

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4141 of 2019

1. M/s Jalan Polytubes Private Limited a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Modi Bhawan, Ghagha Gali Chouk, Patna City, through its Director, Sachin Modi, aged about 41 years (Male) son of Shri Sheo Prasad Modi, resident of Modi Bhawan, Ghagha Gali Chouk, Patna City, P.s.- Khajelalan, Distt.- Patna-800008
2. Sachin Modi S/o Shri Sheo Prasad Modi Resident of Modi Bhawan, Ghagha Gali Chouk, Patna City, P.s.- Khajelalan, Distt.- Patna-800008

... .. Petitioner/s

Versus

1. The South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna through its Managing Director
2. The Electrical Executive Engineer Electric Supply Division, Patna City, Patna
3. The Assistant Electrical Engineer Electric Supply Sub-Division, Katra, Patna City, Patna
4. The Junior Electrical Engineer Electric Supply Section, Malsalami, Patna City, Patna
5. M/s Saket PVC Pipes Industries Private Limited a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Surya Vihar, Exhibition Road, P.s. Gandhi Maidan, Patna through its Director, Vikas Kumar Jalan, Son of Late Narayan Prasad Jalan, resident of 811, Shanti Vihar Apartment, Off Fraser Road, P.O.- G.P.O., P.s.- Kotwali, Patna- 800001

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Suraj Samdarshi, Advocate
For the Respondent/s : Mr.Vinay Kriti Singh, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date : 16-08-2019

The petitioners in the present case are challenging the order dated 12.12.2018 passed in Appeal Case No. 09 of 2018 by the Ombudsman under Section 42(6) of the Electricity Act 2003 (hereinafter referred to as the 'Act of 2003') as according to them



the impugned order is being wholly illegal, contrary to the provisions of the Act of 2003 and the Bihar Electricity Supply Code, 2007 as amended by its 4th Amendment (hereinafter referred to as the 'Supply Code 2007'); Further prayer has been made to quash the order dated 30.07.2018 passed by the Consumer Grievance Redressal Forum (hereinafter referred to as the 'CGRF) in Case No. 22 of 2018 under Section 42(5) of the Act of 2003 whereby the petitioners have been denied fresh electric connection on the ground of outstanding dues over the premises in question.

The petitioners are looking for a writ in the nature of Mandamus directing the respondent authorities to grant fresh electrical connection under Section 43 of the Act of 2003. A declaration has been sought for to say that the action of the respondents in not providing fresh electrical connection to the petitioners is completely unjustified.

FACTS OF THE CASE

Petitioner no. 1 is a private limited company incorporated under the provisions of the Companies Act 1956. Petitioner no. 2 is one of the Directors of the petitioner no. 1. Petitioner no. 1 being a Juristic person in the eye of law made an application on 26.03.2018 through its director petitioner no. 2



with the respondents power company for grant of fresh electrical connection under non-domestic category for a load of 3 Kilo Watt. Respondent no. 4, however, vide his letter no. 32 dated 09.04.2018 communicated to the petitioners that fresh electrical connection over the premises is not possible without payment of the earlier outstanding dues in the name of Narayan Prasad Jalan which was Rs. 20,40,464/-. The petitioners were called upon to make payment of aforesaid amount, failing which the security amount deposited by the petitioners for grant of fresh electrical connection would be adjusted after rejecting the application for grant of said connection. A copy of letter dated 09.04.2018 issued by respondent no. 4 is Annexure '2' to the writ application.

The petitioners claimed that upon query they came to know that earlier an electrical connection was obtained by Narayan Prasad Jalan, Director of respondent no. 5 who had taken electrical connection under high tension category for a contract demand of 134 Kilo Watt. The electric supply was disconnected on 21.06.2013 and a final Bill was raised on 03.07.2014 for a sum of Rs. 20,05,402/-. Copy of the energy bill dated 03.07.2014 has been brought on record as Annexure '3' to the writ application. It is stated that for recovery of the said amount a certificate



proceeding being Certificate Case No. 05 of 2015-16 has been initiated against the defaulting consumers and others.

It is the contention of the petitioners that the respondents intended to recover the outstanding amount from the persons named in letter no. 76 dated 31.01.2015 who are (1) Sri N. P. Jalan, Prop. M/s Saket Tubes Ltd., (2) Sri Sudarsan Kumar Bansal, S/o Karodimal Bansal, (3) Sri Narayan Prasad Jalan son of Hanuman Prasad Jalan and (4) Sri Tapan Kumar Chakraborty c/o Parmanand Yadav.

