(2014) 09 JH CK 0009

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 7481 of 2013

Shree Gajpati Foods (P) Ltd. — APPELLANT

Vs

Jharkhand State Electricity Board — RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 3(6), 8(b)

Citation : (2015) 1 AJR 534 : (2014) 4 JLJR 432

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Dhananjay Kr. Pathak and Sweta Rani, Advocate for the Appellant; Ashok Kumar Yadav, Rupesh Kumar, Ravi Kr. Singh and A. Pradhan, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Aggrieved by refusal to grant a fresh electrical connection vide order dated 07.11.2013, the petitioner namely, M/s. Shree Gajpati Foods (P) Ltd. has sought quashing of letter No. 443 dated 07.11.2003 and for a direction upon the respondents to grant fresh electrical connection to the petitioner-company, the present writ petition has been filed.

2. The brief facts of the case are that, the petitioner-company, pursuant to a sale notice dated 10.06.2012 issued by the Bihar State Financial Corporation, Patna purchased the property in question for a sale consideration of Rs. 126 lakhs and the sale was confirmed in favour of the petitioner-company on 21.08.2012. The auction notice was duly published in the local daily newspaper "Prabhat Khabar". An agreement for sale of the property in question which belonged to M/s. Sarasawati Roller Flour Mills Private Limited was executed on 28.09.2012. A demand for payment of balance consideration amount was made on 31.07.2013 which was paid by the petitioner-company on the same day and "No Dues Certificate" was issued in favour of the petitioner-company by the Bihar State Financial Corporation on 20.11.2013. The petitioner-company intended to start Flour Mill and therefore, applied for fresh electrical connection on 24.10.2013 by

depositing the requisite fee and submitting the application in prescribed Format. However, vide order dated 07.11.2013 of the Assistant Engineer, the petitioner-company was refused fresh electrical connection. In view of the fact that an amount of Rs. 18,52,482/- is pending against the erstwhile owner of M/s. Sarasawati Roller Flour Mills Private Limited on account of energy charges and for realising the said amount a Certificate Case No. 14/Elect./96-97 was filed by the Electricity Board which is pending in the Court, fresh electrical connection to the petitioner-company was refused.

3. A counter-affidavit has been filed on behalf of the Jharkhand Electrical Board stating that the electric connection to M/s. Sarasawati Roller Flour Mills Private Limited was granted vide connection No. BRD-534 in HT category and energy/ electric charge of Rs. 18,52,482/- accumulated due to non-payment of electrical dues. A Certificate Case No. 14/Elect./96-97 was therefore initiated against Sri Pradeep Kumar, Managing Director of M/s. Sarasawati Roller Flour Mills Private Limited and the said case is pending in the Certificate Court. It is stated that the "agreement for sale-cum-repayment of balance loan" dated 28.09.2012, a copy of which is annexed as Annexure-1 to the writ petition, wrongly indicates the balance dues of Rs. 94.50 lakhs against the mortgaged property. In fact an additional amount of Rs. 18,52,482/- is also due against the M/s. Sarasawati Roller Flour Mills Private Limited.

4. Mr. A.K. Yadav, the learned counsel appearing for the respondent No. 7-BSFC submitted that M/s. Sarasawati Roller Flour Mills Private Limited had taken loan from the BSFC on 13.04.1988 and an agreement was executed on 13.02.1989. An amount of Rs. 54.48 lakhs was disbursed to M/s. Sarasawati Roller Flour Mills Private Limited. Since the borrower defaulted in making payment of the loan amount, BSFC proceeded in the matter in accordance with the Bihar State Corporation Financial Act, 1951 and accordingly, an advertisement inviting bids for sale of the property in question was issued. Finally, the property was sold to the petitioner-company for a total sale consideration of Rs. 126 lakhs excluding dues of BIADA. It is further submitted that the property in question was mortgaged to Bihar State Financial Corporation when the loan agreement was signed between M/s. Sarasawati Roller Flour Mills Private Limited and BSFC.

5. The learned counsel appearing for the petitioner submitted that the petitioner-company has purchased the premises in question in an auction sale and therefore, it cannot be burdened with the liability of erstwhile owner. The supply of electricity is in the nature of sale of goods and therefore, no personal liability can be attached to the subsequent purchaser. The electric dues is not considered as a charge on the property and in that view of the matter also the alleged dues of Rs. 18,52,482/- due from the erstwhile owner M/s. Sarasawati Roller Flour Mills Private Limited cannot be recovered from the petitioner-company which is an auction sale purchaser. Moreover, merely on the ground that the Certificate Case is pending against the erstwhile owner for recovery of Rs. 18,52,482/- grant of fresh electric connection cannot be refused to the petitioner-company.

The learned counsel appearing for the petitioner draws a distinction between a fresh electric connection and restoration of an existing electric connection and submits that it is not a case in which the petitioner-company has applied for restoration of an existing electric connection rather, the petitioner-company has applied for grant of fresh electric connection and therefore, the respondent-JSEB is required to act in accordance with the Jharkhand State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2005 and Clause 5.5 of the said regulation specifically exempts the subsequent purchaser from the liability of previous owner/occupant.

6. The learned counsel appearing for the petitioner relies on the decision of the Hon''ble Supreme Court in Special Officer, Commerce, North Eastern Electricity Company of Orissa (NESCO) and Another Vs. Raghunath Paper Mills Private Limited and Another, and Haryana State Electricity Board Vs. Hanuman Rice Mills and Others, .

