(2015) 05 JH CK 0093

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1708 of 2014

Vaishnavi Multigrains Private Limited and Others APPELLANT

Vs

Jharkhand Urja Vikash Nigam Ltd. (J.U.V.N.L.) and Others RESPONDENT

Date of Decision : 01-05-2015

Acts Referred:
Electricity Act, 2003 — Section 15, 181(2), 43, 43(3), 45

Citation : (2015) 4 AJR 87 : (2015) 3 JLJR 104

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : M.S. Mittal, Senior Advocate and Shilpi John, for the Appellant; Saket Upadhyay, Advocates for the Respondent

Judgement

S. Chandrashekhar, J—Ms. Shilpi John, the learned counsel for the petitioners submits that after the writ petition was filed, the respondent-Board has been bifurcated into four separate units and therefore she seeks permission to correct the name of the parties.

2. Permission is granted.

3. Let necessary corrections be carried out.

4. Seeking a direction upon the respondent-Jharkhand Urja Vikas Nigam Ltd. for grant of electric connection of 5 KW (3 phase) C.S. category and for grant of electric connection under H.T. category of 500 KVA, the present writ petition has been filed. A direction upon the respondents for paying penalty in terms of Section 43(3) of the Electricity Act, 2003 has also been sought in the writ petition.

5. The brief facts of the case are that, the petitioner No. 2 who is the Director of the petitioner-Company namely, M/s. Vaishnavi Multigrains Pvt. Ltd. submitted an application on 3.4.2012 for grant of 5 KW electric supply connection. Another application dated 13.3.2013 for 500 KVA in H.T. category for running a rice mill was also made. Since no response came from the respondents, the petitioner No.

2 filed fresh application on 30.11.2013. The petitioner No. 2 wrote letter dated 6.2.2014 to the Assistant Electrical Engineer-respondent No. 4, however, the respondents did not respond to the same. In these facts, the petitioners have approached this Court.

6. Heard learned counsel for the parties.

7. Mr. M.S. Mittal, the learned Sr. counsel for the petitioners submits that the petitioner No. 2 is one of the Directors of the Company namely, M/s. Vaishnavi Multigrains Pvt. Ltd. The petitioner No. 2 had earlier purchased a piece of land in Plot Nos. 484, 485 and 486 vide registered sale deed dated 6.3.1995, over which he decided to start a rice mill and thus, the aforesaid applications were made for grant of electric connections. Referring to Section 43 of the Electricity Act, 2003, the leaned Sr. counsel for the petitioners submits that the respondent-Jharkhand Urja Vikash Nigam Ltd. is under a statutory duty to provide electric connection within 30 days, if an application complete in all respects is received by the Nigam. However, even after submission of the applications dated 3.4.2012, 13.3.2013 and 30.11.2013, neither any defect in the applications submitted by the petitioners was communicated nor fresh electric connection was granted to the petitioner-Company.

8. As against the above, Mr. Saket Upadhyay, the learned counsel for the respondent-Jharkhand Urja Vikash Nigam Ltd. submits that against the erstwhile occupant of the concerned premises, a certificate case for realization of an amount of Rs. 36,27,242/- vide Certificate Case No. 1205/2010-11 and a criminal case for theft of electricity and causing loss of Rs. 87,62,000/- are pending. It is submitted that since against the erstwhile occupant of Plot Nos. 484 and 485, the aforesaid cases are pending therefore, fresh electric connection cannot be granted to the petitioners, who are the occupants of the concerned premises. It is further submitted that in terms of Clause 5.5 of the Electricity Supply Code Regulation, 2005, the Jharkhand Urja Vikas Nigam Ltd. is entitled to recover dues of the erstwhile owner/occupant of the concerned premises from the subsequent purchaser/transferee and therefore, unless the certificate amount is paid and the loss caused to the Nigam is recovered, no electric connection can be granted to the petitioners.

9. In reply, the learned Sr. counsel for the petitioners submits that so far as, the amount of Rs. 87,62,000/- for theft of electricity by the erstwhile owner of M/s. Vaishnavi Steel Industries Ltd. is concerned, the assessing authority reduced the amount to Rs. 40,31,840/-. It is submitted that the petitioner-Company is altogether a different entity and merely because it occupies a part of Plot No. 485, it would not lead to an inference that the two Companies were established on the same premises. It is further submitted that M/s. Vaishnavi Steel Industries Ltd. was a partnership Firm whereas, the petitioner No. 1 is a Company incorporated under the Companies Act, 1956. It is, thus, submitted that neither the petitioners are the occupants of the concerned premises against which electric dues is pending nor the petitioner No. 2 is connected with M/s.

Vaishnavi Steel Industries Ltd. as its partner or Director or Managing Director or in any capacity whatsoever.

10. Before adverting to the rival contentions, the provision under Clause 5.5 of the Jharkhand Electricity Supply Code Regulation, 2005 may usefully be noticed.

"5.5 If the applicant, 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. But if the old consumer who had committed default in payment of the dues has left the premises for good and the concerned premises has come in legal possession of a new occupant through transfer or purchase of the concerned property and where the new incumbent is not connected with the previous owner/occupant in any manner applies for re-connection of the electrical line in the same disconnected premises, in that event the distribution licensee shall be obliged to order reconnection without realization of the arrear dues of concerned premises from the new incumbent, as the purchaser of the premises would not be held liable to meet the liability of the previous consumer in order to secure reconnection."

