

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.795 of 2018

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

Heard Sri J.Prabhakar, learned counsel for the appellant-writ petitioner, and Sri R.Vinod Reddy, learned Standing Counsel for the respondents and, with their consent, the Writ Appeal is disposed of at the stage of admission.

The appellant herein filed W.P.No.12026 of 2007 seeking a writ of mandamus to declare the action of the respondents, in not releasing a new service connection of supply to them in the subject premises, as illegal, arbitrary and contrary to the provisions of the Indian Electricity Act, and the Rules made thereunder. A consequential direction was sought to the respondents to provide a new service connection of Electricity supply forthwith.

In the order under appeal the Learned Single Judge noted that, while admitting the writ petition, this Court had passed the following interim order in W.P.M.P.No.14965 of 2007 on 10.07.2007:

“Heard the learned Counsel for the petitioner and the learned Standing Counsel for the respondents.

The petitioner seeks extension of power supply to the unit established by it. The petitioner is only a lessee. The respondents insist that the previous owner of the property is due certain amount towards consumption and other charges. The question as to whether the principle laid down by the Hon'ble Supreme Court in **Dakshin Haryana Bijili Vitran Nigam Limited vs. M/s.Paramount Polymers Private Limited** (AIR 07 SC 2) applies to the facts of this case, needs to be decided. For the present, this Court is of the view that interest of the parties can be protected by direction extension of the power supply on condition that the petitioner deposits a sum of Rs.5.00 lakhs in addition to the other statutory deposits.

Hence, the WPMP is ordered directing that the respondents shall release power supply to the

petitioner on its deposit of Rs.5.00 lakhs in addition to the other statutory deposits. This arrangement shall be subject to the outcome of the writ petition.”

Thereafter, the Learned Single Judge observed that, pursuant to the aforesaid interim order, the appellant-writ petitioner had deposited Rs.5,00,000/- with the respondents, and the respondents had given the appellant-writ petitioner a new service connection of power supply to the subject premises. The Learned Single Judge also noted the submission of the appellant-writ petitioner that the respondents had sought to recover the outstanding dues, in respect of M/s.Kethaki Cement Private Limited, from the appellant-writ petitioner, and observed that the said proceedings were not challenged by the appellant-writ petitioner nor was the said letter communicated to them; and no such proceedings were issued by the respondents either to the appellant-writ petitioner or to the land owner demanding payment of arrears of electricity charges due from M/s.Kethaki Cement Private Limited.

The Learned Single Judge, thereafter, observed that the writ petition was filed seeking release of a new service connection of power supply to the appellant-writ petitioner's premises; and, since power supply was extended to the appellant-writ petitioner's premises pursuant to the interim order of the Court, the cause in the writ petition did not survive. In so far as the amount of Rs.5,00,000/- deposited by the appellant-writ petitioner, as directed by the Court to get power supply, was concerned the Learned Single Judge left it open to the appellant-writ petitioner to make a representation to the respondents seeking refund of the said amount and observed that, on such a representation being

made, it is always open to the respondents to pass appropriate orders either to refund the amount, or adjust the same as per Rules, within a period of eight weeks from the date of receipt of such representation.

It is not in dispute that the appellant-writ petitioner obtained the subject land on lease from a person who traces his title to a person who purchased the subject land in an auction conducted by the A.P.State Financial Corporation. The said property was put to auction on default in payment of the amount due to the State Financial Corporation by M/s.Kethaki Cement Private Limited. The arrears of electricity charges, non-payment of which resulted in the Power supply being disconnected, in the service connection not being extended to the appellant-writ petitioner, and their having to invoke jurisdiction of this Court under Article 226 of the Constitution of India, is said to be because of the failure of M/s.Kethaki Cement Private Limited to pay arrears of electricity charges. It has also not been disputed before us that, in the light of the law declared by the Supreme Court in **Isha Marbles vs. Bihar State Electricity Board**¹, the auction purchaser cannot be held liable for the electricity arrears due from a defaulter who, besides defaulting in payment of the electricity dues, has also defaulted in repayment of the loan sanctioned to them, by the State Financial Corporation, resulting in the mortgaged property being put to auction by them. In the light of the law declared in **Isha Marbles**¹, the interim order, directing the appellant to deposit Rs.5.00 lakhs, does not appear to be justified.

