

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 1st June, 2011

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W.P.(C) No.8802/2006.

SHRI RAJ KUMAR

..... Petitioner

Through: Mr. Bhushan Tiwari, Advocate.

Versus

NDPL & ANR.

..... Respondents

Through: Mr. K. Datta, Mr. Manish Srivastava
& Mr. Diwakar Sinha, Advocates
for NDPL.
Mr. Ankur Chhibber, Advocate for
R-3/UOI.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, an employee of Delhi Government and posted as a *Beldar* in the Office of the Executive Engineer, PWD, was on 28th March,

2005 allotted and put into possession of government accommodation at 183, Type-I, Lancers Road near Jawahar Market, Timarpur, Delhi. According to the petitioner, the said house was without any electricity connection. The petitioner on 11th April, 2005 applied for electricity connection in the said house. The respondent NDPL however vide its letter dated 11th April, 2005 intimated the petitioner that there were dues of ₹33,113.35p against the electricity connection at the said address in the name of one Mr. Madan. The petitioner protested but without any avail. The petitioner thereafter approached the Estate Officer who also recommended grant of an electricity connection by the respondent NDPL to the petitioner at the aforesaid address. It is the case of the petitioner that he was ultimately in or about February, 2006 directed by the respondent NDPL to make a fresh application and upon the same being made, was this time vide letter dated 25th February, 2006 of the respondent NDPL informed that the dues against the electricity connection in the name of Mr. Madan at the said address were in the sum of ₹1,54,947.11p. The protests of the petitioner meeting with no success, the present writ petition

was filed for a direction to the respondent NDPL to install electricity connection in the name of the petitioner at the aforesaid address and also claiming compensation and penalty from the respondent NDPL for wrongful refusal to install electricity connection demanded by the petitioner.

2. Notice of the petition was issued and the petitioner directed to implead the aforesaid Mr. Madan as well as the Department from which the said Mr. Madan had retired. The petitioner however applied only for impleadment of Estate Officer of the Government of India as the respondent No.3. The Court however on 1st September, 2006 also directed issuance of notice to the Government of NCT of Delhi. None appeared on behalf of Government of NCT of Delhi inspite of service. Vide order dated 19th October, 2006, the respondent NDPL was directed to install new electricity connection at the premises aforesaid without insisting upon payment of arrears aforesaid of ₹1,54,947.11p and was also restrained from recovering the said amount. On the next date, it was informed that the petitioner had been so provided with the electricity connection. The said

order has continued to remain in force and the petitioner is enjoying the electricity connection under interim orders in the present proceedings.

3. The respondent NDPL in its counter affidavit has pleaded that the petitioner has failed to implead Mr. Madan aforesaid inspite of direction of this Court; that the arrears of electricity connection in the name of Mr. Madan were recoverable from Mr. Madan as well as from the Department in which the said Mr. Madan was employed; it is further pleaded that the petitioner has not filed the present petition with clean hands; that in March, 2005 when the petitioner took possession of the premises, the electricity connection in the name of Mr. Madan was still alive and the petitioner continued to enjoy the electricity therefrom and reading of the said meter was taken in August, 2005; that in inspection on 3rd June, 2006, the meter was found damaged and was thereafter removed; that there was consumption of electricity from August, 2005 till the date of removal; that the petitioner had initially applied for electricity connection at the said premises on 2nd April, 2005 which was cancelled on 22nd September, 2005 on the failure of the petitioner to pay the arrears then intimated to him; that

the petitioner thereafter made a second application for new connection on 6th February, 2006. It is otherwise pleaded that the respondent NDPL is entitled to insist upon payment of arrears against the old connection before providing a new electricity connection in the premises.

4. The petitioner has filed a rejoinder to the aforesaid counter affidavit pleading that he was not aware of any particulars of Mr. Madan and as such could not implead him and had filed an application for modification of the order by which he was directed to implead Mr. Madan. He has also denied that the electric connection in the name of Mr. Madan was alive when the petitioner took possession of the premises or that the petitioner has enjoyed or consumed any electricity through the said connection. He has also denied any inspection or removal of the meter as claimed by respondent NDPL.

