THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.19581 of 2007

ORDER:

In this writ petition, under Article 226 of the Constitution of India, filed by the petitioners against the Central Power Distribution Company of Andhra Pradesh Limited (hereinafter, 'APCPDCL') and its officials, the action of the said respondents in requiring the petitioners, who are the subsequent purchasers of House bearing No.11-6-462, Nampally, Hyderabad, to clear the arrears of electricity consumption charges payable by the previous owner/ Service Connection holder, M/s Deepak Medical Hall, as a condition precedent for release of LT Commercial Category-II Service to the said premises is impugned as highly illegal, arbitrary, unjust and void.

2. The case of the petitioners and the submissions made on their behalf, in brief, are as follows:

The petitioners who are brothers jointly purchased house property bearing Nos.11-6-460 & 462 situated at Nampally, Hyderabad, from one Lakshminarayana Gupta through registered sale deed bearing No.1585/2003, dated 5.6.2003. The petitioners' relatives and friends purchased the neighbouring house properties bearing Door Nos.11-6-460, 461, 463, 463/A, 464, 465 and 465/A. All such purchasers including the petitioners joined together by clubbing the properties and obtained permission of the Municipal Corporation, Hyderabad, for construction of a commercial complex. The petitioners applied for L.T. Power Supply connection. Along with the application, the petitioners submitted all the necessary documents. The Assistant Divisional Engineer, Distribution-II, the 3rd respondent, informed the petitioners that the house bearing No.11-6-462, which was purchased by the petitioners, was provided with L.T. Commercial category-I Service Connection No.B2-622 in the name of M/s. Deepak Medical Hall and that in respect of the said Service Connection, there are arrears to a tune of Rs.1,56,357/-. Further, the petitioners were handed over a cash memo in respect of the said service connection showing the above mentioned amount as arrears payable by the said Medical Hall. The 3rd respondent made it clear that unless the petitioners clear the said arrears, the respondents are not going to sanction and release the L.T. power supply for the commercial complex as requested in the application of the petitioners. Thus, the respondents are demanding the petitioners to clear the electricity consumption charges/arrears due in respect of service connection held by the previous owner for the house bearing No.11-6-462 as a condition precedent for consideration of the request of the petitioners. Such action of the respondents is highhanded, illegal, arbitrary and unjust, in as much as there is no privity of contract between the petitioners and the respondents herein for the petitioners to clear the arrears of the previous owner/service connection holder. Further, the electricity through the said service connection was not consumed by the petitioners; and the petitioners purchased the said house subsequently, in the year 2003. As per the settled legal position, the arrears pertaining to the electricity consumed by the previous owner through the service connection obtained by the previous owner cannot be recovered from the subsequent purchaser of the said premises and the subsequent purchaser is entitled to the release of power supply and service connection without paying the arrears payable by the previous owner in respect of the service connection obtained by him for the premises. The purchasers of the premises like the petitioners herein are entitled for release of power supply to the premises purchased by them, if they are prepared to pay the necessary charges payable in respect of the new service connection, without having regard to the arrears in respect of the previous service connection obtained by the previous owner. In the circumstances stated, the writ petition is filed.

3. The averments in the counter of the 3rd respondent, in brief, are as follows: 'The material allegations in the affidavit filed in support of the

petition except those admitted in the counter affidavit are all false. The petitioners made an application for release of LT power supply in respect of premises bearing Nos.11-6-460, 461, 462, 463, 463/A, 464, 465 and 465/A. On receipt of the said application, the petitioners were informed that there are dues in respect of the earlier service connection provided to the premises bearing door No.11-6-462 and that unless the arrears to a tune of Rs.1,56,357/- are cleared, the petitioners will not be given electricity supply. The said demand is neither illegal nor highhanded as stated by the petitioners. Clause 8.4 of the General Terms and Conditions of Supply reads as under:

> 8.4 Transfer of service connection
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> The seller of the property should clear all the dues to the company before selling such property. If the seller did not clear the dues as mentioned above, the company may refuse to supply electricity to the premises through the already existing connection or refuse to give a new connection to the premises till the dues to the company are cleared."

Further, Clause 5.9.6 reads as follows:

> 5.9.6: Dismantlement of service line after termination of agreement: On the termination of LT or HT agreement, the Company is entitled to dismantle the service line and remove the material, meter, cutout, etc. After termination of the agreement, the consumer shall be treated as a fresh applicant for the purpose of giving supply to the same premises when applied for by him provided there are no dues against the previous service connection."

In view of the terms of the said clauses, the respondents are entitled to refuse to give service connection to a premises, if there are dues in respect of the service connection provided to the said premises. The petitioners are not entitled to seek fresh service connection and release of power supply unless the arrears due as demanded by the 3rd respondent are paid. Hence, the writ petition may be dismissed.'

4. Learned counsel for the petitioners and learned Standing Counsel for APSPDCL, representing the respondents 1 to 3, made submissions in line with the respective contentions of the parties, which are stated supra, in detail.

