(2024) 04 CAL CK 0016

In the Calcutta High Court

Case No : W.P.A. No. 1053 Of 2016

Tirupati Vancom (P) Limited & Anr.	APPELLANT
Vs	
West Bengal State Electricity Distribution Company Limited & Ors.	RESPONDENT

Date of Decision : 03-04-2024

Acts Referred:

Citation : (2024) 04 CAL CK 0016

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : U.S. Menon, Abhirup Chakraborty, Sumit Kumar Panja, Sumit Ray

Final Decision : Allowed

Judgement

M.V. Muralidaran, J

1. Heard Mr.U.S.Menon, learned counsel for the petitioners and Mr.Sumit Kumar Panja, learned counsel for the respondents.

2. This writ petition has been filed by the petitioners to quash the memo dated 20.6.2015 and to direct the respondents not to make any further demand with respect to the dues of the erstwhile owner-M/s.Balaji Ispat Private Limited in respect of the land now owned by the petitioners and also to direct the respondents to refund the amount already realized illegally by the respondents from the petitioners against the dues of M/s.Balaji Ispat Private Limited.

3. The case of the petitioner is as follows:-

On 23.5.2012, the petitioner company purchased the land free from all encumbrances at Dankuni, Santrapara, Hoogly through the auction under the SARFAESI Act, 2002 from Andhra Bank. The sale certificate issued by the Andhra Bank clearly stated that the sale of the property is made free from all encumbrances. The petitioner company informed the respondents of such purchase and applied for fresh supply of electricity to the said premises. The respondents informed that there are outstanding dues amounting to Rs.64,95,920/- against the erstwhile owner of the property M/s.Balaji Ispat Private Limited and the said amount is claimed by the respondents from the petitioner company. The petitioner company was made to make payment under compelling circumstances and under protest in order to start operations at its proposed factory.

3.1. Again, the respondents made further demand from the petitioner company against the dues of the erstwhile owner. Despite the petitioners repeated requests and objections, the respondents extorted the dues of a third party from the petitioner company. After making such payments, the petitioner company was issued a no dues certificate on 2.6.2012. While so, on 2.5.2014, the respondents informed the petitioner company that a further Rs.7,42,050/- is due and payable by the petitioner company against the tariff revision outstanding of the erstwhile owner, which payment also extorted by the respondents despite issuance of no dues certificate. On 20.6.2015, the respondents made a fresh demand of Rs.14,31,982/- against the purported outstanding late payment surcharge of the erstwhile owner.

3.2. The petitioner company through its letter dated 22.6.2015 informed the respondents that it had already got no dues certificate and that they are not liable to make payment of such demand of the respondents to which the respondents have till date not replied. However, the respondents are threatening the petitioner company to disconnect the electricity connection at the site. Challenging the same, the petitioners have filed the present writ petition.

4. The respondents filed affidavit-in-opposition stating that the petitioners had applied for bulk power supply on 11.11.2013 with a contract demand of 120KVA. On 20.11.2013 during joint inspection, it was directed that the premises of the petitioners is situated at a plot of land where there was a disconnected central bulk connection in the name of a consumer i.e. M/s.Balaji Ispat Private Limited. From the records, there was a outstanding dues in respect of M/s.Balaji Ispat Private Limited for a sum of Rs.7,42,000/- due to tariff revision for the year 2011-12. By a memo dated 2.5.2014, it was intimated to the petitioners with a request to pay the said. The petitioner company has failed to pay the said sum.

4.1. It is stated that by a memo dated 20.6.2014, the first respondent informed the decision of the authority to pay the said amount by six equal installments. In the said letter, it was also informed that waiver of late payment surcharge amount will be decided by the competent authority of the licensee if the petitioners pray for such waiver. The petitioners paid the first installment and the service connection was effected on 27.6.2014. After payment of six installments by the petitioner company, the proposal of waiver of LPSC was sent to the competent authority of the licensee for consideration. The decision of the competent authority was intimated to the petitioner company by demanding of LPSC of Rs.14,31,962/- against the outstanding dues of M/s.Balaji Ispat Private Limited vide memo dated 20.6.2015. The petitioners have not paid the said amount and further memo was issued, but no response was received from the petitioners. Hence, prayed for dismissal of the writ petition.

