

(2012) 12 GUJ CK 0045
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2240 of 2010 in Spl. C.A. No. 4669 of 2007 with L.P.A. No. 2241 of 2010 in Spl. C.A. No. 2160 of 2010 with L.P.A. No. 2242 of 2010 in Spl. C.A. No. 1753 of 2007

Torrent Power Ltd.

APPELLANT

Vs

Abhisar Developers

RESPONDENT

Date of Decision : 03-12-2012

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49, 79(j)
Electricity Act, 2003 — Section 181(2)(x), 2(15), 43, 50, 56
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22(1)

Citation : AIR 2013 Guj 184 : (2013) 1 GLR 821

Hon'ble Judges : Bhaskar Bhattacharya, C.J;V.M. Sahai, J;A.L. Dave, J

Bench : Full Bench

Advocate : Mihir Thakore with K.B. Pujara, for the Appellant; Percy Kavina with Mayur Rajguru, Anal S. Shah and P.K. Pancholi, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, C.J.—These matters have been referred to a Larger Bench by a Division Bench presided over by the then the Chief Justice by order dated 1st August, 2011 as Their Lordships were of the view that having regard to the provisions contained in Secs. 43 and 45 of the Electricity Act, 2003 ("the Act", hereafter), the judgment rendered by a Division Bench of this Court in the case of Torrent Power AEC Ltd. Vs. Shreeji (Rakhial) Commercial Co-Operative Housing Soc. Ltd., requires reconsideration. The facts giving rise to the filing of these Letters Patent Appeals are almost identical. However, for the purpose of discussion of the facts, the L.P.A. No. 2240 of 2010 is taken as the lead matter, and the facts may be summed up thus:

1.1. The appellant, Torrent Power Limited, granted electric connection bearing Service No. HT-19 in the name of M/s. New Gujarat Synthetic Mills Co. Limited. The said service was disconnected on 12th September, 1986 due to non-payment of electrical energy charges of Rs. 59,16,493/-, tax on sale of electricity Rs.

2,27,163/- and deferment of electricity duty Rs. 16,52,513/-, making a total of Rs. 77,96,169/-. The outstanding dues including interest/delayed payment charges came to Rs. 4,41,42,422/- as on 31st March, 2007.

1.2. The immovable properties of the said M/s. New Gujarat Synthetic Mills Co. Limited were purchased by one M/s. Star. Associates in a winding-up proceedings on "as is where is and whatever there is basis". The properties were conveyed to the present respondent as a nominee of the said purchaser.

1.3. Thereafter, the respondent applied to the appellant-Company for electric connection at the said premises on or about 28th December, 2006. The appellant informed the respondent that there were outstanding dues of Service No. HT-19 which was granted at the said premises, and therefore, unless and until those dues were cleared, the appellant was not in a position to grant re-connection or a new connection at the same premises.

1.4. The respondent, instead of complying with the demand of the appellant, filed a writ-application before this High Court thereby praying for a direction for grant of new connection to the respondent without insisting on payment of arrears payable by the previous owner.

1.5. A learned Single Judge of this Court, by order dated 14th September, 2010, allowed such prayer. Being dissatisfied, the appellant has come up with the present appeal.

2. Mr. Mihir Thakore, the learned Senior Advocate appearing on behalf of the appellant, has strenuously contended before us that the learned Single Judge failed to appreciate the judgment of the Supreme Court in Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, and Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers Pvt. Ltd., and other decisions as well as the provisions of the Supply Code made by the Gujarat Electricity Regulatory Commission (G.E.R.C.) under Sec. 50 of the Electricity Act, 2003 and other provisions of law. According to Mr. Thakore, his client has every right to impose condition for payment of dues of the earlier owner of the property as a condition for grant of new electric connection to the subsequent purchaser. Mr. Thakore contends that there is no bar in imposing such condition under the law of the land. Mr. Thakore, therefore, prays for setting aside the order passed by the learned Single Judge and for passing a direction upon the respondent to pay all arrears if it intends to get a new electric connection.