Narayan Prasad Jalan, however, died much before filing of the certificate case is an admitted position.

Some admitted facts in paragraphs 8 and 9 of the writ applications are worth taking note of as under:-

“8. That the land over which the respondent no. 5 was granted electrical connection was a land which was leased out by Sri Krishna Goshala Prabandhak Committee to the petitioner no. 1 vide lease deed dated 30.1.1999 for a period from 1.4.1998 to 31.3.2028. It is pertinent to mention here that Narayan Prasad Jalan was one of the Directors of M/s Jalan Polytubes Private Limited, who was lessee to the said deed.



9. That it appears that another Company floated by Narayan Prasad Jalan in the name of Saket PVC Pipes Industries Private Limited, i.e. the respondent no. 5, was granted electrical connection under H.T. Category, wherein Narayan Prasad Jalan and other family members owned the Company with its entire shareholding. The aforesaid fact is manifest from the Memorandum of Association of the respondent no. 5, which was formed on 29.05.2001.”

Thus, from the aforesaid statements it is quite clear that both the petitioner no. 1 and respondent no. 5 were the family company of Narayan Prasad Jalan and the leased premises were used to carry business in the name of respondent no. 5. The outstanding bill rose up-to 20,40,464/- and ultimately electricity was disconnected in 2014 July.

Submissions of the petitioners

The submission is that the petitioner no. 1 and respondent no. 5 companies are two separate entities, therefore, the outstanding dues of one company cannot be recovered from another company.

It is submitted that when the petitioners preferred an application before the ‘CGRF’ giving rise to Reg. Case No. 22 of 2018, specific plea was taken that there is no relation between



the defaulting consumer i.e. the respondent no. 5 and the petitioner no. 1 except for the fact that when the electrical connection was granted to respondent no. 5 though late Narayan Prasad Jalan, he was one of the Directors of the petitioner no. company as also one of the Directors of respondent no. 5. The 'CGRF' denied the connection saying that it appears to be some kind of under hand dealing between the petitioner and respondent no. 5. While passing the order dated 30.07.2018 as contained in Annexure '8' to the writ application 'CGRF' held that the petitioner company with new set of Directors cannot be treated as successor occupier /tenant of the premises, lease agreement is still alive in the name of M/s Jalan Polytubes Private Limited through its Director Narayan Prasad Jalan and it's heirs since 01.04.1998. The 'CGRF' therefore, sensed connivance of the opposite parties in the whole episode and approved the action of the respondents not to release the electric connection to the petitioners.

Learned counsel for the petitioners submits that when the petitioner preferred an appeal before the Ombudsman being Appeal Case No. 09 of 2018, the petitioners were asked to deposit 50 % of the dues amount claimed by the licensee vide order dated 12.12.2018 as contained in Annexure '10' to the writ application.



It is further submitted that on 18.06.2017 Sri Krishna Goshala has issued letters as contained in Annexure '11' and '11/1' to the petitioner no. 1 saying that in the meeting of the executive committee dated 19.09.2016 it has been decided that from 19.09.2016 to 31.03.2028 (और 30 वर्ष) it has been declared that on the land related to Jalan Polytubes Private Limited whole ownership right (मालिकानाहक) is being granted to Sachin Modi and his family. There is, however, nothing to show that the registered lease deed in the name of petitioner no. 1 has been cancelled. It has further been declared that now the Goshala has no relation with ex-Manager Vivek Kumar and Late Narayan Prasad Jalan and now the further rent shall be paid by Sachin Modi.

By Annexure '11/A' dated 20.07.2017 the Goshala has written to petitioner no. 1 that in the Executive Committee meeting held on 19.09.2016 it has been decided that it has got right to provide it on rent as per lease deed but information with regard to the person to whom it is being provided on rent will be given to the Goshala and consent of Goshala shall be obtained. Annexure '11' is dated 18.06.2016 which says that the whole ownership right has been given to Sachin Modi and his family but Annexure '11/A' addressed to the petitioner no. 1 company says that it has a right to create a lease. Both the decisions are said to



have been taken in the meeting of the Executive Committee held to be on 19.09.2016.

