

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5130 of 2015

=====

1. Dr. Bharat Prasad, son of Shri Chanchal Prasad, resident of Mahavir Marg, P.O., P.S., Town & District Kishanganj.
2. Jitendra Kumar Bothra, son of Late Champa Lal Bothra, resident of Thakurbari Road, P.O., P.S., Town & District Kishanganj.

.... Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Chairman-cum-Managing Director.
2. The North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Director.
3. The Electrical Superintending Engineer, Electric Supply Circle, Purnea.
4. The Electrical Executive Engineer, Kishanganj, North Bihar Power Distribution Company Limited, Kishanganj.
5. The Assistant Electrical Engineer, Kishanganj, North Bihar Power Distribution Company Limited, Kishanganj.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Adv.

For the Respondent/s : Mr. Anand Kumar Ojha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-04-2015

The two petitioners through this writ petition seek an appropriate direction to the respondent authorities herein for grant of permanent electrical connection under Section 43 of the Electricity Act, 2003 (hereinafter referred to as 'the Act') and the Rules framed thereunder.

The two petitioners have purchased their property from M/s Shanti Vihar Infra Nirman Pvt. Ltd. (hereinafter referred to as 'the developer Company') through registered sale deeds dated 6.9.2012 and 8.8.2012 respectively. Following the purchase, the two



petitioners filed their applications for fresh electrical connection vide application dated 16.4.2014 and 4.4.2014 respectively. It is stated that although the applications were made for permanent connection but the respondent authorities granted only temporary connection which was being extended from month to month. The temporary connection of petitioner No.1 stands disconnected on 19.4.2015 on completion of one year and the life of the temporary connection of the petitioner No.2 is stated to be until 28.4.2015. It is in these circumstances where the two petitioners are being denied permanent connection that they are before this Court praying for appropriate directions.

A counter affidavit has been filed on behalf of the respondents in which a stand has been taken that the owner of the property in question, M/s Saraogi Paper Mills owes an outstanding to the respondent -Distribution Company to the tune of Rs. 93,43,000/-. It is the case of the respondents that the proprietor of M/s Saraogi Paper Mills executed power of attorney in favour of his son Akash Saraogi for transfer of the lands belonging to the paper mills. It is stated that the two sons of the proprietor of M/s Saraogi Paper Mills are partners in M/s Shanti Vihar Infra Nirman Pvt. Ltd. from whom the petitioners are the purchasers. It is the stand of the respondents that the 'developer company' is executing sale deeds in favour of the different persons including the two petitioners and the attempt is to sale out the

entire property of the defaulter M/s Saraogi Paper Mills, thus adversely effecting the interest of the respondent Distribution Company whose more than 93 lacs are at stake.

The stand of the respondents is that the petitioners are not entitled to any electrical connection until such time that the dues standing in the name of M/s Saraogi Paper Mills whose properties are presently under the attorneyship of the 'developer company' M/s Shanti Vihar Infra Nirman Pvt. Ltd. is not cleared.

Mr. Suraj Samdarshi, has appeared for the petitioners while the respondents are represented by Mr. Anand Kumar Ojha.

Whereas it is the stand of the petitioners that there is no provision present either in 'the Act' or the Bihar Electricity Supply Code (hereinafter referred to as 'the Supply Code') to deny permanent connection to the petitioners, it is the stand of the respondents that until such time that the recovery of the dues is secured, it would be difficult for the respondent Company to continue suffering loss.

Mr. Samdarshi, learned counsel for the petitioners has referred to the provisions of Section 43 of 'the Act' to submit that no sooner an application is filed by an owner or occupier of a premise for supply of electricity, it shall be the duty of the respondent-Distribution Company to make such supply within one month of receipt of such



application and in case of any delay, the respondents are liable for imposition of penalty at the rate of Rs. 1000/- per day under Sub Section (3) thereof. He submits that the exception to such supply is given under Section 44 and it is only in circumstances where the respondents are prevented from doing so on account of any act of God or circumstances beyond control that a delay is justified and in no other circumstances.

It is further the submission of Mr. Samdarshi that the provisions of Sections 45, 46 and 47 enables the respondents-Distribution Company to recover the charges, the expenses incurred by them in providing electricity line as well as the security as may be determined and thus in so far as the commitment of the petitioner is concerned, there can be no reasons for any apprehension. He submits that Section 48 further enables the respondent-Distribution licensee to impose any additional restriction and Section 49 enables them to enter into agreement with the consumers on such terms and conditions as may be agreed between them. It is submitted by Mr. Samdarshi that Section 50 of 'the Act' empowers the State Commission to frame an Electricity Supply Code for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply for non payment of the dues, restoration of supply, measures to prevent tampering with the electrical plant, the line and the meters, removal of



meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters that may be specified. He next refers to the provisions of Section 181 of 'the Act' which vests power in the State Commission to make regulation and with reference to Sub Section 2 (t) thereof he submits that in so far as the duty to supply under Section 43 is concerned, the regulations to be framed would merely prescribe the period and nothing else.