5. The respondent No.3 Dy. Director, Directorate of Estates of the Government of India in its counter affidavit has pleaded that the premises aforesaid was allotted to Mr. Madan on 22nd April, 1992 and vacated by

the said Mr. Madan on 29th October, 1992; that thereafter the same was allotted to one Mr. Ramesh Kumar on 25th November, 1992 and vacated by him on 19th November, 1998; the same was thereafter allotted to one Mr. B.S. Bist on 27th November, 1998 and vacated by him on 6th February, 1999; the same was thereafter allotted to one Mr. Sube Singh on 24th February, 1999 and vacated by him on 5th January, 2005. It was thereafter that the same was allotted to the petitioner and petitioner put in possession thereof on 28th March, 2005.

6. It is further pleaded in the counter affidavit of respondent No.3 Dy. Director, Directorate of Estates of the Government of India that a large number of government premises remain lying vacant because of the refusal of the Electricity Distribution Companies as the respondent NDPL to provide electricity connection to the new allottees thereof for the reason of arrears owed by the earlier allottees of the said government accommodation. It is pleaded that inspite of several meetings with the Distribution Companies for resolving the said problem, no solution has been agreed to. It is pleaded that for the said reason, government

accommodations remain vacant putting the burden of HRA on the Government. It is the case of the Government that it is the responsibility of the Distribution Companies to make timely recovery of electricity dues especially with respect to premises as government accommodation, the allottees / occupants whereof keep on changing. It is further pleaded that the dues of the electricity connection in the present case appear to be very old and recovery thereof would in any case be barred under Section 56(2) of the Electricity Act, 2003 and the respondent NDPL cannot compel recovery of time barred dues by denying fresh electricity connection to the premises.

7. Since the filing of the present petition, there have been several pronouncements by this Court with respect to the right of the Distribution Companies as NDPL to deny fresh electricity connection for the reason of arrears with respect to the premises.

8. A Division Bench of this Court in ***Madhu Garg Vs. North Delhi Power Ltd.*** 129 (2006) DLT 213 held that the General Conditions of

Supply clearly prohibit supply of electricity to an applicant unless he deposits the outstanding dues against the premises for which supply of electricity is sought. It was further held that there is no distinction between the purchaser of a premises who was aware that there were outstanding electricity dues against the previous owner/tenant, and one who was not aware of it; in either case, the dues have to be paid by the new owner/occupant before supply can be continued / restored. It was yet further held that whenever a person purchases a property, it is his duty to find out whether there are outstanding electricity dues in relation to the premises or not, and he cannot be allowed to say later that he was unaware of the fact that there were electricity dues of the previous owner / tenant; that the question of *bona fide* or *mala fide* does not arise. Electricity dues were held to be public property required to be protected.

9. A Full Bench of this Court in ***BSES Rajdhani Power Ltd. Vs. Saurashtra Color Tones Pvt. Ltd.*** 161 (2009) DLT 28 while affirming the aforesaid judgment also observed that having regard to the very large number of consumers of electricity, it was necessary to safeguard the

interests of the distributor by providing for a right to refuse supply / new connection for non payment of arrears with respect to the premises even of another. It was held that even though the arrears could not legally be recovered from the new owner / occupier but electricity connection to a new owner / occupier could be denied for the reason of arrears.

10. Finding that neither of the judgments aforesaid dealt with a situation where the arrears for reason whereof new connection was denied were pleaded to be time barred, it was enquired from the counsel for the respondent NDPL as to how the dues in the present case could be said to be recoverable. I may notice that the respondent NDPL along with its counter affidavit has only filed a “Statement of KNO Summary” of the meter in the name of Sh. Madan which shows a total outstanding of ₹21,689/- on 3rd June, 2002 and which increased to ₹1,54,947.11p in January, 2006. It is the case of the respondent NDPL itself that the arrears of ₹33,113/- were initially communicated since the bills against the said connection were being raised on a provisional basis and only on reading in August, 2005, the demand for ₹1,54,947.11p was raised. A careful perusal

of the statement annexed to the counter affidavit of respondent NDPL also shows that no demand whatsoever was being made with respect to the said meter right since 3rd June, 2002 and bulk of the demand of ₹1,54,947.11p is towards late payment surcharge.