Learned counsel for the petitioners has argued before this Court that the outstanding of electricity is not a charge over the property is a settled law up to the Hon'ble Apex Court and a person seeking electrical connection cannot be denied grant of fresh electrical connection under Section 43 of the Act of 2003 on the ground of an outstanding dues over the premises. It is submitted that in the present case refusal is not on the ground that the petitioner is any how related to the defaulting consumer or is managing the affairs of the defaulting consumer i.e. the respondent no. 5.

It is submitted that under the Supply Code, 2007 a procedure for recovery of outstanding dues has been provided. It mandates that no fresh electrical connection can be denied to a fresh applicant, either the subsequent owner or occupier or the tenant on the ground of existing dues over the premises and it can be denied only if the applicant on the premises being an individual is a son or relative as defined under Section 26 of the Companies Act 1956 of defaulting consumer, the petitioner no. 2 claims that he does not fall under the said category as he is no



where related to the defaulting consumer who is the respondent no. 5 in the present case.

It is submitted that under Section 47 of the Act of 2003 a provision has been made to deposit security amount which is equivalent to, on an average, 2 months and aggregate of electricity dues or charges which may be payable by a consumer. Licensee allowed to accumulate the dues to the extent of Rs. 20 lakhs approximately and failed to realize that as it had exceeded the security held by such consumer. As such for statutory default, as stipulated under the Act of 2003 and the Supply Code, 2007, the licensee cannot be permitted to recover the said amount in the garb of grant of fresh electrical connection to a separate consumer who is not a defaulting consumer.

Submissions of SBPDCL

A counter affidavit has been filed in this case on behalf of respondent no. 1- South Bihar Power Distribution Company Limited (hereinafter referred to as the 'SBPDCL'). In the counter affidavit the facts relating to grant of electrical connection to respondent no. 5, accumulation of the outstanding dues and then facts relating to filing of the certificate case No. 05 of 2016 as have been taken note of hereinabove have been reiterated.



Respondent no. 1 has relied upon the observations of the 'CGRF' saying that how an electric connection was given to M/s Saket Tubes Private Limited when the agreement for the said premises was in the name of M/s Jalan Polytubes Pvt. Ltd. and Narayan Prasad Jalan was its director. Respondent no. 1 has defended the order of learned 'CGRF'. It has been stated that the Supply Code, 2007 provides that if any electricity dues on any premises is pending, fresh connection cannot be granted unless the electricity dues is deposited with the power company. Respondent No. 1 has contended that when electricity line was obtained in the name of Respondent No. 5 and bills went on accumulating, both Respondent No. 5 and petitioner no. 1 company were the family company of Narayan Prasad Jalan acting through same and one person Narayan Prasad Jalan (Since deceased).

Since this Court is only required to take a view on the legality of the impugned order by which petitioners have been denied fresh electric connection and the parties admit that no adjudication regarding the bills raised on respondent no. 5 is to be done in this case as also respondent no. 5 was not a party either before 'CGRF' or 'OMBUDSMAN' and the petitioners themselves say that respondent no. 5 is the defaulter no notice has



been issued to Respondent No. 5. The petitioners have enclosed a copy of the Memorandum and Articles of association of respondent no. 5 company as Annexure '6' to the writ application and it is an admitted position that at the relevant time when electric connection was provided to respondent no. 5 both the petitioner no. 1 and respondent no. 5 were the family company of Narayan Prasad Jalan.

In course of hearing of the writ application, this Court called upon learned counsel for the petitioner to place on record the Memorandum of Association and Articles of Association of the petitioner no. 1 company together with its shareholding pattern which has been brought on record by filing a supplementary affidavit on behalf of the petitioners sworn by petitioner no. 2.

CONSIDERATION

Having heard learned counsel for the petitioners and learned counsel representing the respondent power company as also on perusal of the records, this Court finds that the following facts are not in dispute:

(i) Jalan Polytubes Private Limited (petitioner no. 1) had been incorporated as a family company of Narayan Prasad Jalan. The subscribers to the Memorandum of Association and



Articles of Association shows that the three persons who formed this company were (1) Narayan Prasad Jalan son of Sri Hanuman Pd. Jalan, (2) Ramesh Kumar Jalan son of Sri Hanuman Pd. Jalan and (3) Vikash Kumar Jalan son of Narayan Prasad Jalan.