¹ (1995) 2 Supreme Court Cases 648

The question which necessitates examination in this appeal is whether the appellant-writ petitioner is entitled for refund of Rs.5,00,000/- deposited by them. The interim order passed in the Writ Petition required the appellant-writ petitioner, besides depositing Rs.5,00,000/-, to also make all other statutory deposits. While the amount paid by the appellant-writ petitioner towards statutory deposits are, undoubtedly, regulated by the provisions of the Electricity Act or the relevant Rules and the applicable Standing Orders of the respondents, deposit of Rs.5,00,000/- in addition to the statutory deposits, is only because of the interim directions of this Court.

The maxim "*actus curiae neminem gravabit*", means that the act of the Court shall prejudice no one. This maxim is founded upon justice and good sense; and affords a safe and certain guide for the administration of the law. (**State of Punjab v. Darshan Singh²; Jayalakshmi Coelho v. Oswald Joseph Coelho³**). The Court is under an obligation to undo the wrong done to a party by the act of the Court. Any undeserved or unfair advantage gained by a party to the proceedings must be neutralized as the institution of litigation cannot be permitted to confer any advantage on a party by the delayed action of the Court. (**Kalabharati Avertising v. Hemant Vimalnath Narichania⁴; A.R. Sircar (Dr) v. State of U.P.⁵; Shivsankar v. Board of Directors, U.P.SRTC⁶; Inter College, Arya Nagar Kanpur v. Sree Kumar Tiwary⁷; GTC**

² (2004) 1 SCC 328

³ (2001) 4 SCC 181

⁴ (2010) 9 SCC 437

⁵ 1993 Suppl. (2) SCC 734

⁶ 1995 Suppl (2) SCC 726

⁷ (1997) 4 SCC 388

Industries Limited v. Union of India⁸; and **Jaipur Municipal Corporation v. C.L Mishra**⁹). No person can suffer from the act of the Court. Any undeserved or unfair advantage gained by a party, in view of the interim order of the Court, must be neutralized. (**Ramakrishna Verma v. State of U.P.**¹⁰; **Grindlays Bank Ltd. v. ITO**¹¹; **Mahadeo Savlaram Shelke v. Pune Municipal Corporation**¹²). Consequently any amount paid, pursuant to the interim orders, should, on the writ petition being eventually decided in favour of the appellant-writ petitioner, be repaid by the respondents to the appellant-writ petitioner.

Sri R.Vinod Reddy, learned Standing Counsel for the respondents, would submit that the Corporation should be permitted to adjust this deposit of Rs.5,00,000/- towards the future electricity bills of the appellant-writ petitioner. On the other hand, Sri J.Prabhakar, learned counsel for the appellant-writ petitioner, would submit that the monthly electricity charges, due and payable by the appellant-writ petitioner, is around Rs.30,000/- per month; and permitting the respondents to adjust the same would mean that, besides having had the benefit of retaining this amount for the past 10 years without paying the appellant-writ petitioner interest thereupon, the respondents would now be benefited by retaining this amount for a further period of a year and half.

It is wholly unnecessary for us to examine this contention of Sri J.Prabhakar, Learned Counsel for the appellant-writ petitioner, since it is not in dispute that the said amount was deposited by

⁸ (1998) 3 SCC 376

⁹ (2005) 8 SCC 423

¹⁰ (1992) 2 SCC 620

¹¹ (1980) 2 SCC 191

¹² (1995) 3 SCC 33

the appellant-writ petitioner pursuant to the interim order of this Court, and not as a statutory deposit for grant of a fresh electricity connection. The respondents cannot be heard to contend that the amount deposited, only in view of the interim order passed by this Court, should, for no fault of the appellant-writ petitioner, be permitted to be adjusted against their future electricity bills. This contention of Sri R.Vinod Reddy, learned Standing Counsel for the respondents, necessitates rejection.

The order under appeal, to the extent the respondents were directed to consider the appellant-writ petitioner's representation and, if need be, either refund or adjust the amount, is set aside. In case, there are no arrears of electricity dues payable by the appellant-writ petitioner, the respondents shall refund the deposit of Rs.5,00,000/- made by the appellant-writ petitioner, pursuant to the interim order of this Court, with utmost expedition and, in any event, not later than three months from the date of receipt of a copy of this order.

The Writ Appeal is, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

13th June, 2018

Note: Issue C.C in one week.

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