

(2012) 04 MP CK 0097

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1692 of 2012

Suggamal Chaudhary

APPELLANT

Vs

Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Ltd.
and another

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 04 MP CK 0097

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : P.C. Chandil, for the Appellant; Ravi Jain, for the Respondent

Final Decision : Allowed

Judgement

Hon. Shri Justice Sujoy Paul.

1. By invoking jurisdiction of this Court under Article 226 of the Constitution, challenge is made to Annexure P-1, whereby the petitioner is directed to pay an amount of Rs. 75,957/-, failing which electricity connection was denied to him. The case of the petitioner is that one Shri Basant Kumar was his tenant in the suit house. He did not pay rent to the petitioner and, therefore, a civil suit was filed which was decreed in favour of the petitioner. The said judgment got a stamp of approval from this Court by judgment dated 7.2.2011. The petitioner thereafter filed a suit for eviction against Basant Kumar, which is also decreed. It is stated that Shri Basant Kumar has not paid electricity bill/dues to the tune of Rs. 75,957/-. The petitioner submitted an application with requisite fees for grant of electricity connection. The same was rejected by Annexure P-1 on the ground that the petitioner has to first pay the dues aforesaid then only his application shall be considered.

2. Shri P.C. Chandil submits that petitioner purchased the house by registered sale deed dated 9.3.1981. There is no dues against the petitioner. The

petitioner's application seeking electricity connection is pregnant with all necessary formalities and due amount. The petitioner cannot be made to pay the bill which was outstanding against Basant Kumar.

3. Per contra, Shri Ravi Jain, learned counsel for the respondents supported the order and relied on Clause 4.17 of the Madhya Pradesh Electricity Supply Code (hereinafter called as "Supply Code"). On the basis of this, it is stated that the Company has authority to refuse the electricity connection unless all the dues are fully paid up.

4. I have heard the learned counsel for the parties and perused the record.

5. In *Durgesh Agarwal Vs. M.P. State Electricity Board and others*, this Court considered Clause 4.17 and 4.18 of Supply Code and also the provisions of Electricity Act and Electricity (Supply) Act, 1948. In that case the petitioners purchased flats from a builder and sought fresh connection in the premises. The Board refused fresh electricity connection to the petitioners on the ground that dues of previous owner are not cleared. This Court held that fresh electricity connection to petitioners' establishment cannot be denied in case petitioners are willing to comply with all the requisite requirement for seeking new or fresh connection. The order passed by the respondent/Board refusing fresh electricity connection was quashed and Board was directed to grant fresh electricity connection to the petitioners' establishment. However, a bare perusal of para 12 of this judgment shows that the petitioners therein agreed to make payment of requisite amount and comply with the requirement for grant of said connection. Thus, in that factual scenario, this Court directed that electricity supply be provided. It is stated by Shri Ravi Jain that the said judgment was challenged in Writ Appeal No. 323/2006 (M.P.S.E.B. & others vs. Durgesh Agrawal and others). It is further stated that in the said case, the electricity connections were already restored by the M.P.S.E.B. by the time writ appeal was posted for hearing. Taking into account of this fact, the Division Bench found it to be not in the interest of justice to order dismissal of the petition which will result in disconnecting the electricity connection. However, it was directed that the M.P.S.E.B. should first proceed against the erstwhile owner for recovery of dues and if it is not possible, it may proceed against the new purchaser after issuing notices to them. Thus, this judgment will not help Shri P.C.Chandil, who is admittedly the owner of the land even when Shri Basant Kumar was residing in the premises in question.

6. The Apex Court in 2009 (2) M.P.L.J. 61 (*Paschimanchal Vidyut Vitran Nigam Ltd. and others Vs. DVS Steels and Alloys Pvt. Ltd. and others*) in para 11 held as under:-

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 translocating 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 from 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/lessor 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.

7. In a recent judgment reported in *Mahila Kamla Dubey Vs. Madhya Pradesh Vidyut Mandal and Others*, this Court upheld the action of the Electricity Board in refusing grant of new electricity connection on the ground that the dues over old electricity connection are not paid. In this recent judgment also this Court has taken note of Clause 4.17 and various judgments by this Court and the Supreme Court. Ultimately, it was held that electricity is a public property. Clause 4.17 has to be implemented.