(ii) In the whole writ application petitioner no. 2 has not come out with any statement as to when and how did he and his family purchased 336000 equity shares of petitioner no. 1 company whose total authorized share capital as stated in the Articles of Association is Rs. 5000000 (fifty lacs) divided into five lacs equity shares of Rs. 10/- each but in the supplementary affidavit petitioners have stated that shares were transferred in the year 2014-15. Thus, this Court can conclude that shares were transferred only after disconnection of electricity. The certificate of the Chartered Accountant enclosed as Annexure '16' to the supplementary affidavit of the petitioners shows that on the basis of search conducted at MCA 21 (Ministry of Corporate affairs portal) dated 16/07/2019, the shareholders of the company as on 31.03.2018 were (1) Shiv Prasad Modi, (2) Nitin Modi, (3) Sachin Modi and (4) Smt. Santosh Modi and they together hold 336000 shares of petitioner no. 1.

Sachin Modi and Nitin Modi are the directors of petitioner no. 1 company.



From the Memorandum of Association and Memorandum of Articles of Saket PVC Pipes Industries Private Limited (respondent no. 5) which is Annexure '6' to the writ application it appears that this company was floated by the family of Narayan Prasad Jalan as all the four subscribers of Memorandum of Association and Memorandum of Articles of respondent no. 5 are (1) Narayan Prasad Jalan, (2) Vijay Kumar Jalan, (3) Vikash Kumar Jalan and (4) Satyabhama Devi wife of Narayan Prasad Jalan. This company was incorporated on 29th May, 2001.

In case of petitioner no. 1 company the address of the subscribers to the Memorandum and Article of Association were given as that of C/o Shanti Vihar, Fraser road, Patna.

It is apparent that in the year 1998 when petitioner no. 1 company was floated, Narayan Prasad Jalan and his family and his brothers were having a firm namely, Saket Tubes. Later on in the year 2001 they formed Saket PVC Industries Private Limited (respondent no. 5) with main object to take over the existing business of M/s Saket Tubes the existing proprietorship firm. This fact is mentioned under the Main Objects Clause of Memorandum of Association of respondent no. 5.



The registered lease deed was obtained from Goshala on 30.01.1999 in the name of petitioner no. 1. The petitioner no. 1 acting through Narayan Prasad Jalan allowed another family company (respondent no. 5) to enter in the premises and to do its business. Admittedly, the electricity was obtained for running the commercial venture. The electricity bills were allowed to accumulate over to the extent of rupees more than 20 lakhs, as a result thereof the electricity line was disconnected.

It is an admitted position that prior to institution of the certificate case a legal notice was given on 31.01.2015 vide Annexure '4/A' to the writ application, perusal of which would show that it was addressed to Narayan Prasad Jalan as proprietor of M/s Saket Tubes Ltd. and some other persons. Narayan Prasad Jalan had died and then what happened to the certificate proceeding and whether certificate proceeding has been initiated against the respondent no. 5 and others if any are not very clearly stated in the counter affidavit filed on behalf of the respondents but in the present writ application, this Court is not going into that aspect of the matter because it is for the respondent no. 1 to think over its remedy available for recovery of the money.



This Court has been called upon to issue a writ of Certiorari to quash and cancel the decision of the statutory authorities such as 'CGRF' and 'Ombudsman' under the Act of 2003. This Court would therefore take a view on the orders impugned. This Court finds from the materials available on the record and submissions that admittedly, the petitioner no. 1 company and respondent no. 5 company happened to be the family company of Narayan Prasad Jalan. The status of a private limited company in the nature of a family company is totally different from that of a Public Limited Company. As may be seen here it was one man Narayan Prasad Jalan who was managing the entire show with his two brothers and wife as subscribers to the Memorandum of Association and Articles of Association of respondent no. 5 company which was formed to take over the business of the proprietorship firm namely, M/s Saket Tubes.

The lease of the land was obtained in the year 1998 giving a period of 30 years in the name of petitioner no. 1 company. Narayan Prasad Jalan signed the lease deed as Director on behalf of petitioner no. 1 company showing it the lessee under the deed, thereafter, the electricity line was obtained in the name of Narayan Prasad Jalan showing him proprietor of respondent no. 5, electricity bills were allowed to be accumulated whereafter



the electricity line was disconnected and thereafter, the whole company (petitioner no. 1) got transferred to petitioner no. 2, his father and brothers. Annexure '11' and '11/1' to the writ application do not alter the position. Petitioner no. 1 continues as a registered lessee. Petitioner no. 2 having entered in place of director is now referred as owner through a letter which is only a misnomer.

