
(2011) 05 AHC CK 0411

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 30263 of 2011

Smt. Pawan Jha alias Priya Jha

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-05-2011

Acts Referred:

Citation : (2011) 6 ADJ 132 : (2011) 5 AWC 5176

Hon'ble Judges : Ashok Srivastava, J; Amitava Lala, J

Bench : Division Bench

Judgement

Amitava Lala, J.—Petitioner has contended before this Court that she has purchased a flat from Allahabad Development Authority meant for economically weaker section of society but when she applied for electrical connection, the authority concerned wanted her to clear up the dues payable by the erstwhile owner/occupier of the premises. The amount of dues, according to the Petitioner is Rs. 45,625/- and since the Petitioner belongs to economically weaker section of the society, she is not able to pay it to the authority concerned nor can get the electricity connection.

2. So far as the first prayer of the writ petition to quash the Clause 4.3 of the U.P. Electricity Supply Code, 2005 as ultra vires is concerned, the Petitioner has given up the same. However, since the learned Counsel made a distinction between transactions amongst two private parties and allotment of flat by Allahabad Development Authority to an individual, and the Allahabad Development Authority was not made party, we have directed to incorporate it as party Respondent and serve a notice. Pursuant to such notice, learned Counsel appearing for such authority contended that the authority is only empowered to cancel the allotment, in case of default but not to do any thing with regard to supply of electricity. We find so. The recovery of electricity bill amount will be made by the electrical authorities from its consumers. Whether it will be collected from the consumer for her consumption or for consumption of erstwhile owner/occupier is a matter between themselves. According to us, there is no

basic difference in sale and purchase of flat/plot between the two private individuals and allotment of a flat/ plot by a development authority to any private individual to that extent. Now, let us consider two recent judgments of the Supreme Court reported in Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, and Haryana State Electricity Board Vs. Hanuman Rice Mills and Others, to decide question of recovery of arrears of electricity charges from the Petitioner on account of the erstwhile owner/occupier. The ratio of the first judgment i.e. Paschimanchal Vidyut Vitran Nigam Ltd. (supra) is as follows:

9. The supply of electricity by a distributor to a consumer is "sale of goods". The distributor as the supplier, and the owner/ occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a "charge" on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises, in the absence of any contract to the contrary.

10. But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.

11. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the

dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocation of industrial, commercial and residential establishments, provisions similar to Clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor. We do not find anything unreasonable in a provision enabling the distributor/supplier, to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lesser responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may.

The ratio of the second judgment i.e. Haryana State Electricity Board (supra) is as follows:

12. The position therefore may be summarized thus:

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

In the later judgment recovery is with regard to other State when the earlier judgment is in respect of State of Uttar Pradesh where clear Rules, Regulations or Bye-laws for recovery of such amount is available. However, principles laid down by the Supreme Court about recovery of dues on account of electricity are more or less identical.

In this backdrop, we are of the view that the Petitioner cannot avoid the recovery of arrears of electricity dues. However, it is open to the Petitioner, upon deposit, to recover the same from the erstwhile owner or occupier in accordance with law, if so advised. Here, the scope for granting relief is very limited. We can only allow the Petitioner to make the deposit in installments. Therefore, we direct the Petitioner to make deposit of entire dues along with reconnection charges in three equal monthly installments. Since learned Counsel appearing for the electrical authority agreed to give the electricity connection to the Petitioner within 72 hours of the deposit of first installment along with reconnection charges, the electricity connection will be made accordingly, but in case of any default in making deposit of remaining two installments along with current electricity dues, the authority concerned will be at liberty to take steps in accordance with law.

The writ petition is accordingly disposed of, however, without any order as to costs.

I agree.