

(1994) 02 AHC CK 0083

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4136 of 1993

Saved Zafar Abbas

APPELLANT

Vs

Executive Engineer, Electricity Distribution Division, Kalyani
Devi

RESPONDENT

Date of Decision : 08-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 AWC 518

Hon'ble Judges : R.A. Sharma, J;M.C. Aggarwal, J

Bench : Division Bench

Advocate : Vinod Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Although Petitioner was sanctioned a load of 20 H.P. for manufacturing ice-cream at 322, Atarsuiya, Allahabad by the U.P. State Electricity Board (hereinafter referred to as the Board): but neither the meter was installed at the premises nor was he supplied with any power. By a letter dated 14-10-1993 the Board informed the Petitioner that as there are arrears of electricity dues against the premises No. 322 Atarsuiya, Allahabad it will not be possible to give electric connection at the above premises. Petitioner thereafter has filed this writ petition for writ of mandamus directing the Respondents to give electric connection at the above premises. Prayer for getting the aforesaid letter 14-10-1993 quashed has also been made.

2. The Board has filed counter affidavit mentioning therein that at the aforesaid premises there was already electric connection in the name of Smt. Indu Wadhwa/M/S Wadhwa Enterprise for running ice-candy factory and as she failed to pay arrears of electricity dues amounting to Rs. 500400/-, recovery proceedings have been initiated against her and in view of the Board's circular dated 29-5-1973 no electric connection can be given for the above premises. It was further mentioned therein that in case the Petitioner files an affidavit, stating

therein that neither he has any relation with erstwhile consumer nor is he interested in their matter, electric connection can be released in his favour. After receipt of the counter affidavit, Petitioner claims to have filed an affidavit as suggested by the Respondents. Thereafter a supplementary counter affidavit was filed by the Respondents in which it has been mentioned that petitioner is having partnership with Wadhwas, the record of which is in the office of the District Industries Centre, Allahabad and when the Petitioner came to know that the answering Respondents have come to know about the partnership, he moved an application in the office of the District Industries Centre, Allahabad on 20-12-1993, mentioning therein that the partnership firm has come to an end and he has now become its sole proprietor. The stand of the Board is that the Petitioner was electricity connection for running the same old enterprise at the same premises and his whole attempt is to defraud the Board by avoiding the liability of payment of arrears of electricity dues. In supplementary rejoinder affidavit it has been stated by the Petitioner that merely because the premises was being used by Wadhwas earlier and there were arrears against them, the Petitioner cannot be refused the electricity connection. It was further mentioned that Smt. Indu Wadhwa has filed a writ petition against the proceedings initiated by the Board for recovering the aforesaid outstanding dues and this Court has granted stay order, on account of which the new connection cannot be withheld by the Board.

3. The Board's order dated 29-5-1973 provides as under: "A consumer can not be denied a fresh/new connection:

(i) in another premises for non-payment of electricity dues or charges in respect of any other premises owned or occupied by him.

(ii) in a premises for the reasons that certain electricity dues or charges in respect of the same premises are outstanding against another defaulting consumer, unless it appears that the new consumer, is either a legal heir of the defaulting consumer or a person so connected with him that the dues outstanding against the defaulting consumer can be recovered from him.

(iii) in a premises purchased either under a revenue sale or voluntary transfer and the payment of outstanding dues against the electricity in respect of the premises cannot be insisted upon as a condition precedent for the supply of electricity to him.

In the instant case clause (ii) of the order is applicable and the Petitioner is not entitled to the electricity connection. It is true that a consumer cannot be denied a fresh connection in a premises merely because certain electricity dues in respect of the same premises are outstanding against another defaulting consumer; but if a new consumer is a legal heir of the defaulting consumer or is closely connected with him, electricity connection can be refused. It has come on the record that the Petitioner and the Wadhwas have formed the partnership known as Crystal Products, the certificate of which has been filed as Annexure 6

to the supplementary counter affidavit. This partnership is on the record in the office of the District Industries Centre, Allahabad. The electricity connection with the help of which ice-candy factory was being run at the premises earlier, was disconnected on account of non-payment of heavy electricity dues. In order to run the factory without paying the outstanding dues to the Board, Petitioner applied for a new connection in his name. He was a partner in the firm with Wadhwas, who were running the factory earlier at the same premises. Petitioner as such in view of the above order of the Board, was not entitled to the electricity connection. The Petitioner concealed the facts regarding his partnership with Wadhwas, but when it was discovered by the Board, he wrote a letter on 20-12-1993 to the Manager of District Industries Centre, Allahabad, mentioning therein that now he has become the sole proprietor of the firm. He cannot derive any help from such a letter, because from the facts and circumstances, which have been placed before the Court in the form of affidavits, it is apparent that the new connection was merely a device for running the old ice-candy factory. The Board was, thus, fully justified to refuse the electricity connection to the Petitioner.

4. In the end the learned counsel for the Petitioner has contended that Mrs. Indu Wadhwa has filed a writ petition before this Court against recovery proceedings initiated against her by the Board and this Court has granted stay order subject to certain conditions and, as such, the Petitioner is entitled to have the electricity connection. The order, which is stayed by the Court, is not wiped out altogether and it continues to remain in existence and the only effect of the stay is that it ceases to be operative. In this connection reference may be made to a decision of the Supreme Court in the case of Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, . wherein the effect of the stay order was laid down as under:

While considering the effect of an interim order staying the operation of the order under challenge, distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which has been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because inspite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists. It cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.

5. After the outstanding electricity dues against Wadhwas are cleared, it will be open to the Petitioner to approach the Board for fresh electricity connection. If and when such an application is made the same shall be considered by the Board, in accordance with law.

6. For the reasons givenaiove, this writ petition is dismissed with costs.