
(2004) 06 MP CK 0015
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2799 of 2001

Vee Enn Enterprises and Another	Vs	APPELLANT
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision : 23-06-2004

Acts Referred:

Electricity Act, 1910 — Section 24, 26

Citation : (2004) 2 JLJ 377 : (2004) 3 MPHT 366 : (2004) 2 MPJR 294 : (2004) 4 MPLJ 63

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : K.S. Jaitley and Jagdish Sakale, for the Appellant; B.N. Mishra, Government Advocate for the Respondent No. 1, K.K. Trivedi, for the Respondent Nos. 3 to 5 and V.K. Shukla, for the Respondent No. 6, for the Respondent

Final Decision : Allowed

Judgement

K.K. Lahoti, J.

Petitioners aggrieved by the action of respondent Nos. 3 to 5, by which an outstanding recovery against the respondent No. 8 has been directed to be recovered from the petitioners by order (Annexure P-1).

Short facts of the case are that the Industrial premises bearing No. 66-D Sector "C", Industrial Area, Mandideep, Raisen belongs to respondent No. 2 M.P. Audyogik Kendra Vikas Nigam (P) Ltd. This premises was initially allotted to respondent No. 7 M/s. Poly Products. Respondent No. 7 M/s. Poly Products took loan from respondent No. 6 M.P. Financial Corporation. Action u/s 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as "Act" for short) was taken against respondent No. 7 and the property of respondent No. 7 after action u/s 29 of the Act was sold to Smt. Purnima Jain of M/s. Arihant Industries, Mandideep/respondent No. 8. The aforesaid premises was subsequently transferred to respondent Smt. Purnima Jain on 20th September, 1996. Thereafter respondent No. 6 wrote a letter to respondent No. 4 to provide

electricity connection to respondent No. 8. This property was purchased by the petitioners from Smt. Purnima Jain, vide Annexure P-5/A on 5th June, 2000. The respondent No. 2 also executed a deed of amendment in lease deed on 27-1-2001 in favour of petitioners Annexure P-3. Petitioners applied for temporary connection with the respondents, which was granted, but the application for permanent connection of petitioners was not considered and the petitioners were informed that there is an outstanding amount of Rs. 11,15,294/- against the premises and the petitioners were asked to make payment of old outstanding dues for seeking new connection in the premises. This letter (Annexure P-1), dated 21-3-2001 is under challenge in this petition.

The petitioners assailed aforesaid order on following grounds :--

- (1) That the recovery is against respondent No. 7 and not against the petitioner. The property was transferred to respondent No. 7 by respondent No. 6 u/s 29 of the Act. Thereafter, respondent Nos. 3 to 5 were informed by respondent No. 6 vide Annexure P-4, dated 20-9-1996 that the property has been sold to respondent No. 8, but no action has been taken by respondent Nos. 3 to 5 for the recovery of aforesaid amount against respondent No. 7 or 8.
- (2) That the petitioners have purchased the property from respondent Nos. 2 and 8 vide Annexure P-3, dated 27-1-2001 and Annexure P-5/A, dated 5-6-2000, and petitioners can not be held liable for the dues of respondent No. 7.
- (3) That the recovery is time barred and no recovery may be made by respondent Nos. 3 to 5, which is more than three years old.
- (4) That the respondent No. 3 issued an order dated 5-1-1995 by which a decision of the Board was informed that if any asset of any unit is sold by the Financial Corporation to recover their dues in such case their property will be transferred to new purchaser free from all encumbrances. In such case, payment of old energy charges be not insisted from new purchasers.

After filing the return by the respondents, petitioners have also challenged the letter (Annexure R-3/1) by which General Instructions have been issued for the electricity connection in which instruction No. 5.2 directs that on the new electricity connection if there is some old dues then applicant has to deposit the arrears.

The respondents filed the return in this case. The return filed by respondent No. 2 M.P. Audyogik Kendra Vikas Nigam Ltd., in nut shell is that the dispute is between the petitioner and M.P. Electricity Board and respondent No. 2 is not concerned with it.

The respondent Nos. 3 to 5 filed the return and raised a plea that the respondents have a right to recover the old dues of premises, in case of new connection the applicant has to pay all the outstanding dues on the premises. Previously electricity connection was provided to M/s Poly Products which subsequently became a sick industry and the electricity connection was

disconnected. Attempts were made to recover the dues towards the electricity charges from M/s Poly Products, but no fruitful results could be achieved. Thereafter the property was purchased by the petitioners and the petitioners are liable to pay all the outstanding dues of the premises before getting new connection. The respondents have placed reliance to condition No. 5.2 of the circular dated 11-1-2001 prescribing condition for grant of electricity connection. It is further contended by the respondents that proceedings have been initiated for recovery of dues as arrears of land revenue against the premises on 29-5-2001. So far as instructions Annexure P-7 is concerned, it is contended by the respondents that the aforesaid circular has been superseded by the new instruction w.e.f. 11-1-2001 and letter (Annexure P-7) has lost its efficacy. In the additional return by respondent Nos. 3, 4 and 5, it is contended that the petitioners are the purchasers of premises and are liable to pay the dues on the premises as per circular dated 11-1-2001 Annexure R-3/1. It is also contended that the liability of the unit was transferred to respondent No. 8, and now to the petitioners and it is the liability of petitioners to pay the outstanding amount. The petitioners before purchase of property ought to have verified the liabilities on the premises and without which if the petitioners have purchased the property then the petitioners are liable to pay the dues. In these circumstances petitioners can not be said to be bona fide purchasers of the property. So far as the limitation is concerned it is contended by the respondents that the recovery proceedings were initiated long back and it continued till the date, the claim of respondents is not barred by limitation.