3. Mr. Kavina, the learned Senior Advocate appearing on behalf of the respondent, has, on the other hand, opposed the aforesaid contention of Mr. Thakore and has contended that his clients having purchased the property in a winding-up proceedings, his client is not required to pay any amount towards the arrears of electricity of the wound-up Company as unpaid electricity charges cannot form a charge on the property. According to Mr. Kavina, if any statutory rule governing the condition relating to sanction of a new connection or supply of electricity prescribes such a pre-condition, then only, the licensee can recover the

arrears of the previous owner provided, however, the rules so framed are not held to be unreasonable or arbitrary. Otherwise, according to Mr. Kavina, the licensee has no independent right to prescribe any different terms or conditions than what is stipulated in the Act or Regulations consistent with the Act. According to Mr. Kavina, the ratio laid down by the Supreme Court in the case of *Isha Marbles Vs. Bihar State Electricity Board and Another*, has been distinguished and it holds the field. According to Mr. Kavina, in view of the decision of the Supreme Court in the case of *Official Liquidator Vs. Dayanand and Others*, , the law laid in the case of *Isha Marbles*, (supra) is the law of the land so long it is not set aside by a Larger Bench and his client is not required to pay any arrears payable by the previous owner as a consumer. By referring to Clause 4.1.11 of the Supply Code, Mr. Kavina contends that his client having purchased the property in the year 2006 and having applied for fresh electric connection on 28th December, 2006, his client does not fall within the meaning and interpretation of the said clause and is not answerable to the dues left behind by the erstwhile owner. Mr. Kavina, therefore, prays for dismissal of the appeal.

4. Therefore, the following questions arise for determination in this appeal:

(1) Whether in view of the decision of the Supreme Court in the case of (i) *Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers Pvt. Ltd.*, , (2) *Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others*, , and (3) *Indian Maize and Chemicals Ltd. Vs. State of U.P. and Others*, relied upon by the appellant, the appellant is justified in refusing the electric connection unless the outstanding dues of Rs. 4 crore and odd left behind by the erstwhile owner is paid by the writ-petitioner.

(2) Whether the licensee under the licence independently and on its own accord can stipulate the terms and conditions with regard to recovery of arrears and dues of an erstwhile owner from an auction-purchaser without there being any statutory enactment, Rules or Regulations having statutory force.

5. In order to appreciate the aforesaid questions, it will be profitable to refer to the provisions contained in Secs. 2(15), 2(17), 43 and 50 of the Electricity Act, 2003 which are quoted below:

2(15) "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 the business of supplying electricity to the public under this 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;

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2(17) "distribution licensee" means a licensee authorised to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply;

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43. Duty to supply on request:- (1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation:- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-sec. (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-sec. (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

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50. The Electricity Supply Code:- The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

6. It will also be profitable to refer to Clause 4.1.11 of the Supply Code introduced in the year 2010, which is quoted below:

Amendment to Clause 4.4.11:

Clause 4.1.11 shall be substituted in Principal Regulations as under:

An application for new connection, re-connection, addition or reduction of load, change of name or shifting of service line for any premises need not be entertained unless any dues relating to that premises or any dues of the applicant to the Distribution Licensee in respect of any other service connection held in his name anywhere in the jurisdiction of the distribution licensee have been cleared:

Provided that in case the connection is released after recovery of earlier dues from the new applicant and in case the licensee, after availing appropriate legal remedies, get the full or part of the dues from the previous consumer/owner or occupier of that premise, the amount shall be refunded to the new consumer/owner or occupier from whom the dues have been recovered after adjusting the expenses to recover such dues.

