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

+ **W.P.(C) 3965/2011**

NDPL

..... Petitioner

Through Mr.Manish Srivastava with
Mr.Shantanu Parashar, Advocates.

versus

JAGIRI LAL

..... Respondent

Through None

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Reserved on : 20th April, 2017

Date of Decision : 08th May, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Since despite deemed service, the respondent did not appear before this Court, he was proceeded ex-parte vide order dated 06th August, 2013. Thereafter also, on a number of dates, the respondent did not appear. Accordingly, this Court heard the petitioner's arguments and reserved its judgment.

2. It is pertinent to mention that the present writ petition has been filed by the petitioner challenging the order dated 28th April, 2011 passed by the electricity Ombudsman in Appeal No. F. ELECT/Ombudsman/2011/412, whereby the petitioner was directed to refund an amount of Rs. 1,93,380/-

deposited by the respondent towards pending dues for grant of new connection within two weeks.

3. The relevant facts are that an electricity connection bearing K. No. 35400245605 was sanctioned in the name of Omkar Prakash at the property bearing number 5-C/70, New Rohtak Road, Karol Bagh, New Delhi 110 005 for domestic purposes.

4. Till June 2000, the said registered consumer paid the electricity dues, but thereafter no payment was received by the petitioner towards regular consumption. Due to outstanding amount of Rs. 6,17,148/- towards regular consumption, supply at the premises was disconnected and since then, there has been no electricity connection in the said premises.

5. The respondent purchased the above-said property vide sale deed dated 7th November, 2008 from sons of Shri Om Prakash Singhal.

6. Though it is the case of the respondent that in September 2008, he had allegedly requested through post for issuance of no dues certificate against the premises, yet the stand of the petitioner is that no such letter was received.

7. On 13th September 2010, respondent applied for a new electricity connection for a load of 5 KW for domestic purposes. Upon receipt of the application, the petitioner verified the records and as it found that dues of Rs.6,17,148/- were pending against the said premises, the respondent was requested to clear the said dues as per regulations before any new connection could be granted at the said premises.

8. After hearing both the parties, CGRF vide order dated 20th January, 2011 came to the conclusion that no request for issuance of no dues certificate was submitted by the respondent herein. The CGRF further

directed the petitioner herein to waive off the dues pertaining to DVB period i.e. prior to June, 2002 under the policy/order bearing number F.11(40)2007/Power/1278 dated 16th /19th May, 2008 of Government of NCT and revise the bill accordingly and raise a demand note. The petitioner herein was also directed to release a new connection to the respondent within fifteen days of deposit of the amount of the revised bill.

9. In compliance of the order dated 20th January, 2011 the petitioner herein revised the bill and raised a demand note of Rs. 1,93,380/- which was accepted and paid by the respondent without any demur or protest.

10. The respondent, after paying the said amount, preferred an appeal against the order dated 20th January, 2011 before the Ombudsman inter alia on the ground that the CGRF erred in not appreciating the fact that dues did not pertain to him and also that CGRF failed to consider the fact that he had applied for issuance of no dues certificate but the petitioner failed to inform him regarding the dues against the premises.

11. Vide the impugned order dated 28th April, 2011, the Ombudsman restrained the petitioner herein from charging outstanding dues of the connection bearing K No. 35400245605 from the respondent and also directed the petitioner herein to refund the amount of Rs. 1,93,380/- deposited by the respondent towards the outstanding dues within two weeks.

12. It is the case of the petitioner herein that no new connection can be granted to the respondent as the respondent had failed to clear the outstanding dues pending against the said premises.

13. Learned counsel for petitioner submitted that respondent was under obligation under Regulation 15 (ii) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007 to verify that the previous owner

had paid all dues to the petitioner herein and had obtained no dues certificate from the petitioner but admittedly the same was not done by the respondent. Hence, the respondent cannot be allowed to now state that he is not liable to pay the dues pertaining to the period prior to the purchase of property by the respondent.

14. He further submitted that the impugned order is contrary to the provisions of the Electricity Act 2003 and Delhi Electricity Supply Code and Performance Standards Regulations, 2007.

15. It is well settled law that it is the duty of the purchaser or occupier 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 on the premises.

16. A Division Bench of this Court in ***Mrs. Madhu Garg and Anr. Vs. North Delhi Power Ltd., 129 (2006) DLT 213*** has held as under:-

“14. In our opinion, 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. This is because of the statutory provision contained in Clause 2(iv) of the General Conditions of Supply which has been quoted above.

15. In our opinion, 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.

16. *In view of the General Condition of Supply, it is the duty of the new owner/occupant to himself make enquiries and find out whether there was such dues or not. The General conditions of supply are statutory in nature (being delegated legislation), and hence the question of bona fide or mala fide does not arise, and in either case the new owner/occupant of the premises has to pay the dues against the previous owner/tenant, if he wishes the electric supply to be continued/restored.*”

17. Further, the Supreme Court in ***Paschimanchal Vidyut Vitran Nigam Ltd. and Ors. Vs. DVS Steels and Alloys Pvt. Ltd. And Ors., (2009) 1 SCC 210*** has held as under:-

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 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.*

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.

18. A Full Bench of this Court in ***BSES Rajdhani Power Ltd. Vs. Saurashtra Color Tones Pvt. Ltd. and Anr., 161 (2009) DLT 28*** has held as under:-

“35. For the foregoing reasons, we hold that in terms of clause 2.1(iv) of the General Conditions of Supply forming part of the Tariff Order dated May 23, 2001 if there are electricity dues against the previous owner or occupant of a premises who transfers the premises to a new owner or occupant, the new owner or occupant applying for a fresh electricity connection can be compelled by the Distribution company to pay the arrears of electricity dues of the previous owner or occupant and the distribution company can refuse to supply electricity to the premises on account of such non-payment.”

19. Moreover, as in the present case, petitioner denies receipt of respondent's letter asking for information with regard to outstanding dues, the Ombudsman committed an error of law in granting benefit of presumption under Section 27 of General Clauses Act.

20. In **Jagat Ram Khullar & Anr. Vs. Battu Mal, AIR 1976 Delhi 111**, a Coordinate Bench of this Court has held as under:-

"12. It would thus appear that ordinarily a statement of the addressee on oath that the postal cover, said to have been refused by him, was never tendered to him would be sufficient to dislodge the presumption and shift the onus on the other side to establish by evidence that the service had been duly effected. It is, therefore, not possible to accept the contention that the bare statement on oath of the addressee in such a case would not, as a matter of law, be sufficient to dislodge the presumption that may be raised either under Section 114 of the Evidence Act or under Section 27 of the General Clauses Act. A statement on oath of a party to the proceedings is a piece of oral evidence like statement of any other witness and there is no rule of law that such a statement should not be accepted merely because it is made by a person who is interested in the proceedings nor is there any requirement of law that the statement on oath of a party to the proceedings must always be corroborated by any independent evidence before it could be accepted by a Court of Law. It is not possible to lay down any hard and fast rule of law with regard to sufficiency of evidence. If a statement of a party on oath inspires confidence, the Court is entitled to accept it and base its conclusion on it....."

21. Consequently the Distribution Company can refuse to supply/restore electricity to the new purchaser of a premises on account of dues of the previous owner.

22. This Court is further of the opinion that as the order of CGRF was unconditionally complied with, the respondent was estopped from approaching Ombudsman.

23. Accordingly, present writ petition is allowed and the order dated 28th April, 2011 passed by Electricity Ombudsman in Appeal No.F.ELECT/Ombudsman/2011/412 is set aside.

MANMOHAN, J

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