Mr. Samdarshi while arguing that the dues so set up by the respondents are yet to attain finality submits with reference to Section 154(5) of 'the Act' that until such time that these dues are determined by the Special Court in so far as the matters arising under Section 135 are concerned and the civil liability of the defaulting consumers is assessed, it would be an arbitrary exercise of power by the Distribution Company to keep the petitioners at ransom.

Learned counsel with reference to Chapter 4 of the 'the Supply Code' has submitted that the interest of the respondent-Distribution Company is fully protected therein but there is nothing in the chapter which enables the Distribution Company to withhold a grant of a permanent connection to an applicant on grounds of outstanding liability against the seller even when the dues are yet to be adjudicated upon by the different forums where the matters are pending. According to Mr. Samdarshi, the recovery proceedings are pending



before the different forums including the Certificate Officer as well as the Special Courts and thus a mere pendency of such proceedings would not justify the action of the respondent to deny the petitioners a permanent connection. It was also argued by Mr. Samdarshi that the respondent Distribution Company having already completed the formalities of supply by grant of temporary connection, all that is required to be done now is to convert in a permanent connection by entering into an appropriate agreement in this regard in terms of the provisions of Section 49 of 'the Act' read with Clause 4.15 of 'the Supply Code'.

Mr. Samdarshi has referred to an order of this Court passed in C.W.J.C. No. 10579 of 2013 filed by 'the developer company' along with the alleged defaulting consumer M/s Saraogi Paper Mills on denial of a permanent connection to the developer company. He submits that the irony is that whereas 'the developer Company' has been provided with the permanent connection under the orders of this court passed on 29.10.2013 in C.W.J.C. No. 10579 of 2013 which writ petition is yet pending for final adjudication, the respondents are denying similar relief to the present petitioners who are purchasers therefrom. He submits that even if the order is interim in nature, the relief of permanent connection was granted to 'the developer company' and thus there is no ground available for the respondents to

deny similar relief to the petitioners who are purchaser from the developer.

Learned counsel in his support has relied upon a decision of the Supreme Court reported in **(2012) 13 SCC 479 (Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa (NESCO) and Another)** and to submit that in a worse situation where the applicant was a purchaser of an auction sold property and was being denied permanent connection on grounds of arrears against the company in liquidation that his claim was not only upheld by the Single Judge but was affirmed by the Division Bench as well as the Supreme Court. He submits that the Supreme Court upon examination of catena of judgments in this regard has upheld that there would be no reason for the Distribution Company to deny electricity connection to the applicant of the said case who had auction purchased the property. He submits that the case of the petitioners is on a much better pedestal in as much as they are not purchasers from the defaulting consumer rather they have purchased the land from 'the developer company' who holds attorney for the defaulting company.

The argument of Mr. Samdarshi has been strenuously contested by Mr. Ojha with all vehemence and while reiterating the position reflecting from the counter affidavit he submits that the revenue of the



distribution company needs to be protected. He submits that if situations of the present kind is allowed to continue then each defaulting consumer would go on selling his property leaving the distribution company with no remedy for recovery of its lost revenue. He submits that the judgment relied upon by learned counsel for the petitioner also takes notice some earlier judgment of the Supreme Court including the one rendered in the case of **Paschimanchal Vidyut Vitaran Nigam Ltd. v. DVS Steels & Alloys(P) Ltd.** reported in (2009)1 SCC 210 and a subsequent judgment in **Haryana State Electricity Board Vs. Hanuman Rice Mills, Dhanauri and Others** reported in (2010) 9 SCC 145. He submits that the predicament of the Distribution Company has been taken note of by the Supreme Court in paragraphs 11 and 12 of the judgment rendered in the case of **Haryana S.E.B.** (supra) which in turn refers to the conclusion drawn in the case of **Paschimanchal Vidyut Vitaran Nigam Ltd.** (supra). He submits that whereas the judgments rendered by the Supreme Court in cases under reference were in consideration of a statutory provision where the electricity arrears did not constitute a charge over the property, the situation is different in so far as the State of Bihar is concerned and Regulation 4.15 of 'the Supply Code' in its sub clause (iv) makes the outstanding dues of the Distribution Company as a first charge on the assets of the defaulting

consumer/Company and also enables the licensee to ensure its entrance in the agreement so to be executed with the new applicant.

The sum and substance of argument of Mr. Ojha has been that unscrupulous consumers should not be allowed to dispose of their property to defeat the claim of the distribution Company and the new applicant cannot be allowed to avoid this liability on grounds that the outstanding electricity are not a charge on the property or that there is no such agreement with the seller of the property on the issue of sharing of the outstanding electricity dues.