7. Mr. Rupesh Kumar, the learned counsel appearing for the respondent-Jharkhand State Electricity Board submits that in view of Section 3(6) read with Section 8(b) of Bihar and Orissa Public Demands Recovery Act, 1914, the electricity dues is recoverable in accordance with the provisions of Bihar and Orissa Public Demands Recovery Act, 1914. Accordingly, a Certificate Case was instituted against one Pradeep Kumar, in which a notice was served on 29.06.1996. A notice of attachment was also issued on 29.08.2006 and body warrant against the said Pradeep Kumar has been issued on 01.11.2008. It is submitted that when property in question is under attachment for a dues of Rs. 18,52,482/-, a subsequent purchaser is liable to make payment of the outstanding dues. Referring to agreement dated 28.09.2012, the learned counsel appearing for the respondent-JSEB submits that clause 14 of the said agreement specifically says that the municipal dues, land revenue and water cess would be paid by the purchaser, i.e. the present petitioner and therefore, in terms of agreement signed between the petitioner-company and the BSFC, the petitioner-company is liable to make payment of the outstanding dues of Rs. 18,52,482/-. It is further submitted that since a beneficial covenant has been incorporated in the agreement, the respondent-JSEB can always invoke clause 14 in its favour for recovering the dues against M/s. Sarasawati Roller Flour Mills Private Limited.

8. I have carefully considered the submission made by the learned counsel appearing for the parties and perused the documents on record.

9. Before adverting to the legal submissions, it can be usefully noticed that the erstwhile owner M/s. Sarasawati Roller Flour Mills Private Limited had taken loan from Bihar State Financial Corporation, for which an agreement was signed on 13.02.1989. The premises in question was duly mortgaged with BSFC when the loan agreement was signed with BSFC. It appears that subsequently the erstwhile owner defaulted in making payment of the electric charges which accumulated upto Rs. 18,52,482/- and therefore, Certificate Case was initiated by the Bihar State Electricity Board in which notice was served on the Manager of

M/s. Sarasawati Roller Flour Mills Private Limited on 29.06.1996. A notice of attachment has been issued on 29.08.2006. It is thus apparent that, the notice of attachment has been issued subsequent to the mortgage of the premises in question with BSFC. The copy of notice of attachment dated 29.08.2006 does not disclose the identity of the property and no where in the counter-affidavit filed on behalf of the Jharkhand State Electricity Board it has been indicated how the premises in question which has been purchased by the petitioner-company in an auction sale can be assumed to have been under attachment by virtue of order of the Recovery Officer.

10. It has further become apparent on account of the fact that the proceeding was initiated only against one Pradeep Kumar, Managing Director and a body warrant was issued against him. This has not been brought on record whether the premises in question was solely owned by the Pradeep Kumar and whether the said Pradeep Kumar possessed only this property. However, I am of the opinion that in view of the prior mortgage of the property in question with BSFC, the alleged attachment of the said property on account of order of the Recovery Officer and the entire proceeding in the Certificate case pale into insignificance, in so far as, the issue of grant of fresh electric connection to the petitioner-company is concerned.

11. Now coming to the question of grant of fresh electric connection to a consumer, it is common ground that it has to be regulated in terms of the Jharkhand State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2005. Clause 2.1(n) defines "Consumer" means any person who is supplied with electricity for his "own use" by a licensee or the Government or by any other person engaged in business of supplying electricity to the public under the Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be. Chapter 3 deals with Recovery of Charges. It provides that the distribution licensee (Jharkhand Electricity Board in this case) shall be authorised to recover charges for the supply of electricity from any person requiring such supply in accordance with the provisions of the Act and these Regulations and such charges shall include:

"(a) Recovery of such expenses as may be reasonably incurred by the licensee in providing electric line or electrical plant used for giving such supply in accordance with Clause 17 of these Regulations below.

(b) Charges of electricity supplied by licensee in accordance with the tariff order issued by the Commission."

12. Chapter 5 deals with requisition for the new supply of electricity and clause 5.5 specifically provides that, if the old consumer has committed default in payment of the dues and the premises has come in the legal possession of the new occupant through transfer or purchase of the concerned property and the

new occupant is not connected with the previous owner/occupant in any manner applies for new connection of the electric line in the same premises, in that event the distribution licensee shall be obliged to order new connection without realisation of arrear dues of concerned premises from the new occupant and the purchaser of the premises would not be held liable for the liabilities of the previous consumer in order to secure new connection. Clause 5.5 has been inserted in the regulation by the amendment dated 16.04.2007. From the reading of the aforesaid clauses of the Jharkhand State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2005, it does not appear that the Jharkhand Electricity Board is entitled to recover the dues from the subsequent purchaser even if the property was mortgaged to other financial institution/bank prior to the charge created upon the property by the BSEB/JSEB.

13. The learned counsel appearing for the petitioner has relied on the decision of Hon''ble Supreme Court in Special Officer, Commerce, North Eastern Electricity Company of Orissa (NESCO) and Another Vs. Raghunath Paper Mills Private Limited and Another, , in which also the Hon''ble Supreme Court has held that "the supply of electricity by a distributor to a consumer is "sale of goods". The transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot be forced to pay the dues of the predecessor-in-title or possession.

14. The reliance placed by the learned counsel appearing for the JSEB on clause 9, 13 and 14 of the agreement dated 28.09.2012 is misplaced. In view of absence of specific provision in the Electricity Act, 2003 and the Jharkhand State Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2005 and more particularly, in view of the fact that the property in question belonging to M/s. Sarasawati Roller Flour Mills Private Limited was validly mortgaged to BSFC way back in the year, 1989, a fresh electric connection cannot be denied by the JSEB. It is not in dispute that the auction sale was widely published in the local daily newspaper. It was incumbent upon the Jharkhand Electricity Board to approach BSFC before finalisation of the sale in favour of the petitioner-company which admittedly JSEB has not done in the present case.

15. In view of the aforesaid, this writ petition is allowed and the respondent-Board is directed to grant fresh electric connection to the petitioner-company forthwith.