7. After hearing the learned Counsel for the parties and after going through the provisions contained in the third amendment of Gujarat Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2010, by which Clause 4.1.11 has been introduced in modified form, we find that the said amendment was made by virtue of the purported power conferred under Secs. 50 and 181(2)(x) of the Electricity Act, 2003, enabling the distribution licensee to refuse a new electric connection unless any dues relating to the premises by the former consumer is paid by the new purchaser. However, the said regulation was introduced in the year 2010 during the pendency of these proceedings.

8. Therefore, without taking the aid of the said amended provision, we first propose to consider whether the appellant is entitled to refuse a new electricity connection to the auction-purchaser on the ground that before getting a connection, the auction-purchaser is required to pay for the dues of the wound-up company.

9. If we go through the provision contained in Sec. 43, it gives a mandate upon the distribution licensee to give supply of electricity to the premises on an application by an owner or occupier of such premises within one month after receipt of application subject to the proviso of the said Section. In Sec. 43 itself, no condition has been imposed that in order to get supply of electricity, the dues of the previous consumer in respect of the electricity consumed in that premises should also be paid.

10. The sum and substance of the definition of "consumer", as indicated in Sec. 2(15) of the Act, indicates that the consumer means a person and not the premises where the electricity is supplied. Therefore, the liability to pay the arrear in respect of electricity consumed by a consumer is his personal liability and devolves on his death upon his legal heir and representative provided such heir and legal representative has inherited any amount from such consumer and the liability of the heir and legal representative should be limited to the extent of the amount inherited by such heir and legal representative and not beyond that.

11. If a third-party purchases a property from a consumer who is defaulter and whose electricity has been disconnected on that ground, he has no liability to pay the personal debt of the consumer unless such due becomes a charge on the property by inter vivos transaction entered into between the consumer and the licensee before the purchase or by operation of the law.

12. There is no dispute that under the Electricity Act, 2003, the dues of a consumer do not become a charge on his property and in these cases, there is no dispute that at the time of purchase of the property, there was no existing order of attachment of the said property in any Court of law at the instance of the appellant nor was any charge created by the consumer in favour of the licensee before the transfer in favour of the respondent. Therefore, in accordance with the law of the land, a purchaser from a consumer, who is a defaulter, has no liability to pay the defaulted amount as a precondition of getting a new connection, unless an order of attachment has been obtained by the licensee from a competent Court of law.

13. If we look at Sec. 56 of the Act, it appears that for the neglect to pay any charge for electricity or other charges mentioned therein, a licensee is entitled to disconnect the supply after giving the required notice without prejudice to his rights to recover such charge or sum by suit, and may discontinue the electricity supply until such charges or any other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid.

14. According to sub-sec. (2) of Sec. 56 of the Act, notwithstanding anything contained in any other law for the time-being in force, no sum due from any consumer, under Sec. 56 shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as an arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity. In other words, unless, in spite of default, the licensee has continued with supply of electricity and shows the default amount as arrear of charges continuously while supplying electricity, the defaulted amount is not legally recoverable after the period of two years from the date such sum became first due. Therefore, in a case, where for a default committed by a consumer, electricity has been disconnected and no suit is filed for recovery of the amount within two years when the amount first became due, the said amount shall not be legally recoverable at the instance of the licensee. Such prohibition having been imposed by the provision of Sec. 56(2) of the Act, it is not within the competence of the distribution licensee, a creature of the same Statute, to impose any condition for payment of that amount which had become irrecoverable and such liability of a consumer which is personal one cannot be forced to be paid by a third-party as a pre-condition of exercise of his independent right conferred under the Act.

15. Although, the learned Counsel appearing on behalf of the appellant strenuously contended before us that the electricity connection is given to the premises and anybody having subsequently acquired interest in the said

premises should be saddled with the liability of the arrears of a previous consumer, we are not impressed by such contention, because to accept such a contention will have a disastrous effect and the same would be against the existing law of the land and the principles of natural justice.