5. In the light of the facts, which are undisputed, and the submissions made before this Court, the only short but important question that falls for determination in this writ petition is - 'whether the respondents are justified in refusing to consider the request of the petitioners for providing L.T. power supply connection to the commercial complex bearing Door Nos.11-6-460, 461, 462, 463, 463/A, 464, 465 and 465/A unless the petitioners paid the arrears of electricity consumption charges in a sum of Rs.1,56,357/- in respect of service connection No.B2-622 in the name of M/s. Deepak Medical Hall provided to the said house bearing No.11-6-462?.

5.1 The petitioners contend that the service connection to the said premises bearing House No.11-6-462, which was purchased by the petitioners, was obtained by the previous owner and that the electricity was also consumed by the previous owner and that therefore, the arrears, if any, are payable by the previous consumer/owner and that the petitioners, being the subsequent purchasers of the said premises in the year 2003, are not liable to pay the said arrears and that the petitioners are entitled for release of L.T. power supply connection to their Commercial Complex without the necessity of payment of arrears of consumption charges payable by the previous owner as there is no privity of contract in respect of the said service connection between the petitioners on one hand and the respondents on the other and also in view of the decisions of the Supreme Court in Isha Marbles v. Bihar State Electricity Board and another[1]; and, Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt.

[1] (1995) 2 Supreme Court Cases 648

Ltd.[2]; and the decisions of this Court in W.P.no.13812 of 2005 and in Writ Appeal No.294 of 2007.

6. Per contra, the learned Standing Counsel appearing for the respondents while reiterating the contentions in the counter of the respondents and also the terms of clauses referred to in the counter from the General Terms and Conditions of Supply would contend that the subsequent purchaser of the premises is bound to pay the arrears due and payable by the previous owner in respect of the service connection provided to the premises and that unless the such arrears are cleared, the respondents are obligated under facts and in law to refuse to release L.T power supply connection sought for by the petitioners for the commercial complex. Learned Standing Counsel called in aid the decision of a Division Bench of this Court in Writ Appeal No.922 of 2008.

7. Since the facts are not in dispute, it is profitable to refer to the legal position obtaining.

7.1 In Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd (2nd supra), the facts disclose that it is a case arising under Section 24 of the Indian Electricity Act, 1910. It is not in dispute that the said provision is substantially similar to the provision in Section 43(1) of the Electricity Act, 2003. In the said decision, the Supreme Court held that in case of a fresh connection, though the premises is the same, the purchaser of it in an auction cannot be held liable to clear the arrears of electricity consumption charges payable by the previous owner in respect of power supply to the premises, in the absence of there being a specific statutory provision in that regard. In this decision, the ratio in the earlier decision in Isha Marbles v. Bihar State Electricity Board (1 supra) was reiterated. In both these cited decisions, the facts reflect that the properties in question were purchased in auction sales and that the purchasers of the properties are auction purchasers and that the sales are not voluntary

[2] (2004) 3 Supreme Court Cases 587

sales as was the sale in the case on hand. Further, in the instant case the relevant provisions are also brought to the notice of the Court. Hence, in the considered view of this Court the cited decisions are clearly distinguishable on facts and are not helpful to the petitioners.

7.2 In the decision rendered, on 04.07.2005, in W.P.No.13812 of 2005 [Between: M/s R.R. Poly Techs Ltd., :*And*: Transmission Corporation of A.P. Ltd., and others] this Court following the ratios in the decisions of the Supreme Court held that denial of power supply to the petitioners on the ground that the previous occupant of the premises has not cleared the arrears is a misconceived defence and accordingly allowed the writ petition holding that denial of power supply to the petitioners therein is without just cause and on an irrational basis.

7.3 In the decision rendered, on 10.04.2007, in W.A.No.294 of 2007, [Between: The Central Power Distribution Company of A.P. Ltd., and others :*And*: Gopal Agarwal and others] the facts are as under: 'In response to the tender/sale notice issued by the Authorized officer of the City Union Bank Limited under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the 1st respondent having participated in the open auction gave highest bid and purchased the property and later obtained document and possession of the property and submitted an application to the competent authority of APCPDCL; but, the authority concerned declined to release connection on the ground that the erstwhile consumer was in arrears to a tune of Rs.1,88,000/- and odd; nonetheless, a learned Single Judge following the two decisions (1 and 2 supra) of the Supreme Court issued directions for release of supply.' Further, in the Writ Appeal, it was noted that it was not shown to the Court that the 1st respondent who purchased the property of the previous consumer had undertaken to discharge the latter's liability; therefore, it was held that the appellants cannot withhold the supply of power to the 1st respondent on the spacious ground that arrears of the previous consumer have not been cleared. The facts of this cited case also disclose that the sale therein is not a voluntary sale. The Division Bench further held that the liability on the purchaser can be fastened if it is possible to hold that the purchaser has undertaken the responsibility of clearing the arrears of the previous owner.