I have heard learned counsel for the parties and I have perused the materials on record.

The issue which arises in the present proceeding is whether the denial by the respondent-Distribution Company of a permanent electricity connection to the two petitioners who are purchasers from the attorney holder of the defaulting consumer, is justified.

While Mr. Samdarshi with reference to the statutory provisions of 'the Act', 'the Supply Code' and the judgment of the Supreme Court has argued that it has been a consistent view of the Court that a purchaser of a property of a defaulting unit cannot be saddled with such liability rather the statutory provisions cast an obligation on the Distribution Company to forthwith ensure supply of electricity on receipt of any such application by a consumer, such argument has

been contested by Mr. Ojha on the anvil that the view expressed by the Supreme Court were in consideration of the regulations which did not protect the interest of the distribution company.

Sections 42 to 49 of 'the Act' definitely casts an obligation on the licensee to provide electrical connection to a consumer on such terms and conditions as entered in between them in an agreement so to be executed. Thus in my opinion whereas there is an obligation cast upon the licensee to provide an electricity connection, 'the act' in Section 49 also vests legal right in the licensee to enter such terms and conditions as may deem, fit and proper and until such terms and conditions are found to be perverse, it need not be interfered with as held by the Supreme Court in the case of **Paschimanchal Vidyut Vitaran Nigam Ltd.** (supra).

While Mr. Samdarshi relied upon statutory provisions of 'the Act' to submit that the act of the Distribution Company in not providing the electricity connection to the petitioners is an arbitrary act, the sum and substance of the argument of Mr. Ojha revolves around the opinion of the Supreme Court expressed in paragraphs 11 and 12 of the judgment rendered in the case of **Haryana S.E.B.**(supra) which runs as follows:-

“11. In *Paschimanchal Vidyut Vitran Nigam Ltd. v. DVS Steels & Alloys (P) Ltd.*⁵ this Court held, while reiterating the principle that the electricity dues did not constitute a charge on the premises, that where the applicable

rules require such payment, the same will be binding on the purchaser. This Court held: (SCC p. 214, paras 11-13)

“11. ... 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.

...

12. ... 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. ... provisions similar to Clauses 4.3(g) and (h) of the Electricity Supply Code are necessary to safeguard the interests of the distributor.”

12. The position therefore may be summarised thus:

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises

cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorise the supplier of electricity to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.”

While the apprehension of the licensee can well be appreciated in the backdrop of the fact that the defaulting consumer namely M/s Saraogi Paper Mills through its attorney holder M/s Shanti Vihar Infra Nirman Pvt. Ltd. has sold of its assets to different purchasers including the two petitioners, one also cannot loose sight of the fact that the outstanding which has been quantified by the licensee at more than Rs. 93 lacs is yet pending before the different statutory forums for final determination and thus the final liability of the defaulting consumer namely M/s Saraogi Paper Mills is yet to be determined by the competent forums where recovery proceedings are pending.

In such circumstances it would be a travesty of justice to allow the petitioners to await a final adjudication of such recovery proceedings until they are provided with electricity connection. It is noticed that the statutory provisions governing the cases relied upon by the parties did not provide that electricity arrears would constitute a charge over the property. In fact, it is in such circumstances that the



Supreme Court in the case of **Haryana S.E.B.**(supra) has summarized in paragraph 12 that where electricity arrears do not constitute a charge over the property then in general law, a transferee of the premises cannot be held liable for the dues of the previous owner. In so far as the case in hand is concerned, the provisions of the Regulation 4.15 of 'the Supply Code' not only casts a responsibility on the seller of the property to find out the arrears and also to obtain a no dues certificate before it effects any sale, the provision also requires him to clear the outstanding dues before the sale of premises. Sub Clause (iv) thereof at the same time enables the licensee to protect its interests, when it runs as follows:

“ (iv) The outstanding dues will be first charge on the assets of the defaulting consumer/company, and the licensee shall ensure that this is entered in an agreement with new applicant.”

As already discussed, Section 49 of 'the Act' provides for execution of agreement in between the applicant consumer and the licensee on such terms and conditions agreed upon by them and Clause 4.15(iv) of 'the Supply Code' outlines the area.

Considering the law laid down by the Supreme Court in the judgments relied upon in the background of the statutory provisions governing the issue coupled with the fact that the outstanding so claimed by the licensee is yet to be finally determined by the statutory forums before whom the recovery proceedings are pending, this Court

is of the opinion that the action of the respondent- Distribution Company in withholding the permanent electricity connection to the petitioners is an arbitrary act neither supported by the statutory provisions nor by judgments so relied upon.

For the reasons aforementioned, the writ petition is allowed. The respondents are directed to provide permanent electricity connection to the petitioners within one week of receipt/production of a copy of this order, in accordance with law.

(Jyoti Saran, J)

Bibhash/-

U			
---	--	--	--