To consider the rival contention of the parties, it will be profitable to refer the judgment of Apex Court in *Isha Marbles Vs. Bihar State Electricity Board and Another*, wherein the Apex Court considering similar circumstances held :--

"In all the present cases the supply of electricity to a particular premises which had the benefit of enjoying electricity had been disconnected u/s 24 of the Electricity Act. The auction-purchasers want reconnection. The Board say no; unless and until the consumption charges in relation to that property which came to be incurred during the ownership of the previous incumbent are cleared off. Is the stand of the Board correct ? The High Court, in the main judgment in *Suman Packaging (CWJC No. 5358 of 1992)* gives the following reasons for answering the question against the Board :--

(1) Section 24 stipulates discontinuance of supply of electrical energy to the consumer in respect of a sum due from him. We are afraid the High Court had not read Section 24 in conjunction with other statutory provisions though they had been noted, namely, Section 26 of the Supply Act; Section 22 of the Electricity Act and Clause VI of Schedule to the Electricity Act. They clearly postulate the obligation to supply energy for such premises. At the risk of repetition we hold that the premises had enjoyed the benefit of electricity. The owner of the premises or even the occupier of the premises, as stated under Rule 2 (af) of the Indian Electricity Rules, becomes liable to pay the consumption

charges together with other dues. In other words, the liability is in respect of the dues of electricity which came to be supplied pursuant to the contract with the former owner. The discharge of such liability will be on such owner or occupier. ,

From the above it is clear that the High Court has chosen to construe Section 24 of the Electricity Act correctly, There is no charge over the property. Where that premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electricity energy he can not be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board can not seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant. The form of requisition relating to the contract is in Annexure VIII prescribed under Clause VI of the Schedule to the Electricity Act. They can not make the auction-purchaser liable. In the case of Isha Marbles we have already extracted the relevant clause wherein the consumer was asked to state his willingness to clear off the arrears to which the answer was in the negative. Therefore, the High Court has rightly held that the auction-purchaser, namely, "the writ petitioner before us is ready and willing to enter into a new contract and that the auction-purchaser does not intend to obtain the continuance of supply of electrical energy on the basis of the old agreement". It is true that it was the same premises to which reconnection is to be given. Otherwise, with the change of every ownership new connections have to be issued does not appear to be the correct line of approach as such a situation is brought about by the inaction of the Electricity Board in not recovering the arrears as and when they fall due or not providing itself by adequate deposits.

This is a case of sale u/s 29 of the Corporations Act. Of course, what the Corporation seeks to recover are the loans advanced by enforcement of a mortgage. Such sale can not affect the right of the Board to recover its dues. The failure of the Board to recover the dues as and when such dues arose, is a point to be put against it.

Turning to the instruction issued by Chairman of the Board and a circular dated 19-1-1972 on which the High Court had relied, in our considered view, is again to be weighed, against the Electricity Board.

In view of above, we hold that the decision in Souriyar Luka on which reliance is placed by Mr. Gopal Subramaniam is correct. The ruling of National Textile Corpn. (M.P.) Ltd. rested on the interpretation of the provisions of Sick Textile Undertakings (Nationalisation) Act (57 of 1974). That is not relevant. The question with which we are concerned did not directly arise in Bihar State Electricity Board v. Green Rubber Industries. We do not think it is necessary for us to refer to Ram Chandra Prasad Sharma v. State of Bihar, since that case related to co-owners.

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."

In view of judgment of Apex Court, facts of the present case may be seen. The previous unit owner had the benefit of electricity supply, it borrowed from the Madhya Pradesh Electricity Board. The electricity arrears in relation to these premises had fallen due since it had neglected to pay. The respondent Nos. 3, 4 and 5 because of non-payment of dues disconnected the electricity supply of respondent No. 7. The respondent No. 6 M.P. Financial Corporation also took steps u/s 29 of the Act and transferred the property in favour of respondent No. 8. Thereafter with the concurrence of respondent No. 6 the property was transferred by respondent No. 8 in favour of petitioners and now the premises is owned and occupied by petitioners after purchase from auction purchaser respondent No. 8 and from respondent No. 2. When the petitioner sought supply of electric energy from respondent Nos. 3, 4 and 5, they insisted to recover the dues on the premises. In fact the recovery of charges is a matter of contract between respondent Nos. 3, 4 and 5 and respondent No. 7. This will be covered by the contract entered into by respondent No. 7 and electricity Board. The Board (Jan not seek enforcement of contractual liability of third party. The petitioners can not be held liable, though it was the same premises to which connection is sought. The Apex Court considering the similar situation held that it is impossible to impose on the purchasers the liability, which was not incurred by them. Though the property was purchased by respondent No. 8 after disconnection, but they can not be "consumer or occupier". The electricity is public property. Law in its majesty, benignly protects public property and behoves everyone to respect public property. But, the law, as it stands, is inadequate to enforce the liability of 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 that if it is held as above, then 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 can not be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness.

In view of aforesaid settled law by the Apex Court, the respondent Nos. 3, 4 and 5 can not insist recovery of dues of respondent No. 7 against the petitioners. As a result of which, the order (Annexure P-1) asking petitioners to deposit arrears of respondent No. 7 before getting new electricity connection can not be sustained under law.

Accordingly, this petition is allowed. The order (Annexure P-1), dated 21-3-2001 is hereby quashed and respondent Nos. 3, 4 and 5 are directed to consider the application of petitioners for new electricity connection, without insisting the

recovery of dues against respondent No. 7. However, respondent Nos. 3, 4 and 5 shall be free to recover the aforesaid dues in accordance with law, against respondent No. 7. No order as to costs.