16. It appears that in the Electricity Act, the word "premises" has been defined under Sec. 2(15) as including any land, building or structure. Therefore, the definition of "premises" is an inclusive one. Thus, if a multi-storied building is occupied by various flat-owners, by virtue of the inclusive definition of premises, the main building will also come within the inclusive definition of "premises". Let us now take a case where a particular flat owner of a multi-storied building has defaulted in making payment of charges of the electricity supplied to him and for non-payment, his electricity connection has been disconnected. In the said multi-storied building, there are separate connections in respect of various flat-owners and the owner of one of such flats decides to surrender his existing supply of electricity, and thereafter, sells the said flat to a third-party. If we accept the contention of the learned Counsel for the appellant that the electricity connection is granted not to a consumer but to the premises and the liability fastens to the premises, in that event, by taking aid of such interpretation, the licensee may lawfully demand that a new purchaser of a different flat whose purchaser was not a defaulter, would still be liable to pay the arrears of a defaulting consumer of another flat of the same multi-storied building on the ground that it is a part of the same premises. Therefore, we are of the view electricity dues of a consumer being personal in nature as provided in the Act itself, the licensee cannot force the intended consumer to enter into an agreement to pay the arrears of a different consumer.

17. As regards the amended Regulation 4.1.11, we find that the said Regulation has been enacted by the Regulatory Commission in exercise of power conferred under Secs. 50 and 181(2)(x) of the Act but the appellant cannot take advantage of the said provision in view of the fact that the respondent approached the appellant prior to coming into operation of the said amended enactment and at the same time, the said provision is ultra vires the main provision of the Electricity Act as held by us today in details in a separate judgment delivered in the case of Sanjay Balvantrai Desai, Partners of Apurva Chemicals v. Dekshin Gujarat Vij Co. Ltd., being Special Civil Application No. 2582 of 2012 [reported in 2013 (1) GLR 487 (FB)].

18. We now, propose to deal with the decisions cited by the learned Counsel for the parties.

19. It appears that a three-Judge Bench of the Supreme Court in the case of Isha Marbles Vs. Bihar State Electricity Board and Another, had an occasion to consider the question as to whether in a case, where the premises to which the Electricity was given came to be owned or occupied by an auction-purchaser, he can be called upon to clear the arrears of the previous owner as a condition precedent to a new supply.

19.1. The said Bench, on consideration of the provisions of the Electricity Act, 1910 and Electricity (Supply) Act, 1948, came to a conclusion that for the defaulted amount, there was no charge over the property in question. It was further held that where the premises came to be owned or occupied by the auction-purchaser and such a purchaser seeks supply of electricity, he cannot be called upon to clear the past arrears as a condition precedent to the new supply. According to the Supreme Court, what matters was the contract entered into by the erstwhile consumer with the Board and the Board could not seek enforcement of contractual liability against the third party. The Supreme Court further stated that the bona fide of the sale might not be relevant. The said three-Judge Bench further held that the decision of the Kerala High Court in the case of *Souriyar Luka Vs. Kerala State Electricity Board*, , laid down the correct proposition of law in this regard. The Supreme Court further held that the decision of the M.P. High Court in the case of *National Textile Corporation (M.P.) Ltd., Bhopal Vs. M.P. Electricity Board, Jabalpur*, , rested on the interpretation of the provisions of Sick Textile Undertakings (Nationalisation) Act and was not relevant and at the same time, the decision of the Supreme Court in the case of *Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others*, did not deal with the question that was the subject-matter in the case of *Isha Marbles Vs. Bihar State Electricity Board and Another*, . It may be mentioned here that in the case of *Souriyar Luka Vs. Kerala State Electricity Board*, , the test applied by the Kerala High Court was whether the applicant who sought electricity connection was the legal representative of the defaulter and further, the payment of arrears due from the defaulting consumer could not be insisted for supply of electricity to the premises used by erstwhile consumer.

