

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5911 of 2018

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Mahesh Kumar Agrawal son of late Shri Krishna Chand Agrawal resident of near HP Petrol Pump, Madhopur, PO and PS - Bakhtiyarpur, District Patna.

... .. Petitioner/s

Versus

1. The South Bihar Power Distribution Company Limited through its Managing Director, Vidyut Bhawan, Bailey Road, Patna.
2. The Managing Director, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The Chief Engineer (Commercial), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Electrical Executive Engineer, Electric Supply Circle, Barh, Patna.
5. The Assistant Electrical Engineer, Electricity Supply Sub Division, Bakhtiyarpur, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Rahul Srivastava, Advocate Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Anand Kumar Ojha, Advocate Mr. A.K. Karn, Advocate

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
CAV JUDGMENT

Date : 08-08-2018

Heard Mr. Gautam Kumar Kejriwal, counsel for the petitioner and Mr. Anand Kumar Ojha, counsel for the South Bihar Power Distribution Company Ltd. (hereinafter referred to as the Company).

2. The petitioner in the present writ application has sought the following reliefs:

“(I) For issuance of a direction
upon the respondent South Bihar Power
Distribution Company Ltd. (Hereinafter



referred to as the company for short) and its authorities to supply electricity connection to the petitioner's premises in light of section 43 of the Electricity Act, 2003 and Clause 4.1 of the Bihar Electricity Supply Code, 2007 (hereinafter referred to as the Supply Code for short)

(II) For issuance of writ in the nature of certiorari for quashing of the order dated 19.01.2018 passed in registered case No. 153/2016 by learned Consumer Grievance Redressal Forum, Patna whereby the petitioner's application seeking a direction upon the respondents for grant of electrical connection has been rejected and the stand of the respondents to not grant connection to the petitioner for reasons of outstanding dues on the premises in question on account of consumption of electricity by the tenant of the petitioner has been upheld.



(III) For holding and a declaration that the petitioner cannot be denied the electrical connection for reasons of pendency of outstanding dues of the tenant of the petitioner who had a separate connection, separate meter altogether in his name and as such the entire outstanding dues are payable by the said tenant alone.

(IV) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case.”

3. The facts of the case is that the petitioner had premises of 5000 square feet in area with 12 rooms and a godown-cum- hall on the ground floor in Khata No. 346, Khesra No. 1508, Tauzi No. 8518 and Thana No. 138 at Madhopur, P.O. and P.S. - Bakhtiyarpur, District- Patna. One Rajeev Kumar approached the petitioner for obtaining the said place on rent for operating a rice mill in the name of M/s L.K. Rice Mill and, accordingly, a rent agreement



(Kirayanama) was executed between the parties on 16.11.2010 for a period of three years beginning from 1st January, 2011 for a monthly rental of Rs. 14,101/-. The possession of the premises would be given to the said Rajeev Kumar with effect from 16.11.2010, but the tenancy would continue uptill 31.12.2013. Apart from other clauses, relevant clause, which relates to the present case is that:

“The SECOND PART, TENANT shall pay and discharge all monthly bills for electricity used as applicable in the demised premises, during the lease period.

The electricity connection will be borne by the SECOND PART, the TENANT on his own cost.”

4. Accordingly, the said tenant, Rajeev Kumar applied for electric connection and same was given by the Respondent-Company to him. The said connection was given on 15.01.2013, but having failed to pay the electricity bills of Rs. 8,13,748.94, the connection was disconnected on 18.06.2013 and meter was taken away, as is evident from letter dated 31.03.2014, Annexure-2 issued by the Assistant Electrical Engineer, Electric Supply Sub-Division, Bakhtiyarpur. A legal notice was also sent to the said Rajeev Kumar with regard to the dues of Rs. 8,13,748.94 for the



period 15.01.2013 to 18.06.2013. The petitioner thereafter applied for a electrical connection in his name and deposited the application fees, security deposit and supervision charges and received a money receipt dated 12.02.2016, Annexure-4. It may be noted that on receipt of the application fee for new connection, the Respondent- Company found that Rs. 9,88,481/- was outstanding with regard to the connection given to one Rajeev Kumar in the premises of the petitioner, which was demanded by the Respondent-Company to be paid, otherwise, the application would be cancelled. Having failed to get the electric connection, petitioner moved before the Consumer Grievance Redressal Forum, South Bihar Power Distribution Company Ltd. at Patna, which was registered as Case No. 153 of 2016 (hereinafter referred to as the CGRF), as contained in Annexure-8 to this application. The CGRF vide order dated 19.01.2018 passed in Case No. 153 of 2016, Annexure-13 found that the lease, rent agreement executed between the petitioner and the tenant Rajeev Kumar, who was running a rice mill, had left the premises leaving the outstanding dues of Rs. 9,88,481/- for the said premises. The said connection was granted to the tenant of the petitioner on his due consent. Hence, the



