considering the relevant legal provisions governing the situation. Petitioners have not been merely dragged into this writ litigation, but were being opposed contrary to the object and purpose of Clause 4, 17. Despite such a clause, respondents have obtained affidavits from the petitioners while submitting application for new connection and have compelled them to acknowledge their liability to make the payment of dues of previous owner. This act is clearly in utter disregard of the legal provisions applicable to the present situation, therefore, the respondent Nos. 1 to 3 are liable to be saddled with exemplary costs.

Accordingly, a cost of Rs. 10,000/- is imposed on respondent Nos. 1 to 3, which shall be payable by respondent No. 1 to the petitioners within a period of one month from receipt of certified copy of this order. In case of failure, the amount of cost would attract interest @ 9% per annum until its realisation. Petition accordingly, stands allowed in the aforesaid terms.

No order as to costs of litigation.

