

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12253 of 2015

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Dr. Abdul Jamil S/o Late H.A. Qayum Resident of Minat Nursing Home,
R.K. Mission Road, P.O., P.S., Town & District Katihar **Petitioner**
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 Managing Director.
3. The Electrical Superintending Engineer, Purnea Electric Circle, Purnea.
4. The Electrical Executive Engineer, Purnea Electric Supply Division,
Purnea.
5. The Assistant Electrical Engineer, Electric Supply Circle, Katihar.
6. The Junior Electrical Engineer, electric Supply Circle, Katihar.

.... **Respondents**

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Appearance :

For the Petitioner : Mr. Suraj Samdarshi, Advocate

For the Respondents : Mr. Vinay Kirti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH
ORAL ORDER

2 28-08-2015 The petitioner seeks direction to the respondent authorities to grant fresh electrical connection under section 46 of the Electricity Act, 2003. He further seeks a declaration that an auction purchaser cannot be saddled with the liability of the earlier owner of the premises, so far as, electricity dues is concerned.

The facts of the case, in short, are as follows:-

The petitioner purchased 1.50 acres of mortgaged assets of one M/s Bihar Iron & Steel Company, Katihar, which was auctioned sold under section 29 of the Bihar State Financial Corporation Act, 1951 vide order dated 12.11.2001. M/s Bihar



Iron & Steel Company had defaulted in payment of loan due to Bihar State Financial Corporation (herein after referred to as 'the BSFC'). After coming into possession of the property, the petitioner learnt that a certificate proceeding bearing Certificate case no. 01 of 1997-98 was pending against the said property in the court of the Addl. Collector cum Certificate officer, Katihar for realization of the electrical dues amounting to Rs.16,98,351.99/-. The petitioner intervened and produced details of purchase of the auction sale under section 29 of the BSFC Act. Being convinced with the bona fide of petitioner the Certificate officer dropped the proceeding with respect to 1.50 acres of land purchased by petitioner.

On 11.5.2015, petitioner applied for fresh electric connection of 1KW commercial load as he proposed to construct a Nursing home on the said plot. The requisite fees were deposited, as also other formalities. However, the application of the petitioner for grant of fresh electric connection was rejected on 16.6.2015, as there was outstanding energy dues on the premises. Hence this writ for electric connection under section 146 of the Electricity Act.

Counsel for the Company submits that there was heavy electric dues on the premises and as the petitioner has

purchased and stepped into the shoes of owner, the electric dues would shift on him. The petitioner took the stand that liability incurred by another consumer, cannot be shifted on an auction purchaser under section 29 of the BSFC Act.

Heard learned counsel for the petitioner as well as learned counsel appearing for the Bihar State Power (Holding) Company Limited.

The Power Holding Company has statutory right to recover electric dues from the consumer. Clause 4.15(iv) of the Bihar Electricity Supply Code, 2007 states that the outstanding dues will be first charge on the assets of the defaulting consumer/company, and the licensee can recover it by initiating a certificate case or by putting pressure on the consumer by disconnecting the electric line.

Clause 4.15(iv) of the Bihar Electricity Supply Code, 2007 is quoted here in below for easy reference:-

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

The issue is whether outstanding dues can be recovered from an auction purchaser or a third party which had not incurred the liability. The answer would depend on terms and



conditions of auction sale. If auction sale, attaches a clause that purchaser would be liable to pay electric dues of the mortgager, then in such cases, the liability would devolve upon auction purchaser. But, energy dues cannot be recovered from an auction purchaser, unless and until the same is one of the conditions attached with the auction sale.

In the instant case, there was no such clause attached in the auction sale and the petitioner purchased the property free from liability to pay the electric dues. As such, no claim of the Company would lie against the auction purchaser, but still it can lodge its claim with the financial institution. Clause 4.15(v) of the Bihar Electricity Supply Code, 2007 reads as follow:-

“Clause 4.15(v). “The recovery proceedings against the defaulting consumer and where the defaulting consumer if financial institution has auctioned the property without consideration to licensees charge on assets, claims may be lodge with the concerned financial institution with diligent pursuance”.

It is evident from bare perusal of Clause 4.15(v) that if an auction purchaser seeks supply of electricity, he would not be required to clear the past dues as a condition precedent either for grant of electric connection or supply of the same. There would be no charge over the property. The contractual

obligation of a third party cannot be enforced on an auction purchaser, unless and until the property is auction sold along with consideration of license charge on the assets.

A similar matter came for consideration before Hon'ble Supreme court in 1995, in case of Isha Marbles and others Vs. Bihar State Electricity Board and others, reported in (1995)2 Supreme Court Cases 648. In this case, the Hon'ble Apex court held that the Board cannot seek enforcement of contractual liability against the third party. A purchaser cannot be saddled with liability which was not incurred by them. Hon'ble Apex court further observed that it is impossible to impose on the purchasers a liability which was not incurred by them. Furthermore the auction purchasers came to purchase the property after disconnection, but they cannot be 'consumer or occupier' within the meaning of the above provisions, till a contract is entered into.

Though the judgment was rendered prior to framing of Supply Code, 2007, still after coming into force of the Code in 2007 an auction purchaser would be liable under clause 4.15(v) only if the property was auction sold with charges of electricity attached to the assets, which is not the intention here.

In the instant case, the petitioner auction purchased the



assets of the Company without any strings attached to it like payment of electricity dues. As such, the Company erred in rejecting petitioner's application on the ground that there was electric dues on the premises which would devolve on the auction purchaser. No charge on the assets would pass over to the auction purchaser. Furthermore, the petitioner purchased the mortgaged assets in 2001, as such, the provisions of Supply Code, 2007 would have no application in any case.

In the result, this writ petition is allowed. The respondents Power Company is directed to provide energy connection to the petitioner.

It goes without saying that it will be open for the respondents to realize the energy dues either from the original proprietor i.e. M/s Bihar Iron & Steen Company, Katihar or from the Bihar State Finance Corporation.

(Samarendra Pratap Singh, J)

Shashi./AFR
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