In the whole writ application neither there is any averment that petitioner no. 1 company had executed a sub-lease with the consent of Lesser nor any document has been brought on record to demonstrate the same. Under the lease deed petitioner no. 1 was granted right to carry on trade and industry and as it appears presently it was the lessee who was permitted to take electric connection on it's own cost. The lease deed contains recital in paragraph 12 that after obtaining the written approval of Goshala the lessee may allow the lease hold land and premises to be used by a reputed firm/parties to use as godown/factory within the lease period without causing any damage to the interest of the Goshala. It is not the case of the petitioner that the petitioner no. 1 being lessee obtained any prior approval of the Goshala and the leased land was given to any other firm of repute.



The petitioner no. 1 company has made a statement in paragraph '6' of the writ application that upon query the petitioners **came to know** that earlier an electrical connection was taken by Narayan Prasad Jalan one of the Director of the respondent no. 5. This claim of petitioner no. 1 that upon query it 'came to know' is totally false, concocted and baseless statement inasmuch as the petitioner no. 1 cannot be allowed to say that what was done by its Director Narayan Prasad Jalan was not known to it. It is to be remembered again that petitioner no. 1 was a family company of Narayan Prasad Jalan and a family company is like a quashi partnership firm of the family. Thus, what has been stated in paragraph '6' of the writ application on behalf of petitioner no. 1 stands falsified and is a mere pretext.

The petitioner no. 1 being a company and registered lessee of the land in question has not stated that at any point of time the lease land was sub-leased with prior permission of the Goshala. The writ application has been filed giving an impression that the petitioner no. 1 company must be treated at arms length with its Director Narayan Prasad Jalan as if it was the act of Narayan Prasad Jalan to allow respondent no. 5 to enter into the premises and to do business after obtaining electricity connection from the respondent power company. Again the bona fide of



petitioners in saying so is highly questionable. At no point of time the other directors/shareholders of petitioner no. 1 questioned the decision of Narayan Prasad Jalan. No legal action was initiated against him alleging that he was acting against the interest of petitioner no. 1, thus, now the petitioner no. 2 cannot build up his case on these statements alone.

This Court is afraid that if the contention of the petitioner no. 1 is accepted it would result in a anomalous situation where a family company of a person will disown the act of its Director after transferring the company to another person to get rid of a liability which would if proved otherwise fall on the private limited company/family company and it's directors who may be found acting in collusion with each other to cause a loss to a Public Sector undertaking and thereby causing loss of public money in the garb of an incorporated body.

Well it is true that a company is a '*Persona Designata*' a person in the eye of law. It can 'sue' or be 'sued' in it's own name but sometimes Corporate veils are required to lifted to find out the truth. In the present case lifting of corporate veil is required.

In the present case, I find that petitioner no. 1 company having gone beyond the rights conferred upon it as a



lessee allowed another family firm of Narayan Prasad Jalan to enter into the lease premises, obtain electricity to run the family business and then after accumulating the energy bills when the electricity line has been disconnected now the petitioner no. 1 through petitioner no. 2 is looking for a fresh electricity connection on the ground that it is a separate entity and cannot be fasten with the liability of another business entity of Narayan Prasad Jalan. This Court is not ready to accept this plea of the petitioners, because any such interpretation would have a tendency to encourage this kind of transactions which would ultimately result in loss to public exchequer.

Learned counsel for the petitioner has given much emphasis on Section 43 of the Act of 2003 read with the provisions of the Supply Code, 2007. It would be relevant to quote section 43 as under:

Section 43. (Duty to supply on request): --- (1) ¹⁵[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area

15. substituted by the Electricity (Amendment) Act, 2007 (26 of 2007), S. 8 (i) , for "Every distribution" (w.e.f. 15-06-2007)



wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

¹⁶[Explanation.- For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, alongwith documents showing payment of necessary charges and other compliances.]

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

This Clause provides for supply of electricity to be given to the owner or occupier of premises by a distribution licensee within one months, or within six months where such supply requires extension of distribution mains, commissioning of new sub-stations. If a distribution licensee fails to supply electricity within the period specified above, he shall be liable for a penalty which may extend to one thousand rupees for each day of default. (Notes on Clauses).”

Further the relevant third proviso of clause 4.1 of

Supply Code, 2007 reads as under:

2. Amendment in chapter 4 of the Code

This proviso of clause 41. shall be substituted by the following:-

16. Inserted by the Electricity (Amendment) Act, 2007 (26 of 2007), S. 8 (ii) (w.e.ef) 15-6-2007)



Provided that

(I) 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 alternately the arrears may also be transferred to another running accounts of the defaulting consumer after adjustment of amount of security deposit and interest there on and giving fifteen days notice.