8. In *M.P. Paschim Kshetra Vidyut Vitran Company Ltd. Vs. Electricity Consumer Grievances Redressal Forum and Another*, , the electricity bill was sought to be recovered from a person who purchased the property subsequently in auction. In *Paschimanchal Vidyut Vitran Nigam Ltd. (supra)* also the electricity bill of erstwhile user was sought to be recovered from subsequent purchaser.

9. The factual scenario in the present case is totally different. The petitioner is admittedly the owner of the premises from 1981. The electricity dues of his tenant Shri Basant Kumar was sought to be recovered from him. All the judgments aforesaid including *Mahaila Kamla Dubey (supra)* deal with a different factual scenario where the subsequent owner was made to pay the electricity bill failing which the electricity connection was declined to him. In this case, the petitioner is an owner since beginning and dues of his erstwhile tenant are sought to be recovered from him by Annexure P/1, failing which the electricity connection was declined.

10. Considering the aforesaid, it is necessary to minutely peruse and analyze the enabling provision, on the strength of which Shri Ravi Jain submits that the respondents have rightly passed Annexure P/1. This Clause 4.17 of Supply Code reads as under:

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 has any arrears of electricity dues or other dues for 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. In case of a person occupying a new property, it will be the obligation of that person to check the bills for the previous months or, in case of disconnected supply, the amount due as per the licensee's records immediately before his occupation and ensure that all outstanding electricity dues as specified in the bills are duly paid up and discharged. The licensee shall be obliged to issue a certificate of the amount outstanding from the connection that was installed or is installed in such premises on request made by such person. The licensee may refuse to supply electricity to the premises through the already existing connection or refuse to give a new connection to the premises till such outstanding dues to the licensee are cleared.

A microscopic reading of this clause would show that with regard to a consumer in respect of an earlier agreement executed in his name or in the name of firm or company with which he was associated in either of the capacity described in the clause, his any application for supply will not be entertained unless the dues are paid in full. This portion of clause 4.17 has no application on the petitioner. The petitioner is not a party to the earlier agreement executed in his name or in the name of firm or company with whom he was associated so far the erstwhile connection of Shri Basant Kumar is concerned. In other words, the petitioner had no role to play either in the capacity of consumer or in any capacity in the electricity connection granted to Shri Basant Kumar, the erstwhile tenant. The underlined portion of clause 4.17 further shows that it deals with a person occupying a new property. Clause 4.17 does not have any enabling provision to realise the amount of erstwhile licence/ connection from the owner of the premises, who is not occupying a new property. In the present case the petitioner has not occupied any new property. The property is of petitioner from 1981.

11. It appears that clause 4.17 is designed by taking into account the maxim of "caveat emptor". It means "let the purchaser beware". It means that the buyer must take care. "Caveat emptor" is the ordinary rule in contract. A vendor is under no duty to communicate the existence even of latent defects in his wares unless by act or implication he represents such defects not to exist. Caveat emptor qui ignorare non debuit quod jus alienum emit is a maxim meaning let a purchaser beware : who ought not to be ignorant that he is purchasing the rights of another". No duty is casted on a person who is not occupying a new property. In other words, there is no enabling provision in clause 4.17 which permits the respondents to realise the payment of erstwhile tenant from the petitioner who has not purchased a new property and decline electricity connection till such payments are made.

12. This is settled principle of interpretation that every word of a Statute has to be given effect to. It is further held that when the language of the Statute is

clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the Statute speak the intention of the Legislature. Dr Ganga Prasad Verma and Others Vs. State of Bihar and Others,

13. On the basis of aforesaid analysis, in the considered opinion of this Court, the judgment cited by the respondents have no application in the facts and circumstances of this case. A judgment is a precedent for a thing which has been actually decided and not what is logically flowing from it. On the cost of repetition, it can be said that all the judgments are based on different factual scenario on which clause 4.17 was considered and applied by the courts. In the peculiar facts of this case, clause 4.17 has no application and, therefore, the respondents have committed an error in applying the same. Accordingly, petition is allowed. The order Annexure P/1 is set aside. If the petitioner fulfills the requirement of grant of new electricity connection, the respondents are bound to consider and grant him the said connection. However, liberty is reserved to the respondents to recover the electricity dues from Shri Basant Kumar by instituting appropriate proceedings. No costs.