5. The learned counsel for the petitioners submitted that an auction purchaser who has no nexus with the erstwhile owner is not liable to pay the arrear electricity dues of the erstwhile owner of land when the auction purchaser has purchased the land free from all encumbrances. The erstwhile owner is still an active company and the respondents could have enforced its claim only against the erstwhile owner.

6. By placing reliance upon the decisions of the Hon'ble Supreme Court in the cases of (i) Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd. and others, AIR 2004 SC 2171; (ii) Haryana State Electricity Board v. Hanuman Rice Mills, Dhanauri and others, (2010) 9 SCC 145; (iii) Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa and another, (2012) 13 SCC 479; (iv) Rana Girders Limited v. Union of India, (2013) 10 SCC 746; and (v) Southern Power Distribution Company of Telangana Limited v. Gopal Agarwal and others, (2018) 12 SCC 64, the learned counsel for the petitioners submitted that the auction purchaser purchased the property in an auction sale shall not be held liable to pay any dues, particularly electricity dues of the erstwhile owner of the land.

7. The learned counsel for the petitioners urged that the petitioner company is a new consumer and has not connected with the earlier business of the erstwhile owner. The electricity dues do not constitute a charge on the property purchased by the petitioner company in the public auction. Therefore, the respondents cannot claim to recover the dues of erstwhile owner from the petitioner.

8. The learned counsel further submitted that the foundation of the claim of the respondents against the petitioner company is illegal and wrongful and, as such, the demand of LPSC is without any authority of law and legal support. In any event, the respondents have not been able to demonstrate that the Tariff Order, 2011-2012 authorises the respondents to recover the dues of the erstwhile owner from the petitioner company who is a new consumer. It was not a case of transfer of connection, but it was a case of new connection. Hence, the demand as made in the letter/memo dated 20.6.2015 is totally vague and arbitrary and also unjustified in the eye of law. The learned counsel for the petitioners has also placed reliance upon the following decisions in support of his submissions:

(i) Order in W.P.No.10085 (W) of 2019, dated 19.6.2019 [Shree Ramdoot Rollers Private Limited v. Damodar Valley Corporation and others]

(ii) Isha Marbles v. Bihar SEB, (1995) 2 SCC 648

9. Per contra, the learned counsel for the respondents submitted that in the tender notice itself it has been stated that the purchaser is liable to pay local taxes, exercise duty and any other legal dues. The petitioner company purchased the property knowing fully well the terms and conditions of the tender. In the

sale certificate issued by the bank, it has been stated that the sale of the schedule property is made free from all encumbrances known to the bank. So the bank did not preclude the successful tenderer from paying other dues not known to the bank. Accordingly, the respondents requested the petitioner company to pay a sum of Rs.61,35,615.05 in order to settle the dues received from M/s.Balaji Ispat Private Limited.

10. The learned counsel for the respondents would submit that the petitioner company requested the authority to intimate the amount of liabilities on account of power supply and expressed its desire to make payment. The petitioner company without raising any question paid the said amount and also paid Rs.3,60,305/- on account of tariff redetermination order dated 30.12.2011 for the year 2010-2011.

11. The learned counsel further submitted that the respondent authority, by its letter/memo dated 20.6.2015, requested the petitioner company to pay LPSC amount. The LPSC amount is statutory due and the said amount is raised on the basis of Clause 4.14 of the regulations of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011. The petitioners have challenged the said letter/memo on flimsy grounds.

12. According to the learned counsel for the respondents, as per the Electricity Act, 2003 and Regulation made thereunder, the licensee is entitled to realize the dues of the previous consumer of a plot where the petitioner company is asking for new connection and the licensee authority is claiming the dues of the previous consumer of the plot and the petitioner company accepted such demand and paid the same. The issue arises in the present writ petition is payment of LPSC which the petitioner company is denying to pay the same. However, under the statute and/or regulation, the petitioner company is liable to pay such LPSC as per the Tariff Order made from time to time. The late payment surcharge is being calculated after payment of all outstanding dues of the consumer. Therefore, unless the dues has been cleared totally, the question of late payment surcharge do not arise. In the present case, after payment of last installment of six installments, the LPSC amount was generated. Thus, a prayer has been made to dismiss the writ petition.