(ii) Where a property/premises has been sub-divided, the outstanding dues for the consumption of energy on such premises, if any, shall be divided and recovered on pro-rata basis based on area of subdivision, and 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. A 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 applicant.

(iii) If there are arrears of electricity dues on a premises, a new connection may be refused to a new applicant on the same premises if the applicant being an individual is an associate or relative as defined in Section 2 and 6 respectively of the companies Act, 1956 of the defaulting consumer, or where the applicant being a company or body corporate or association, or body of individuals, whether in corporate or not, or artificial judicial person, is controlled, or having controlling interest in the defaulting customer. Provided the Licensee shall not refuse electric connection on this ground, unless an opportunity to present his case is provided to the applicant and reasoned order is passed by an officer designated by the licensee for this purpose and the order of refusal shall be communicated within one month of receipt of the application.”



So far as Section 43 of the Act of 2003 is concerned, it provides for a duty upon the licensee to give supply of electricity to such premises in respect of which an application is made by the owner, occupier or a tenant. This provision, however, starts with “save as otherwise provided in this Act”.

The Supply Code, 2007 contains the procedures to provide for recovery of electricity charges, intervals for bill of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electricity plant or electrical line or meters etc. and it has got the force of law by virtue of its being framed by the Bihar Electricity Regulatory Commission in exercise of its power under Section 50 of the Act of 2003. By judicial pronouncement, it has been held that the electricity dues is not a charge over the property rather it is a charge over the consumer. The Courts of law have held that a new entrants in the premises has to be allowed a fresh electricity connection and cannot be deprived of the same on the ground of outstandings lying upon the previous occupier of the premises. The question is whether the concept of fresh electricity connection and a new occupier as envisaged under aforesaid



provision of law may be applied in relation to petitioner no. 1 in the facts of the present case. (emphasis supplied)

To this Court, it is quite clear that the Legislatures while providing Section 43 of the Act of 2003 had never intended that a person like the present petitioner no. 1 who is the lessee of a premises will allow a business entity in which it's own directors had an interest to enter into the lease premises, take electricity connection in their name and then after the electricity connection is disconnected due to non-payment of the outstanding bills, the lessee will come forward to say that now he is applying for a fresh electricity connection. Any such approach would be contrary not only to the provisions of the Act of 2003 but would also be against the public policy.

The principles on which a writ of Certiorari may be issued are also well settled in law. This Court sitting in its writ jurisdiction is not sitting in appeal over the judgments of court and tribunals. The word 'Certiorari' is also called 'cert' in common law jurisdiction. Unless it is found that the order passed by a court or tribunal is perverse or otherwise against the public policy, this Court would not be justified in exercising its discretionary power of issuance of a writ in the nature of Certiorari. This Court is of the considered opinion that it is not a



fit case in which the extra ordinary writ jurisdiction of this Court be exercised to quash the order passed by 'CGRF' and to issue the directions as prayed for.

This Court having declined to issue a writ of Certiorari against the order of 'CGRF' at the instance of the petitioners, however, must place on record it's strong displeasure in the manner in which the power company and its authorities allowed a huge sum of Rs. 20,40,464/- to be accumulated over the period and then has remained contended by filing a certificate proceeding in the name of Late Narayan Prasad Jalan (who was already dead prior to filing of the certificate case) and some other persons in the year 2015. The facts that have been brought on record shows that Narayan Prasad Jalan died long back and as asserted by the petitioners he died in the year 2011 and on this ground alone the writ application filed by Vijay Kumar Jalan son of Narayan Prasad Jalan being C.W.J.C. No. 17455 of 2015 was allowed by a learned co-ordinate Bench of this Court on the ground that the certificate proceeding cannot be initiated against a dead person.

It is difficult to understand that how the power company who has got all rights to recover it's electricity dues filed certificate proceeding against a dead person leaving the



business entity in whose name the electricity line was provided to go escot free. The 'SBPDCL' could not think of the remedy available to it legally to recover the dues if a person against whom there is any dues which is in the nature of 'Public Money' dies. It is this inaction on the part of 'SBPDCL' which is allowing the petitioners to make all endeavour to argue that while Narayan Prasad Jalan and /or respondent no. 5 may be the defaulters the petitioner no. 1 cannot be denied fresh connection. This may be one of the most suitable instance to understand why Public Sector Power Company may be running in loss.