11. The above regulation is in two parts. The first part contemplates a situation in which the applicant, who has made an application for grant of new electric connection if, is a party to the agreement executed for grant of electric connection in the concerned premises either in his own name or in the name of a Firm or Company with which he was associated as a partner or Director or Managing Director against which there is an arrear of electricity dues, the requisition for supply may not be entertained by the licensee until, the dues are paid in full. The learned Sr. counsel for the petitioners submits that the petitioner No. 2 was not party to the agreement executed for grant of electric connection to M/s. Vaishnavi Steel Industries Ltd. and he was not associated with the said industry either as a partner or a Director or a Managing Director and thus, the first part of Clause 5.5 of 2005 Regulation is not attracted in the present case. The learned counsel for the respondents-Jharkhand Urja Vikas Nigam Ltd. submits that it would be a question of fact whether the petitioner No. 2 was associated with M/S. Vaishnavi Steel Industries Ltd. or not and since the necessary documents have not been produced on record such an inference cannot be drawn. I find force in the submission of the learned counsel for the respondents.

12. So far as, the second part of Clause 5.5 is concerned, I find that the important expressions in the said Clause are "concerned premises" and "reconnection". The second part of Clause 5.5 contemplates a situation in which an application for grant of electric connection has been made by a new consumer in the same disconnected premises and if, it is found that the person making application has come in occupation of the concerned premises through transfer

or purchase and he was not connected with the old consumer in the manner provided therein, the respondent-Nigam would be under an obligation to order reconnection without realization of the arrears of dues of the concerned premises. Though, the word reconnection has been used in Clause 5.5, I am of the opinion that in case of a new consumer/new incumbent seeking reconnection, whether the application is for reconnection or for a fresh connection, it would not make any difference and no distinction can be made on the ground that the application was for grant of a new electric connection and not reconnection.

13. The learned Sr. counsel for the petitioners submits that in view of the facts disclosed in the present writ petition, even the second part of Clause 5.5 is not attracted.

14. Adverting to the stand taken in the counter affidavit, learned counsel for the respondent-Nigam submits that this again would be a question of fact which cannot be decided in the present proceeding.

15. The Electricity Act, 2003 is a special legislation with certain special features. While the Act itself imposes a duty upon the distribution licensee to grant supply of electricity to the owner or occupier of any premises within one month after receipt of application, certain powers have been given by the Act itself to the distribution licensee. Section 45 gives power to the distribution licensee to charge prices fixed according to tariffs and in terms of the conditions of license. Section 46 empowers the distribution licensee to require a person to pay expenses reasonably incurred in providing any electric line or electrical plan used for the purpose of giving supply. The distribution licensee is also empowered under Section 47 to require a person to furnish "reasonable security" as may be determined by the regulations. Regulation 10.2 of the Electricity Supply Code Regulation, 2005 provides that for supply of electricity, a consumer is required to provide security three times the monthly average bill to the respondent-Nigam. However, under Section 43(3) of the Act the distribution licensee has been made liable to pay penalty of Rs. 1,000/- for each day of default in the event the distribution licensee has failed to provide electric supply within one month of receipt of application. A glance to Section 86 indicates that the Electricity Regulatory Commission discharges wide range of functions in exercise of power conferred by Clause (x) of Section 181(2) read with Section 15 of the Electricity Act, 2003. The Jharkhand State Electricity Regulatory Commission has framed electricity Supply Code Regulations, 2005. Thus, Clause 5.5 has statutory force. In Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, AIR 2009 SC 647 : (2008) ELR 756 : (2008) 12 JT 672 : (2009) 1 SCC 210 the Hon''ble Supreme Court has observed as under:

"11. 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.

12. 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.

13. 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 Clauses 4.3(g) and (h) of the Electricity Supply Code are necessary to safeguard the interests of the distributor.

14. 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/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."

16. Referring to various documents produced in the present proceeding, the learned Sr. counsel for the petitioners has submitted that the petitioner No. 1-Company is a separate entity and the petitioner No. 2 was not connected with M/s. Vaishnavi Steel Industries Ltd. in any manner whatsoever. However, it is not denied that the petitioner No. 2 is the brother of the proprietor of M/s. Vaishnavi Steel Industries Ltd. The respondent-Urja Vikash Nigam Ltd. has taken a stand that the petitioner No. 1-Company is situated at Plot Nos. 484, 485 & 486 over a part of which M/s. Vaishnavi Steel Industries Ltd. was situated and to avoid the rigours of Clause 5.5 of 2005 Regulation, the petitioner No. 2 has incorporated a new Company and sought supply of electric connection in the concerned premises.

17. From the aforesaid discussions, I find that a dispute has arisen regarding the identity of the petitioner No. 1-Company and M/s. Vaishnavi Steel Industries Ltd. I find that necessary documents have not been produced by the petitioners to establish the aforesaid claim. Moreover, in the present proceeding, such a dispute cannot be adjudicated. However, in the light of the mandate of 2003 Act, the respondent-Jharkhand Urja Vikash Nigam Ltd. is directed to examine the documents produced by the petitioners. The petitioners are directed to produce necessary documents, as required by the respondent-Jharkhand Urja Vikash Nigam Ltd., within a period of two weeks and the respondents shall take a decision for grant of electric supply connection to the petitioners within next two weeks.