

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

1.

CWP No.18023 of 2017

Date of Decision: November 07, 2017

M/s. Krishna Agro Foods and another

. . . . Petitioners

Vs.

Punjab State Power Corporation Limited and others

. . . . Respondents

2.

CWP No.18093 of 2017

M/s. Vivek Agro Foods and another

. . . . Petitioners

Vs.

Punjab State Power Corporation Limited and others

. . . . Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.D.K. Singal, Advocate,
for the petitioners.

Mr.Vinod S. Bhardwaj, Advocate,
for the respondents (in CWP-18023 of 2017)

Mr.Hiten Nehra, Advocate,
for the respondents (in CWP-18093 of 2017)

RAKESH KUMAR JAIN, J.

This order shall dispose of two petitions bearing

CWP No.18023 of 2017 titled as “*M/s. Krishna Agro Foods and another Vs.*

Punjab State Power Corporation Limited and others” [for short ‘the 1st

petition’] and *CWP No.18093 of 2017* titled as “*M/s. Vivek Agro Foods and*

another Vs. Punjab State Power Corporation Limited and others” [for short

‘the 2nd petition’] as the issue involved in both the petitions is common. However, for the sake of convenience the facts are being extracted from the 1st petition.

The partnership firm M/s. Harleen Rice Mills had two partners, namely, Daljeet Singh and Davinder Singh. The firm obtained loan from the State Bank of Patiala. Dilraj Kaur wife of Daljeet Singh (partner of the firm) mortgaged the land measuring 20 kanal 15 marla comprised in khewat khatoni No.328/569, khasra No.220//4 min (3-6), 7 (7-19), 8 min (7-19) & 9 min (1-11) situated at Sailbrah Road, Village Gumti Kalan, District Bathinda [hereinafter referred to as ‘the property in question’] as security for the grant of said loan. There were two rice mills in the property in question, namely, M/s. Harleen Rice Mills and M/s. Amanpreet Rice Mills. M/s. Harleen Rice Mills made a default in repayment of loan. The State Bank of Patiala initiated recovery proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by putting the property in question to sale. The bank issued auction notice inviting bids. Petitioner No.2 participated in the auction in his individual capacity and purchased the property in question for a sum of ₹38,10,000/- in his name. The bank issued the sale certificate in favour of petitioner No.2 on 10.03.2017, which was duly registered in the office of Sub Registrar, Rampura Phul, District Bathinda on 3.5.2017. After the issuance of sale certificate, the bank also wrote a letter dated 28.4.2017 to the Tehsildar, Rampura Phul, District Bathinda to remove the bank lien in the revenue record and it is alleged that the bank lien was accordingly removed from the revenue record in respect of the property in question and thus it was free from all encumbrances.

Since the petitioners were to set up a rice-sheller in the property in question under the name and style of M/s. Krishna Agro Foods, it had applied for a new electricity connection to respondent No.5 by depositing the requisite amount/fee vide application dated 9.5.2017. Apart from this, it also applied for sales tax and other required permissions with different statutory authorities like Punjab Pollution Control Board and Market Committee, Bhagta Bhai etc. Respondent No.5 sent a letter dated 24.5.2017 to the petitioners stating that for a new electricity connection they had to pay ₹3,08,510/- on account of the dues towards M/s. Harleen Rice Mills. The petitioners disputed the demand and served a legal notice dated 8.6.2017 but neither the electricity connection was released nor any reply was given by respondent No.5 and hence, the present petition has been filed in order to challenge the letter dated 24.5.2017.

It is pertinent to mention that vide the impugned order/letter dated 24.5.2017, the petitioners were intimated by respondent No.5 that *“where you have applied the L.S. connection in the name of M/s. Krishna Agro Foods, at that premises M/s. Harleen Rice Mills vide A/c No.BR01/00007 whose outstanding amount is as under.”* It is also averred therein that *“in case the said amount is not deposited by you within the given period in that event the LS connection which has been applied by you through online made would be returned back to you because of non-payment of outstanding amount”.*

Learned counsel for the petitioners has submitted that the petitioners are not liable to pay the dues of the erstwhile firm M/s. Harleen Rice Mills because the petitioners are not asking for the transfer of the electricity connection which was in the name of the previous owners rather

his submission, he has relied upon a decision of the Supreme Court in the case of *“Special Officer, Commerce, North Eastern Electricity Company of Orissa (NESCO) and another Vs. M/s. Raghunath Paper Mills Private Limited and another” 2012 (13) SCC 479.*

On the other hand, learned counsel for the respondents has submitted that the petitioners are liable to pay previous dues of M/s. Harleen Rice Mills even if they are asking for a new connection in the premises of M/s. Harleen Rice Mills. In this regard, he has referred to Clause 30.13 of the Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2014 [in short ‘the Supply Code 2014’] which read as under: -

“30.13 If a consumer vacates any premises to which electricity has been supplied by a distribution licensee without paying all charges due from him in respect of such supply or for the provision of an electricity meter, electric line or electrical plant, the distribution licensee may refuse to give him supply at any other premises until he pays the amount due and also may refuse to connect such premises either on request from existing consumer or on application for new connection by any person till all dues are cleared.”