13. This Court considered the rival submissions and also perused the materials available on record.

14. Based on the auction notice issued under the SARFAESI Act calling for tenders issued by the Andhra Bank for the sale of land measuring approximately 10 Bighas together with building/structure on it at Dankuni free from all encumbrances on the property, the petitioner company submitted its bid for Rs.4,26,92,000/-, which was accepted by the bank. A sale certificate was issued and possession was also handed over to the petitioner company. After that, the petitioner company intended to run a factory from the premises and had applied for fresh electric connection from the respondents. The petitioner company

received a demand of Rs.61,35,615.05 towards idle demand charges and a further sum of Rs.3,60,305/- on account of tariff redetermination for the year 2010-2011 from the petitioner company which were the dues recoverable from the erstwhile owner of the land. The petitioner company had to pay the said sum under duress as the petitioner company desperately wanted electric connection to run a fly ash unit. Again the respondents demanded a sum of Rs.7,42,050/-, which the petitioner company was compelled to pay under protest, whereupon no due certificate dated 2.6.2012 was issued by the respondents and fresh connection was provided to the petitioner company after a long lapse of time.

15. The contention of the petitioners is that in spite of issuance of no due certificate, the respondents have claimed a sum of Rs.14,31,962/-towards LPSC. The petitioner company through the letter dated 22.6.2015 requested the respondents to waive off the alleged LPSC amount, as the petitioner company had already made payment of all the claims raised. That apart, in the no due certificate issued in favour of the petitioner company, there is no mention of any LPSC amount being further payable.

16. According to the respondents, the LPSC amount is a statutory due and the said amount is raised on the basis of Clause 4.14 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations.

17. It is the admitted case that the payments made till date by the petitioner company were all payable by the erstwhile owner M/s.Balaji Ispat Private Limited for the said premises. According to the petitioners, M/s.Balaji Ispat Private Limited is still an active company and the respondent authorities could have enforced their claim only against the erstwhile owner. The specific case of the petitioners is that the petitioner company being the auction purchaser has no nexus with the erstwhile owner and, therefore, the petitioner company is not liable to pay the arrears of electricity dues of the erstwhile owner of the land when the petitioner company purchased the land free from all encumbrances. This Court finds some merits in the case of the petitioner company.

18. The Apex Court in the case of Isha Marbles, supra, held that the auction purchaser who has purchased the property in an auction sale shall not be held liable to pay any dues, particularly, electricity dues of the erstwhile owner of the land.

19. In Ahamadabad Electricity Company Limited, supra, the Apex Court held that "in case of a fresh connection though the premises are the same, the auction purchaser cannot be held liable to clear the arrears incurred by the previous owners in respect of power supply to the premises in the absences of there being specific statutory provision in that regard".

20. In Haryana State Electricity Board, supra, the Apex Court held that "an Electricity Board could not seek the enforcement of the contractual liability of the previous owner/occupier against the purchaser, who was a third party insofar as the contract between the Electricity Board and the previous occupant and that an

auction purchaser who purchases the property after disconnection of the electricity supply could not be considered as a consumer within the meaning of the Electricity Act" even though he seeks reconnection in respect of the same premises.

21. As rightly argued by the learned counsel for the petitioners, the petitioner company is a new consumer and was not connected with the earlier business of the erstwhile owner. The petitioner, being an auction purchaser, cannot be held liable to clear the arrears incurred by the previous owner in respect of power supply to the premises in the absence of there being specific statutory provision in that regard. Though it is the say of the respondents that it is the duty of the petitioner company to clear all the dues of the earlier owner, nothing has been produced by the respondents to show nexus between the petitioner company and M/s.Balaji Ispat Private Limited. Nexus can be established if the old electricity connection is sought to be revived or if the subsequent consumer already has same connection to the business/property of the erstwhile consumer. The nexus between the erstwhile owner and the subsequent consumer cannot be construed merely because the land on which supply is requested by the subsequent purchaser from an auction conducted by the secured creditor.