19.2. Therefore, the law laid down by the Supreme Court in the case of *Isha Marbles Vs. Bihar State Electricity Board and Another*, , in the light of the provisions of the old Electricity Act was that the law as it stood was inadequate to enforce the liability of the previous contracting party against the auction-purchaser who was a third-party and was in no way connected with the previous owner/occupier. The Supreme Court further reminded that it might not be correct to state that it would permit the dishonest consumers transferring their unit from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lakhs and lakhs of rupees and each one of them can easily say that it was not liable for the liability of the purchaser in interest. According to the Supreme Court, no doubt, the dishonest consumer could not be allowed to play truant with the public property, but inadequacy of the law could hardly be a substitute for overzealousness.

20. In the case of *Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others*, upon which strong reliance was placed on behalf of the applicant-licensee, a two-Judge Bench of the Supreme Court was considering the question as to whether a supplier can recover the electricity dues from the purchaser of the legally sub-divided plot of the defaulting consumer. In that case, the Electricity Board submitted that if a consumer disposed of his

premises or any portion thereof without clearing the dues in regard to the electricity supplied to the premises, any transferee seeking fresh electricity connection or supply of electricity to the premises will have to clear the electricity dues of the previous occupant and in support of such contention, the Electricity Board referred to the sub-clauses (g) and (h) of Clause 4.3 of the Electricity Supply Code, which are quoted below:

(g) Where the property has been legally sub-divided, the outstanding dues for the consumption of energy on such premises, if any, shall be divided on pro-rata basis.

(h) A new connection to such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. Licensee shall not refuse connection to an applicant only on the ground that, dues on the other portion(s) of such premises have not been paid, nor shall the licensee demand record of last paid bills of other portion(s) from such applicants.

20.1. In the above context, the Supreme Court made the following observations in Paragraphs 9 and 10 of the judgment:

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 of 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 fulfilment 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.

(Emphasis supplied)

20.2. After making the above observations, the Supreme Court in Paragraph 11 made the following further submission which was strongly relied upon by the learned Counsel for the appellant by contending that the observation made in Paragraph 11 is a proposition of law laid down by the Supreme Court and is binding upon this Court in this case:

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 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 Clauses 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 had already been disconnected for non-payment, insist upon clearance of arrears before afresh 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.

20.3. After going through the aforesaid observations, we, however, find that in case of Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, a two-Judge Bench of the Supreme Court had no occasion to consider the question as to whether sub-clauses (g) and (h) of Clause 4.3 of the Electricity Supply Code were ultra vires the provisions of the Electricity Act, 2003, and therefore, the observation of the Supreme Court that, a stipulation of the distributor that dues in regard to the electricity supplied to a premises should be cleared before the electricity supply is restored or new connection is given to the premises cannot be termed as unreasonable or arbitrary, cannot be the proposition of law laid down by the Supreme Court in considering the legality of such provision in the light of the provisions of the Act of 2003. It appears that the Supreme Court also did not take into consideration Secs. 43, 50 and 56 of the Act nor had the Supreme Court occasion to consider the scope of the provisions of Sec. 181(2)(x) of the Act, by virtue of which Regulation 4.1.11 has been enacted.

20.4. Further, we find that the following observations mentioned below in the case of Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, , i.e. 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, which is the basis of the said decision are in conflict with the following view of the three-Judge Bench of the Supreme Court in the case of Isha Marbles Vs. Bihar State Electricity Board and Another, which is quoted below:

61. What we have discussed above appears to be the law gatherable from the various provisions which we have detailed out above. It is impossible to impose on the purchasers a liability which was not incurred by them.

62. No doubt, from the tabulated statement above set out, the auction-purchasers came to purchase the property after disconnection but they cannot be "consumer or occupier" within the meaning of the above provisions till a contract is entered into.

63. We are clearly of the opinion that there is great reason and justice in holding as above. Electricity is public property. Law, in its Majesty, benignly protects public property and behaves everyone to respect public property. Hence, the Courts must be zealous in this regard. But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction-purchaser who is a third party and is in no way connected with the previous owner/occupier. It may not be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lakhs and lakhs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor-in-interest. No doubt, dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness.