11. Once it is found that the payment was not being made against the meter at least since 3rd June, 2002, the respondent NDPL could not, in 2005, have denied electricity connection to the petitioner for the reason thereof.

12. The counsel for the respondent NDPL in response to the query as to whether the right to deny electricity could be exercised even with respect to time barred dues has invited attention to *M/s Swastic Industries Vs. Maharashtra State Electricity Board* AIR 1997 SC 1101 laying down that the right to recover electricity charges is one part and right to discontinue supply to the consumer who neglects to pay charges is another part; that the mere fact that the limitation prescribed to file a suit for recovery of dues has expired does not take away the right to make a demand for the

charges and to discontinue supply for non payment thereof.

13. The nature and character of the premises in the present case however cannot be equated with the nature and character of premises in relation to which the Division Bench and Full Bench of this Court in ***Madhu Garg*** and ***Saurashtra Colour Tones Pvt. Ltd.*** respectively held as aforesaid. The premises which this petition is concerned with is accommodation owned by the Government and meant for use of those entitled to Government accommodation. The occupants of the said accommodation do not acquire any title to the accommodation save a right to use and enjoy the same as a licensee of the Government and during the pleasure of the Government. The occupants from time to time of the said accommodation are not successors-in-right or title of the previous occupant as was the case in ***Madhu Garg*** and ***Saurashtra Colour Tones Pvt. Ltd.*** Rather, the right of such occupant stems from his entitlement to such accommodation, generally as in the present case under the terms of employment. The question which thus arises is whether inspite of such vital difference, the principle of law laid down in ***Madhu Garg*** and ***Saurashtra Colour Tones***

Pvt. Ltd. would apply to such Government accommodation also.

14. In this regard, it may be noticed that a three Judge Bench of the Apex Court in ***Isha Marbles v. Bihar State Electricity Board*** (1995) 2 SCC 648 had held that the electricity dues are not a charge over the property to which they pertain and a subsequent purchaser of property cannot be called upon to clear the past arrears of his predecessor-in-interest as a precedent to supply of electricity. Ofcourse, it was observed in para 63 of the judgment that such view was being taken owing to inadequacy in law to enforce the liability of previous contracting party against the purchaser.

15. Notwithstanding the aforesaid dicta of the Apex Court in ***Isha Marbles***, the Division Bench of this Court in ***Madhu Garg*** (supra) held the purchaser to be liable as a condition for supply of electricity in the property for the dues of his predecessor for the reason of the decision in ***Isha Marbles*** turning on the provisions of law applicable in Bihar and finding the position to be different in Delhi. Reference was made to the General Conditions of Supply as applicable in Delhi and prohibiting supply of

electricity to an applicant unless he deposits outstanding dues against the premises for which supply is sought. It was thus held that the inadequacy of law commented upon in *Isha Marbles* had been made up as far as the city of Delhi was concerned. It was thus owing to the specific provision in this regard in force in Delhi that *Isha Marbles* was not followed.

16. Reference in this regard may also be made to the recent dicta in *Haryana State Electricity Board v. Hanuman Rice Mills* (2010) 9 SCC 145 laying down that electricity arrears do not constitute a charge over the property and because in general law a transferee of premises cannot be made liable for the dues of the previous owner/occupier and further holding that only where the statutory rules and terms and conditions of supply which are statutory in character, authorize the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due from the previous owner/occupier in regard to supply of electricity to such premises, can the supplier recover the arrears from the purchaser.