22. In the instant case, upon acquiring the land of M/s.Balaji Ispat Private Limited, the petitioner company paid Rs.61,35,615.05 on account of idle demand charges; Rs.3,60,305/- as per the tariff redetermination order; Rs.7,42,050/- due to tariff revision for the year 2011-2012, which was paid in six installments and the respondents have also issued no dues certificate on 2.6.2012 to the petitioner company. According to the petitioners, the aforesaid payments made under protest. Almost after a year of making the last installment on 30.6.2014, the petitioner company was issued with the impugned demand notice on 20.6.2015 calling upon them to pay Rs.14,31,962/- against the outstanding dues of LPSC of M/s.Balaji Ispat Prviate Limited. As rightly argued by the learned counsel for the petitioners, the said demand is despite the petitioner company having made payments to the tune of Rs.72.00 lakh as against the outstanding dues of the erstwhile owner.

23. It appears that through their letter dated 22.6.2015, the petitioner company requested the respondents to waive the alleged LPSC amount as they have already made payment of all the claims raised by the respondents and, more so, issued with the no dues certificate. It also appears that the payments made by the petitioner company were all under the compelling circumstances. No reply has been given by the respondents to the letter dated 22.6.2015 sent by the petitioner company. Without considering the payments made by the petitioner company and without redressing the letter of the petitioner company dated 22.6.2015, demanding the amount of Rs.14,31,962/- against the purported LPSC in the bill of December, 2015 is unacceptable. The petitioner company on 9.6.2016 made a representation to the respondents to waive the LPSC amount. The said letter has also not been considered and redressed till date by the

respondents.

24. The argument of the learned counsel for the petitioners is that when a property comes to be owned or occupied by an auction purchaser and such purchaser seeks supply of electricity, he cannot be called upon to clear the past arrears as a condition precedent to fresh connection and supply. What matters is the contract entered into by the erstwhile consumer with the Electricity Board and the Electricity Board cannot seek the enforcement of contractual liability against any third party as a condition for fresh supply for a new entity. This Court finds some force in the said argument made by the learned counsel for the petitioners. Admittedly, the petitioner company is a completely new consumer and was not connected with the earlier business of the erstwhile owner. The electricity dues do not constitute a "charge" on the property purchased by the petitioner company in public auction. As stated supra, time and again, the Apex Court held that an auction purchaser cannot be called upon to clear the past arrears. Further, the power connection to an auction purchaser cannot be withheld for the dues of the past owner.

25. In the instant case, the demand of LPSC is without any authority of law and legal support. It was not a case of transfer of connection, but it was a case of new connection. The petitioner company has paid almost Rs.72.00 lakh in order to get the electricity connection. The further demand of Rs.14,31,962/- made by the respondents is totally arbitrary.

26. The argument of the learned counsel for the respondents that the petitioner company without raising any question paid the amount previously and, therefore, the petitioner company is estopped from raising objection to the impugned demand cannot be countenanced. The respondent West Bengal State Electricity Distribution Company Limited without any authority is insisting the petitioner to pay Rs.14,31,962/-towards LPSC amount.

27. 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.

28. As stated supra, a purchase of the premises cannot be foisted with the electricity dues of any previous owner merely because he happens to be the current owner of the premises. This Court is of the considered view that this is a fit case for interfering and remanding back the matter to the respondent authorities for consideration of the claim of the petitioners made vide letters dated 9.1.2016.

29. In the result,

(1) The writ petition is allowed.

(2) The impugned letter/memo dated 20.6.2015 issued by the SE & Regional Manager, Hooghly Region, West Bengal State Electricity Distribution Company Limited is set aside and the matter is remanded back to the concerned authority

to consider the claim of the petitioner company, including the refund of the amount already realized by the respondents from the petitioner company against the dues of M/s.Balaji Ispat Private Limited in the light of the decisions of the Apex Court referred to above as well as the discussions held supra.

(3) The said exercise is directed to be completed by the respondent West Bengal State Electricity Distribution Company Limited within a period of twelve weeks from the date of receipt of a copy of this order.

(4) No costs.

