IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9208 of 2016

==

Poonamika Foods (India) Pvt. Ltd., having its industrial unit at 17-18B, Industrial Area, Hajipur, District Vaishali (Bihar) through its Managing Director A.N. Mithilesh s/o late Ram Jatan Singh r/o Village - Salaha, P.S. Jandaha, District Vaishali.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Industries, Bihar, Patna.
2. Principal Secretary, Department of Industries, Bihar, Patna.
3. Director (Industries), Department of Industries, Bihar, Patna.
4. North Bihar Power Distribution Company Ltd., through its Chairman, Vidyut Bhawan, Bailey Road, Patna.
5. Managing Director, North Bihar Power Distribution Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
6. General Manager (Revenue), North Bihar Power Distribution Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
7. The Electrical Executive Engineer, Electricity Supply Division, Hajipur, District Vaishali.

.... Respondents

==

Appearance :

For the Petitioner/s	:	Mr. Harsh Singh, Adv.
		Mr. Ravi Shankar Choudhary, Adv.
For the Respondent/s	:	Mr. Prabhat Kumar, AC to GA-11
For NBPDCL	:	Mr. Anand Kumar Ojha, SC.
		Mr. Ashok Kumar Karna, Adv.

==

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-02-2017

Rather peculiar circumstances accompany the present writ petition. The petitioner is a consumer with the respondents and was granted a LTI connection bearing No. H-8762. The Company fell into financial problems and ran sick not being able to even pay the electricity dues which stood at Rs.2,83,276.04 and following which the line was disconnected on 27.7.2000. According to the petitioner, the final billing on the date of disconnection stood at Rs.3,28,510.84

as on 28.2.2013. Neither the respondents took any steps for realization of arrear dues standing against the petitioner nor the financial position of the petitioner improved for seeking a reconnection by deposit of arrear dues until the year 2016 when an application was filed by the petitioner on 8.4.2016 before the General Manager of North Bihar Power Distribution Company Ltd. Undertaking to make payment of the pending arrears amount even though they stood time barred. The petitioner prayed for a fresh connection. A copy of the application is present at Annexure 7 and a copy of the Bill Consumer Ledger is enclosed at Annexure 7A which reflects arrear dues at Rs.3,23,656/-. The prayer was renewed by the petitioner on 18.5.2016 with an undertaking to deposit the arrear elecriciy dues, which according to the petitioner was Rs.3,28,410/-. The petitioner in the representation has mentioned that even though no bills had been raised by the respondents in the meantime yet the office of the Electrical Executive Engineer at Hajipur was demanding Delayed Payment Surcharge for the delayed payment, which according to the petitioner was contrary to the provisions of Section 56 of the Electricity Act, 2003 (hereinafter referred to as 'the Act'). The petitioner informed the Electrical Executive Engineer that the demand draft for Rs.3,28,410/- was ready for deposit. It is thereafter that the petitioner was informed by the Electrical Executive Engineer(Supply) vide letter dated

19.5.2016, enclosed at Annexure 10, requiring deposit of Rs.2,83,276/- stated to be arrears of electricity charges which led to disconnection together with Delayed Payment Surcharge for the period June, 2000 to March, 2016, which was calculated at Rs.7,54,598.40, the total coming to Rs.10,37,874.44. The Electrical Executive Engineer alongside also enclosed a payment chart in respect of the payment of dues in six instalments which the petitioner had agreed to pay. The chart enclosed is present at Annexure 11 and it is following the demand that the petitioner deposited the sum of Rs.3,28,410/- on 23.5.2016 under protest, which was the first instalment and raised objections to the remaining instalments vide Annexure 12. The petitioner also made payment of the second instalment of Rs.1,41,873/- but since he defaulted in making payment of the other instalment(s) in terms of the directions contained in the letter dated 23.5.2016 present at Annexure 11 of the Electrical Executive Engineer, it led to the disconnection of his electricity line on 14.10.2016 and feeling aggrieved he is before this Court.

It is the submission of Mr. Harsh Singh, learned counsel for the petitioner that the petitioner, besides the instalments, has been regularly making payment of current charges and there was no default in the same. According to him, this disconnection of the electricity line of the petitioner is without any notice as mandated under section

56 of 'the Act' and without any default on the current charges rather it is on failure to deposit instalments.

The petitioner by filing an interlocutory application prayed for interim connection and by the order dated 28.10.2016 he was directed to make deposit of the instalments which would be subject to result of the writ petition but assigning financial constraints, neither any deposit was made nor line was restored. The matter has thus been heard on merits and whether there is any obligation cast on the petitioner to make deposit of the balance instalments.

Mr. Harsh Singh, learned counsel appearing for the petitioner, has relied upon the provisions of Section 56 of 'the Act' to submit that even if the petitioner in his bonafide had offered to make payment of arrears that was outstanding against the petitioner, he could not have been forced to make payment of the Delayed Payment Surcharge. He submits that the law prohibits the respondents from making any recovery of arrear dues pending for more than two years and in the present case, it is after 16 years since the amount became due, that the petitioner himself has offered to make payment of arrears and when he has been saddled with Delayed Payment Surcharge. He submits that even when the provisions underlying Section 56(2) of 'the Act' prohibits the respondents from taking any steps for realization of dues more than two years old and even if the petitioner has voluntarily agreed to deposit the arrear dues, there is no jurisdiction vested under 'the Act' or the Rules framed thereunder, which vests power in the respondents, to raise a demand for Delayed Payment Surcharge. It is the argument of Mr. Harsh Singh that apart from undertaking given by the petitioner, any realization beyond that, is without sanction of law and the reliance of the respondents on the so called agreement present at Annexure 11 is an ex-parte direction, which does not bind the petitioner. Learned counsel in support has relied upon the judgment of this Court reported in 2011(1) PLJR 264 (**M/s Shakti Cold Storage v. Bihar State Electricity Board & ors.**) and with particular reference to paragraphs 6, 12 and 23, it is submitted that it squarely applies to the case of the petitioner.