Learned counsel for the respondents also referred to a decision of the Supreme Court rendered in the case of *“Haryana State Electricity*

145 to canvass that where the statutory rules or terms and conditions of supply, which are statutory in character, authorize the supplier of electricity to demand from the purchaser of a property claiming re-connection 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 the purchaser.

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

The whole case of the petitioners, in order to challenge the impugned order/letter dated 24.5.2017 (Annexure P-7), is that the petitioners have applied for a new connection in terms of Section 43 of the Electricity Act, 2003 [for short 'the Act']. His entire reliance is on the decision of the Supreme Court rendered in the case of *M/s. Raghunath Paper Mills Private Limited and another (Supra)* in which the facts of the case were that the moveable and immoveable assets and properties of the factory unit of M/s Konark Paper & Industries Limited which was in liquidation was sold on "as is where is and whatever there is" basis. The unit was purchased by M/s Raghunath Paper Mills Private Limited in auction and possession was taken over. Since there was no power supply, therefore, the purchaser made an application to the Chief Executive Officer, North Eastern Electricity Company of Orissa [for short 'the NESCO'] for its restoration. The NESCO directed the petitioner to pay arrears of electricity due against the premises in question. The purchaser filed writ petition in the High Court of Orissa which was allowed and the appeal against that order filed by the NESCO was dismissed. The NESCO was thus before the Supreme Court where the Supreme Court considered Regulations 13(10) of the Orissa Electricity

[for short ‘the Supply Code 2004] in which it is provided that *“the service connection from the name of a person to the name of another consumer shall not be transferred unless the arrear charges pending against the previous occupier are cleared”*. It was argued before the Supreme Court that there is no privity of contract between the purchaser and NESCO for paying the dues of the previous owner/consumer. In this background, the Supreme Court held that since there was no request for transfer of the connection from the previous owner to the purchaser and it was a request for a fresh connection, therefore, the appeal filed by the NESCO was dismissed.

But the decision, in the case of *M/s. Raghunath Paper Mills Private Limited and another (Supra)* is not applicable because it has been held by the Supreme Court in the case of *M/s. Hanuman Rice Mills Dhanauri and others (Supra)* that if the statutory rules or terms and conditions of the supply, which are statutory in character, authorize the supplier of electricity to demand from the purchaser of a property, claiming either reconnection or fresh connection, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises then the supplier can recover the arrears from the purchaser.

In the present case, the petitioners have though claimed that they have applied for a new connection but the new connection is applied on the old premises i.e. the premises of M/s. Harleen Rice Mills. In this regard, the statutory Clause 30.13 of the Supply Code 2014 is squarely applicable as it is provided therein that *“the distribution licensee may refuse to give him supply at any other premises until he pays the amount due and also may refuse to connect such premises either on request from existing consumer or on application for new connection by any person till all dues are cleared.”*

2014 and the Supply Code 2004 because in Regulation 13.10 of the Supply Code 2004 there is no such condition of refusing to give supply at any other premises even a new connection until and unless dues of the old connection are paid/cleared by the purchaser.

This Court in *CWP No.17600 of 2017* titled as “*M/s. S.N. Bajaj Alloys Vs. Punjab State Power Corporation Limited and others*” decided on 18.9.2017 has already discussed the decisions of the Supreme Court rendered in the case of “*M/s Isha Marbles Vs. Bihar State Electricity Board*” 1995 (2) SCC 648, “*M/s. Paramount Polymers Private Ltd. Vs. Dakshin Haryana Bijli Vitran Nigam Limited*” 2005 (3) PLR 796 and *M/s. Hanuman Rice Mills Dhanauri and others (Supra)* and held that the statutory rules would prevail for the purpose of electricity connection after the dues of the earlier consumer is cleared.

Thus in view of the aforesaid discussion, I do not find any merit in the present petitions and hence the same are hereby dismissed.

A photocopy of this order be placed on the file of connected case.

November 07, 2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No