petitioner being the original owner is liable to clear all the outstanding dues of the premises for taking new electric connection, hence, the denial of of electrical connection to the petitioner and cancellation of application by the Respondent-Company appeared to be genuine. The case of the petitioner was dismissed by the CGRF. It is this order, which has been challenged by the petitioner by filing the present writ application.

5. Learned counsel for the petitioner submits that no consent was taken by the Respondent-Company for giving electrical connection to the tenant, Rajeev Kumar, hence, he is not liable to pay the outstanding dues against Rajeev Kumar. He submits that in view of Chapter 4, Clause 4.1 of the Bihar Electricity Supply Code, 2007, the licensee has an obligation to give supply of electricity to such premises within one month after receipt of completed application and requisite charges on an application by the owner or occupier of the premises. Denying electrical connection to the petitioner on grounds of pendency of dues of the tenant of the petitioner is not justified in view of Section 43 of the Electricity Act, 2003, as it is the duty of the licensee to give supply of electricity on an application by the owner or



occupier of any premises within one month after receipt of the application requiring such supply, if the application is complete in all respect. He contends that the obligation of payment of outstanding dues is of the tenant of the petitioner, who had a separate electricity connection, meter and equipment in his own name, as such, now just because there is outstanding electricity bill in the name of the tenant of the petitioner, who is a separate and individual consumer of the Respondent-Company, the petitioner cannot be denied electric connection. He further submits that a fresh electric connection has been given to the said Rajeev Kumar by the Respondent-Company, who is a tenant of another premises, in spite of huge outstanding dues pending against him regarding electricity bill and the petitioner has been denied electric connection by the the Respondent-Company. He thus seeks a direction upon the Respondent-Company to give supply of electricity on his application requiring such supply. In this connection, learned counsel for the petitioner relies upon order dated 27.08.2014 passed in CWJC No. 8548 of 2014 wherein it has been held that clause 4.15(vi) provides that a lease holder with consent of the house owner is only liable for clearing the outstanding dues against the lease holder and



since there was no consent of the house owner i.e. the petitioner, Respondent -Company be directed to give fresh connection of the electricity supply.

6. Learned counsel for the Respondent-Company, Mr. Anand Kumar Ojha, however, submits that against the order of the CGRF, Patna dated 19.01.2018, Annexure-13, there is provision of appeal under Section 42(6) of the Electricity Act, 2003 before the Ombudsman and as such, the present writ application is not maintainable. He submits that the electricity is supplied to the premises, meter is installed and supplies are given, thus, the action is purportedly taken under clause 4.15 (vi) of the Bihar Electricity Code, 2007, which provides as under:

“4.15. No Dues Certificate.

.....

(vi) in case the electricity connection to the said premises was given with the consent of house owner, such person shall ensure the payment of all arrears/ dues of electricity by the tenant before the tenant vacates the premises.

However the conditions mentioned under clause 4.15 above shall not apply if inconsistent with the



provision of any higher court order or an order as a consequence to it.”

He submits that since the agreement (Kirayanama) was entered by the petitioner with his tenant and a consent was given for electricity connection and since the dues were found outstanding on the said premises, the house owner of the premises i.e. the petitioner is liable for making payment of all arrears/ dues of the electricity by the tenant and that the order dated 27.08.2014 passed in CWJC No. 8548 of 2014 will not be applicable in the present context.

7. After hearing the parties, I am in agreement with the submissions advanced by the learned counsel appearing on behalf of the Respondent- Company that the agreement (Kirayanama) postulated that electric connection will be taken by the tenant and if the petitioner was a signatory to the said agreement, it amounts to a consented agreement between the parties. As per clause 4.15(vi) of the Bihar Electricity Code, 2007, it is the premises on which electricity connection is given and if certain dues of the tenant before he vacates the premises are outstanding, the house owner is liable for making payment of such outstanding dues.



8. This writ application is devoid of merit and is hereby dismissed.

9. The petitioner may take recourse to alternative remedy, as provided under the Act and Code, if he so desires.

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	AFR
CAV DATE	03.08.2018
Uploading Date	08.08.2018
Transmission Date	NA