The argument of Mr. Singh is contested by Mr. Anand Kumar Ojha, learned counsel for the respondents no. 4 to 7, who while relying upon Clause 4.11 of the Bihar Electricity Supply Code submits that since there were arrears standing against the petitioner, the reconnection could only be on payment of such arrears. He, thus, submits that there is no illegality in the action of the respondents requiring the petitioner to clear his dues. It is the argument of Mr. Ojha that even if Section 56(2) of 'the Act' renders the dues pending for more than two years non-recoverable, yet the moment a prayer is made for reconnection or fresh connection, then the consumer as a condition precedent for such connection, would be duty bound to clear his dues.

Despite endeavour, Mr. Ojha has not justified as to how dues towards Delayed Payment Surcharge could have been raised by the Electrical Executive Engineer when the principal dues itself had become irrecoverable. In fact the action taken by the respondent Electrical Executive Engineer to realize the Delayed Payment Surcharge is also contrary to the Consumer Ledger present at Annexure 7A, wherein the Power Distribution Company itself has merely recorded the arrears dues outstanding against the petitioner and nothing beyond that. Clearly the Electrical Executive Engineer has exceeded his jurisdiction to demand the Delayed Payment Surcharge from the petitioner vide his letter dated 19.5.2016 and since the petitioner wanted to revive its unit, it had no choice but to succumb to the pressures.

The issue is whether at all the petitioner could be bound under the agreement present at Annexure 11? Section 56(2) of 'the Act' clearly debars the respondents from enforcing any such agreement on any consumer. If the dues itself are irrecoverable, it cannot be realized through unfair means. It is not in dispute that the disconnection of the electricity line of the petitioner on 27.7.2000 was on account of arrears of Rs.2,83,276.04. As per the admission of the petitioner present at Annexure 7, the last billing is at Rs.3,28,510/- as on 28.2.2013 and which also somewhere matches the arrears dues shown in the Consumer Ledger enclosed at Annexure 7A. While Mr. Ojha relies upon the provisions of Supply Code to justify and support the impugned action, it is the argument of Mr. Singh that notwithstanding the bar put under section 56(2) of 'the Act' even if the petitioner has voluntarily undertaken to make payment of the arrear dues, he cannot be saddled with the liability of Delayed Payment Surcharge. The provisions of Section 56(2) of 'the Act' runs as under:

> "56(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

The legislative intent of Section 56(2) of 'the Act' is very clear and the dues outstanding against a consumer for more than two years become non-recoverable unless it is shown continuously as recoverable. It is not in dispute that in the present case, since after 28.2.2013, no bills were raised and thus the exception carved out in the provision is not satisfied. The issue thus, whether or not, in the circumstances where Statutes itself prohibits recovery of dues more than two years old, it can be made a condition precedent for grant of electricity connection to a defaulter consumer, though a relevant issue but since in the present case, the act of deposit of electricity charges is voluntary by the writ petitioner and such realization is not being questioned, I shall leave this issue open for discussion in an appropriate matter.

In so far as the case in hand is concerned, the petitioner has voluntarily undertaken to make payment of the arrear of energy charges and following which he has been provided with fresh electricity connection albeit accompanied with a stipulation of making payment of Delayed Payment Surcharge. The direction of the Electrical Executive Engineer as found in his letter dated 19.5.2016 in so far as it raises demand towards Delayed Payment Surcharge of Rs.7,54,598.40 for the period June, 2000 to March, 2016 is illegal and contrary to statutory prescriptions underlying Section 56(2) of 'the Act'. Where the principal dues itself has become non-recoverable, there cannot be any question of raising a demand towards Delayed Payment Surcharge. Even otherwise the respondents were themselves well conscious of this legal position and which is reflecting in the Consumer Ledger present at Annexure 7A which though taking notice of the principal amount, raises no demand towards Delayed Payment Surcharge. The Electrical Executive Engineer (Supply) has clearly acted without jurisdiction to raise this demand and which is accordingly quashed and set aside.

As I have observed, the offer was made by the petitioner himself, to clear the arrears of electricity dues which according to him stood at Rs.3,28,510/- as reflecting in the final bill issued on 28.2.2013. This bill was never pursued by the respondents nor any steps were taken by them for its recovery. It cannot be disputed that this dues had become time barred but considering the fact that the petitioner has voluntarily undertaken to deposit this amount and which has been deposited on 25.5.2016 with protest, which is confirmed by Annexure 13 series, he is discharged from any further obligation in so far as the remaining instalments towards Delayed Payment Surcharge is concerned and any further realization by the respondents would be an illegal extraction, without sanction of law.

According to the petitioner, in addition to the instalments of Rs.3,28,510/-, he has also deposited an instalment of Rs.1,41,873/- in tune with the directions of the Electrical Executive Engineer and which is not in dispute. Let the said deposit of Rs.1,41,873/- be adjusted towards the future dues of the petitioner.

In the circumstances discussed where there is no fault on the part of the petitioner in either making payment of the current charges coupled with the fact that the mandatory requirement of Section 56 of 'the Act' has not been followed and the line of the petitioner has been disconnected without a disconnection notice, it should be restored within 48 hours from today.

Since the order is being passed in presence of Mr. Ojha, learned counsel for the respondents, he shall appropriately inform the Electrical Executive Engineer concerned for ensuring compliance and restoration of electricity line of the petitioner.

The writ petition is accordingly allowed and interlocutory applications are disposed of.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.02.2017
Transmission Date	NA