21. Further, in the case of Ahmedabad Electricity Co. Ltd. Vs. Gujarat Inns. Pvt. Ltd. and Others, , a three-Judge Bench of the Supreme Court followed the decision in the case of Isha Marbles Vs. Bihar State Electricity Board and Another, holding that the buyer is under no obligation to pay the arrears incurred by the previous owner. The following observations are relevant:

We are clearly of the opinion that in case of a fresh connection though the premises are the same, the auction-purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supply to the premises in the absence of there being a specific statutory provision in that regard.

22. In the case of Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers Pvt. Ltd., , relied upon by the appellant, a two-Judge Bench of the Supreme Court did not lay down any proposition of law on the question whether

the licensee can in the agreement stipulate a condition of recovery of the dues of the previous consumer and held that such a clause may be violative of fundamental right as would appear from the following observations:

15. We must observe that the decision in *Isha Marbles Vs. Bihar State Electricity Board and Another*, is by itself not an answer to the validity of clause 21A of the Terms and Conditions inserted by the notification. Under Sec. 49 of the Supply Act, the licensee or rather, the Electricity Board, is entitled to set down the Terms and Conditions of Supply of electrical energy. In the light of the power available to it, also in the context of Sec. 79(j) of the Supply Act, it could not be said that the insertion of clause 21A in the Terms and Conditions of Supply of electrical energy is beyond the power of the appellant. It is also not merely contractual. This Court in *M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others*, , has held that the Terms and Conditions of Supply of electricity notified by the Electricity Board under Sec. 49 of the Electricity (Supply) Act are statutory and the fact that an individual agreement is entered into by the Board with each consumer does not make the Terms and Conditions of Supply contractual. This Court has also held that though the Electricity Board is not a commercial entity, it is entitled to regulate its tariff in such a way that a reasonable profit is left with it so as to enable it to undertake the activities necessary. If in that process in respect of recovery of dues in respect of a premises to which supply had been made, a condition is inserted for its recovery from a transferee of the undertaking, it cannot ex-facie be said to be unauthorised or unreasonable. Of course, still a Court may be able to strike it down as being violative of the fundamental rights enshrined in the Constitution of India. But that is a different matter. In this case, the High Court has not undertaken that exercise.

(Emphasis supplied)

22.1. Thus, in the case of *Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Paramount Polymers Pvt. Ltd.*, the question of legality of the condition was kept open, and consequently, the said decision does not help the appellant.

23. In the case of *Indian Maize and Chemicals Ltd. Vs. State of U.P. and Others*, relied upon by Mr. Thakore, the question was whether a sick company can take the benefit of the provisions contained in Sec. 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 for preventing disconnection for non-payment of the charges of the electricity. We fail to appreciate how the said decision can be of any help to the appellant.

24. We, therefore, propose to follow the views of the two three-Judge Bench decisions mentioned above and find that in the Act of 2003, there being no provision of imposing the liability of a defaulter upon the third party, the amended Regulation relied upon by the appellant herein is not only prospective in operation but also inconsistent with the provisions of the Act, and hence, ultra vires.

25. In view of the above finding, we do not propose to deal with the other question raised by Mr. Kavina that the licensee can, at the most, claim, from the subsequent purchaser, the amount which was due at the time of disconnection but neither interest nor penalty can be demanded. On consideration of the entire materials on record, we, thus, dismiss these appeals and affirm the ultimate conclusion arrived at by the learned Single Judge on the basis of the reasons assigned by us above.

FURTHER ORDER:

After the judgment was pronounced, the learned Counsel for the appellant prays for stay of operation of the judgment.

In view of what has been stated above, we do not find any reason to stay our judgment. The prayer is refused.

In view of the dismissal of the appeals, the interim stay passed in these appeals have become infructuous and the respondents will be free to enforce the order passed by the learned Single Judge.