

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19051 of 2015

=====

Dr. Abdul Jamil Son of Late H.A. Qayum Resident of Minat Nursing Home, R.K. Mission Road, P.O. + P.S. +Town & District - Katihar.

... .. Petitioner/s

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 Superintendint 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 (Rural), Katihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s:	Mr. Suraj Samdarshi, Adv Mr. Sumit Kumar Jha, Adv Mr. Vijay Shankar Tiwary, Adv
For the Respondent/s	Mr. Vinay Kirti Singh, Sr.Adv Mr. Vijay Kumar Verma, Adv Mr. Akhileshwar Singh, Adv

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 04-12-2018

The present writ petition has been filed for the following reliefs –

(ii) For quashing of the letter no. 477 dated 23.09.2015 issued by the respondent no. 6, by which the petitioner has been asked to deposit the outstanding dues of erstwhile consumer over the premises, purchased by the petitioner.

(ii) For a direction to the respondent authorities, and in particular respondent no. 5 and 6, to grant fresh electrical connection to the petitioner under Section 43 of the Electricity Act,



2003 (hereinafter referred to as 'the Act'), which is illegally being denied by the respondents.

(iii) For a declaration that the purchaser of a property who is in no way related to the vendor of the property, cannot be saddled with the liability of outstanding electricity charges against such vendor.

(iv) For a declaration that the provisions of Bihar Electricity Supply Code, 2007 cannot apply retrospectively for the properties purchased, upon which fresh electrical connection is sought for.

(v) For a direction to the respondent authorities to pay penalty under Section 43, Sub-Section 3 of the Electricity Act, 2003, for not providing fresh electrical connection in terms of Section 43 of the Act, and for any other relief or reliefs to which the petitioner is found entitled.

2. Mr. Suraj Samdarshi, learned counsel for the petitioner submits that the petitioner is the *bonafide* purchaser of the subject land from the erstwhile owner Govardhan Das Khuswani in terms of five registered sale deeds, all executed during the years 2004 and 2005 in favour of the petitioner. It is submitted that the electricity dues of the said erstwhile owner cannot be recovered from the petitioner, nor can a new connection as applied for be denied to the petitioner as sought to be done in the impugned letter dated 23.09.2005 (Annexure-3). Learned counsel for the petitioner invites reference to the 3rd proviso of Clause 4.1 of the Bihar Electricity Supply Code, 2007 (for short 'the Supply Code') as substituted with effect from 19.05.2015 which provides as follows –

4.1(i) Provided that if there are arrears of electricity dues against the owner or occupier or tenant of a premises as a consumer, new connection shall not be denied to subsequent owner, occupier or tenant, and the arrear of electricity dues



on the premises shall be recovered from the defaulting consumer under the provisions of Bihar and Orissa Public Demands Recovery Act, 1914 or alternatively the arrears may also be transferred to another running accounts of the defaulting consumer after adjustment of the amount of security deposit and interest thereon and giving fifteen days notice."

3. It is therefore submitted that the only option remaining for the respondents was by resorting to recovery through certificate proceedings from the erstwhile owner for his electricity dues, but the respondents are not empowered to refuse a new connection to the petitioner.

4. Mr. Vinay Kirti Singh, learned Senior Counsel appearing on behalf of the respondent-power company opposes the writ petition. Referring to the counter affidavit, he submits that the petitioner while purchasing the land from the erstwhile owner must have realised the outstanding dues and is thus liable to make payment of the dues of the seller.

5. Having heard learned counsel for the parties and on consideration of the materials on record, this Court finds considerable merit in the writ petition. The substituted 3rd proviso to Clause 4.1 of the Supply Code is clear and ambiguous. After the substitution of the said proviso with effect from 19.05.2015, the only remedy available with the respondents for recovery of the electricity dues against the vendor of the property is by way of certificate proceedings. The arrears admittedly due from the vendor of the property cannot be made basis for denial of new electric connection to the petitioner and as such the impugned order dated 23.09.2015 cannot be sustained. The statement of the respondents that the petitioner must have realised the outstanding dues from his vendor is mere hypothesis and in any event, recovery cannot be made from the petitioner on this basis even otherwise.



6. The impugned order dated 23.09.2015 is accordingly quashed and the respondents are directed to grant fresh electric connection to the petitioner without further delay.

7. The writ petition stands allowed.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.12.2018
Transmission Date	NA