17. At the time when the petitioner in the year 2005 applied for electricity connection, the supply of electricity by the respondent NDPL was governed by the Delhi Electricity Regulatory Commission (Performance Standards - Metering & Billing) Regulations, 2002. Regulation 7 deals with transfer of ownership of connection and Regulation 14 with change of occupancy/vacancy of premises. Under the said Regulation, the respondent NDPL was entitled to insist upon the owner of the connection, before vacating the premises notifying the respondent NDPL of the same and NDPL was required to arrange a special reading to be done and to raise a final bill. There is no explanation as to why the same was not insisted upon or done. Similarly under Regulation 22 the respondent NDPL was required to immediately disconnect supply for non-payment. The same was also not done allowing the occupants of the premises from time to time to continue enjoying electricity without paying therefor. The 2002 Regulations have been substituted by Delhi Electricity Supply Code and Performance Standards Regulations, 2007 under Regulations 15, 46 and 49 whereof also the

respondent NDPL was required to take steps as aforesaid to ensure clearance of dues by the owner of the connection before he vacates the premises.

18. The question which arises is whether the respondent NDPL inspite of having failed to ensure compliance of steps under Regulations aforesaid by Mr. Madan and inspite of failing to perform its obligations, can insist upon the petitioner as a condition of supply clearing the dues against the premises and for accumulation of which dues the respondent NDPL itself is also responsible. The facts of the present case speak of nothing but the negligence of NDPL and its predecessor-in-interest. The present is not a case where the dues are inspite of performance by NDPL of its obligations. The conditions of supply owing whereto this Court in *Madhu Garg* and *Saurashtra Color Tones Pvt. Ltd.* held the supplier of electricity to be entitled to as a condition of supply insist upon payment of dues against the property cannot be read in a pedantic and a mechanical manner so as to allow the supplier of electricity to allow one set of consumers to benefit at the cost of others. As aforesaid, there is no general right of supplier of

electricity to recover dues of previous occupant from the subsequent occupant. Such condition of supply cannot be permitted to allow the supplier of electricity to become complacent in the belief that its dues are secure and will be recovered if not from the previous occupant then in any case from the subsequent occupant.

19. Moreover, just like recovery of electricity charges was held to be in public interest, it is also in public interest that Government accommodation meant for allotment and habitation by Government employees is not on the one hand wasted owing to such reasons (in as much as it cannot be habitable without the essential amenity of electricity) and on the other hand the Government is burdened with the payment of HRA to persons who are unable to so occupy the Government accommodation.

20. I find that another Single Judge of this Court in order dated 16th June, 2006 in W.P.(C) No.10377/2006 where however the electricity connection was in the name of the CPWD, directed fresh connection to be provided in the name of the allottee with a direction to the CPWD to pay

the arrears and with liberty to recover the same from the earlier occupant. Though it was suggested that in the present case also the Estate Officer be directed to clear the arrears but I am not inclined to adopt the said procedure for the reason that the electricity connection in the present case was not in the name of the Estate Officer but in the name of Mr. Madan and it is owing to the sheer negligence of the respondent NDPL that notwithstanding Mr. Madan having vacated the premises in 1992 itself, making a claim with respect to the charges in the year 2005.

21. Since the counter affidavit of the respondent No.3 Estate Officer has pleaded that inspite of attempts no solution has been arrived at, I endeavour to make suggestions in this regard and which in my opinion are workable and foolproof. The interest of all concerned can be safeguarded by adopting the following procedure:

- (i) The Estate Officer being required to forward to the distribution company concerned, a copy of the communication regarding allotment and vacation of Govt.

accommodation so that the Distribution Company is aware of the status thereof and takes timely steps for recovery of dues with respect thereto.

- (ii) The allottee before surrendering the Government accommodation being also required to furnish to the Estate Officer the 'No Dues Certificate' from the distribution company.
- (iii) The Estate Officer making it a term of occupation of accommodation that the dues of electricity shall be recoverable / adjustable from the emoluments of the employee(s) surrendering / vacating the government accommodation.

22. The petition therefore succeeds. The petitioner is found entitled to the electricity connection without being required to pay the arrears claimed. The electricity connection granted to the petitioner under interim

orders of this Court is therefore to remain and the respondent NDPL is restrained from recovering the dues of electricity connection in the name of Mr. Madan from the petitioner. The respondent NDPL shall however be at liberty to recover the dues from Mr. Madan.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

JUNE 1st, 2011
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