7.4 In Paschimanchal Vidyut Vitran Nigam Ltd. v. DVS Steel & Alloys (P) Ltd.[3] the Supreme Court considered the question – 'whether the supplier can recover the electricity dues from the purchaser of a sub-divided plot?. The appellant there in submitted that if a consumer disposed of its premises, or any portion thereof, without clearing the dues in regard to the electricity supplied to its premises, any transferee seeking fresh electricity connection or supply of electricity to the premises, will have to clear the electricity dues of the previous occupant. The appellant referred to sub-clauses (g) and (h) of Clause 4.3 of the Electricity Supply Code, which are extracted below:

> (g) Where the property has been legally sub-divided, the outstanding dues for the consumption of energy on such premises, if any, shall be divided on pro-rata basis.
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> (h) A new connection to such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. Licensee shall not refuse connection to an applicant only on the ground that, dues on the other portion(s) of such premises have not been paid, nor shall the licensee demand record of last paid bills of other portion(s) from such applicants.

The supplier/appellant therein submitted that similar provisions existed in the relevant regulations of the Board even before the said Code came into force. To the contrary it was contended before the Supreme Court that 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

[3] (2009) 1 SCC 210

electricity does not constitute a `charge' on the premises and that 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 and hence, the supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises, in the absence of any contract to the contrary. Rejecting all the said contentions of the purchaser, the Supreme Court held thus: "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. 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 Clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor. 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 them 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." The above ratio in the decision of the Supreme Court puts the issue beyond pale of any controversy and amply supports the case/defence of the respondents.

7.5 In the decision rendered by a Division Bench, on 02.07.2009, in Writ Appeal No.922 of 2008 [Between: Sujata Gupta and others :*And*: The Superintending Engineer Central Power Distribution Company of Andhra Pradesh Limited and others], the facts are as under: 'Certain sheds were constructed in landed property by the appellants; the lessees of the said property obtained electric service connections in their own names from the then Andhra Pradesh State Electricity Board; however, continuation of power supply to the lessees was objected to as the arrears of consumption charges were not paid by them and as there was also contravention of the conditions of the lease; nevertheless, the lessees vacated the premises without informing the lessors/legal heirs of the lessors/property owners. APCPDCL, which is the successor of APSEB, did not dismantle the power connection for a long time; but, it initiated steps for recovery of arrears of consumption and other charges due in respect of the service connection obtained by the lessees and action was also initiated with the aid of the District Collector concerned under the Revenue Recovery Act and steps were taken for attachment of the properties of the appellants in the Writ Appeals. Challenging the said action, the appellants filed batch of writ petitions. However, aggrieved of certain observations made by the learned Single Judge in his order, the successful petitioners filed appeals before the Division Bench. Indeed, the learned single Judge while clarifying the position held that it would be open to the respondent authorities to proceed against the persons in whose names power connections were released, but concluded that the premises shall not be extended power supply unless such arrears were cleared. It is this concluding directive that spurred the successful petitioners in the writ petitions to come before the Court by way of Writ Appeals. This Court considered the definition of 'consumer' under Section 2(15) of the Electricity Act, 2003 and clause 5.9.6 of General Terms and Conditions of Supply and held as follows:

> "The rationale behind clause 5.9.6 is not far to gather. If a consumer, being a lessee, avails electricity supply without paying for the same and thereafter absconds and the same is held to be without any legal consequences, at least as against the premises for the purpose of future power supply, such instances would no doubt abound and it would not be in public interest to saddle such lessees upon the Electricity Supplying Companies. It is therefore logical that such premises should not be furnished power supply till the clearance of the arrears. This would be one means of assuring that the owner of such premises would be mindful of the whereabouts of his lessee and would take adequate care to see that such lessee does not leave behind unpaid arrears of electricity consumption charges."

Thus, after taking note of the terms of the above clause 5.9.6 of the General Terms and Conditions of Service and as the said clause was not under challenge, the Division Bench of this Court further held that the appellants cannot seek a direction to the contra and therefore, dismissed the writ appeals holding that the appellants are entitled to fresh power service connection in respect of the subject premises only after the clearance of the arrears due as against the earlier service connections pertaining to the same premises.

8. Reverting to the case on hand, it is to be noted that the official respondents are not only able to show the position of law in support of their stand but also that that their stand is correct, just and rational. Further, in the case on hand also, clause 5.9.6 of GTCS, by which the parties are bound, is not under challenge. Having carefully examined the facts of the instant case, this Court finds that the petitioners herein cannot claim the relief sought for in the writ petition, in the light of the fact that the issue involved in the present writ petition is identical to the issue involved in the Writ Appeal No.922 of 2008 and is also squarely covered by the decision rendered by a Division Bench of this Court in the said Writ Appeal No.922 of 2008 and also the decision of the Supreme Court in DVS Steel & Alloys (P) Ltd., (3rd supra) where in the legal position is succinctly crystallised. The ratio in the said decision of the Supreme Court applies on all fours to the case on hand. On the above analysis, this Court holds that the writ petition is devoid of merit and is liable to be dismissed.

9. Resultantly, the Writ Petition is dismissed holding that the petitioners are entitled to fresh power supply/Electric power supply connection in respect of the subject premises only after clearance of the arrears due against the earlier service connection obtained to the same premises. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

10th March, 2017
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