This Court laments the manner in which the public money / dues have remained unrealized and now the petitioners have audacity to move this Court after transfer of shares of petitioner no. 1 in favour of petitioner no. 2 and his family for a declaration that the petitioner no. 1 company is entitled for a fresh electricity line treating it a separate entity from that of respondent no. 5. The kind of statement made in paragraph 13 of the supplementary affidavit of the petitioners would show how they are making allegations against the respondent power company showing total unawareness on the part of petitioner no. 1. Paragraph 13 reads as under:

“13. That it is submitted that in any view of the matter the defaulting



company is the company and not the director and the Respondents having allowed the Respondent no. 5 to consume and enjoy electricity in excess of security held under section 47 of the Electricity Act 2003 cannot be allowed to claim the same from a non-user of electricity in the garb of grant of a fresh connection”

In the opinion of this Court the ‘CGRF’ has rightly appreciated the facts and circumstances of the case and affirmed the decision of the respondent company not to release the electricity in favour of the petitioner. There are certain ramifications of the order of ‘CGRF’ which the ‘SBPDCL’ will be required to think of suitably.

The order passed by ‘Ombudsman’ directing the respondent company to provide electricity connection to the petitioners on deposit of 50% of the due amount Rs. 20,40,464/- for the present and then in case the opposite parties fail to prove the certificate case as claimed as dues on the premises of the business, the amount deposited by petitioners shall be adjusted against consumed bills, is wholly erroneous and is contrary to the statutory scheme of the Act of 2003 and the Supply Code, 2007 framed thereunder. The Ombudsman has erred in saying ‘dues on the premises of the business.’. The dues is on the erstwhile consumer i.e. against Narayan Prasad Jalan and respondent no. 5



who was permitted to enter in the premises and take electric connection by petitioner no. 1. The erstwhile consumer and petitioner no. 1 both happened to be the closely held family company of Narayan Prasad Jalan. Now no doubt petitioner no. 2 and his family has taken over petitioner no. 1 but that would not bring any change in the position. In the case of **Amit Products (India) Ltd. Vs. Chief Engineer (O & M) Circle and Anr.** reported in **AIR 2005 SC 3475** their Lordships have held that change of Directorship or shareholding pattern would not make a company a different entity.

In paragraph 9 of the supplementary affidavit petitioners have made the following statements:

“9.That it is further submitted that the present set of directors of the petitioner company have no correlation with the founder members of either Jalan Polytubes Private Limited or Saket PVC Pipes Industries Private Limited. Moreover, the present set of directors of the Petitioner Company also do not have any relation with the present of set of directors of Saket PVC Pipes Industries Private Limited.”

In view of the Hon’ble Supreme Court’s judgment in the case of **Amit Products (India) Ltd.** (supra) change of directors and share-holders shall not change the identity of petitioner no. 1. A company is define as under:-



“A person may come. A person may go. But the company goes on for ever.”

The order passed by ‘Ombudsman’ saying that petitioner may deposit 50% of dues and then saying that if opposite parties would fail to prove the certificate case then the amount shall be adjusted against consumed bills of petitioner no. 1 is not in accordance with the statutory scheme of Section 43 of the Act of 2003 and the Supply Code 2007. The order of ‘OMBUDSMAN’ is thus set-aside.

To this Court it also appears that the ‘SBPDCL’ and its authorities are required to be more responsible in granting electric connection and pursue the recoveries effectively. Filing of certificate case against a dead person without impleading the company/consumer, no progress in the certificate case, etc. are some of the reasons for this Court to observe that the ‘SBPDCL’ is not seriously pursuing the matter.

Let it be recorded that the observations made hereinabove as regards the recoveries to be pursued by ‘SBPDCL’ are limited to pursuation of the recovery proceedings and are not to be taken on the merit of the proceedings and contentions of the parties are left open to be decided independently in any recovery proceeding.



Let the entire matter be brought to the notice of the Managing Director and also to the Chairman of the South Bihar Power Distribution Company Limited to make them aware of these things and take an appropriate view of the matter by examining the entire facts and circumstances, in order to take such suitable action as may be required in accordance with law.

The writ application stands disposed of with the aforesaid observations and directions.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	AFR
CAV DATE	17.07.2019
Uploading Date	16.08.2019
Transmission Date	

