IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: May 29, 2019
Judgment delivered on: July 01, 2019

\+ W.P.(C) 5183/2012, CM No. 10585/2012

BSES YAMUNA POWER LIMITED

..... Petitioner

Through: Mr. Manish Srivastava, Adv. with Ms. Deboshree Mukherjee & Ms. Prachi Johri, Advs.

versus

RAJENDER GOYAL & ORS

..... Respondents

Through: Mr. Prashant Mehra, Adv. for R-1 & R-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by BSES Yamuna Power Limited challenging the order dated March 23, 2012 passed by the Consumer Grievance Redressal Forum ('Forum', in short), whereby the Forum has decided the Complaint No. 06/01/2011 filed by the respondent nos. 1 and 2 herein challenging the bills raised by the petitioner herein in the month of February, 2009 for ₹6,35,330/- and ₹10,80,110/- respectively with regard to two electricity connections in property bearing no. R-551, New Rajinder Nagar, New Delhi purchased by respondent

nos. 1 and 2 vide sale deed dated June 5, 2008.

2. The case of the respondent nos. 1 and 2 herein before the Forum was that they purchased the property from M/s. On Dot Courier and Cargo Ltd., respondent no.3 herein vide sale deed dated June 5, 2008. They received two electricity bills on February 6, 2009 from the petitioner for the aforesaid amounts in respect of two electricity connections bearing CRN Nos. 1140100253 and 1140100381 on account of revision for the period 09.05.2005 and 21.01.2009 & 25.11.2005 and 21.01.2009 respectively. Respondent nos. 1 and 2 challenged the aforesaid bills on the ground that they were not aware of the existence of these two electricity meters when they purchased the property from the respondent no.3 and the said bills have been raised by the petitioner after a lapse of more than three years. It was their case that the officials of the petitioner company were regularly visiting their premises during the period June, 2008 till February, 2009 to take reading against the other three electricity connections existing in their premises, but they never pointed out to them about the existence of the two other electricity meters in respect of which the bills have been raised in February, 2009.

3. Respondent nos. 1 and 2 have challenged the validity of the two bills on the ground that the petitioner is prohibited by Section 56 (2) of the Electricity Act, 2003 as the said bills have been raised after a lapse of more than 3 years. It was also stated by them, when the said premises was purchased from respondent no.3, it was represented to them that there were only three electricity meters working / functioning in the said premises and

before purchasing the said premises they verified that there were no dues / arrears against those three electricity meters. However, on enquiry from the respondent no.3 it was revealed to them these two meters in respect of which bills have been issued by the petitioner, got disconnected sometime in the year 2005.

4. The case of the petitioner before the Forum was, that the two electricity meters have been existing in the said premises since long back and the old meters of these two connections were replaced with new electronic meters bearing nos. 17014933 and 17014931 on May 9, 2005 and November 25, 2005 respectively under the mass replacement plan of meters at initial reading 01. However, due to some technical error in their system, the computer started showing the status of these connections as disconnected and consequently no bills were raised against these two connections after installation of new electronic meters in 2005, even though the electricity connection was alive and continued to be consumed by the consumers. Finally, they came to know about the existence of these meters in January, 2009 and pursuant to taking the actual meter reading on January 21, 2009, they have issued the above-stated bills in respect of these two connections in February, 2009 on the basis of actual consumption of electricity down loaded from meter data. Hence the same are correct. The petitioner has also contested the plea of the respondent nos. 1 and 2 that the petitioner is barred under Section 56(2) of the Electricity Act, 2003 to raise a demand after three years. The petitioner had relied upon the judgment of the Supreme Court in the case of ***Sisodia Marbles and Granites Pvt.***

Ltd. v. Ajmer Vidyut Vitran Nigam Limited in Civil Appeal No. 202 and 203/206, wherein it has been held that the normal law of limitation is not applicable for recovery of electricity dues and consumer is liable to pay for the actual consumption of units.

5. The Forum has accepted the plea of the petitioner on the aspect of the limitation and has held that the petitioner is entitled to issue bills for actual consumption of electricity even after a period of three years and therefore the validity of the bills issued cannot be questioned on that ground. Further, it was the conclusion of the Forum from the MRI data furnished by the petitioner and the fact that the meters physically existed at site, the connections were not disconnected in the year 2005 and the electricity supply through these connections remained alive since the date of installation till February, 2009. The Forum was also of the view that respondent No.3 has not produced any record relating to these electricity connections for the period up to 2008, when they were in possession of the premises and before the same was purchased by the respondent nos. 1 and 2. They have not produced any document to show upto which period the bills related to these two electricity connections were paid by them and thereafter why no action was taken by them to seek bills from the petitioner as the supply through the two connections still remained live even after the replacement of old meters with new electronic meters. The Forum was of the view that as per the sale deed executed on June 5, 2008 between the respondent nos.1 and 2, it is stated, the respondent no.3 shall pay all the dues, demands, house tax, electricity and water charges etc. in respect of the

portion in the said property up to the registration of the sale deed and thereafter the same shall be paid by the vendee, i.e., respondent nos. 1 and 2, as respondent no.3 was in possession of the premises at the relevant time. So, the Forum has accordingly, held that the bills from the date of installation up to the date of sale deed of the property, i.e., June 5, 2008 shall be paid by the respondent no.3 and the bills for the electricity consumption from June 5, 2008 upto February 2009, shall be paid by the respondent nos. 1 and 2 as they have been in possession of the property from June 5, 2008 as the new owners of the property.

6. Mr. Manish Srivastava, learned counsel appearing for the petitioner would submit that there is a finding of fact of the Forum that the respondent nos. 1 and 2 while purchasing the property from the respondent no.3 have not cared to obtain no dues certificate from the petitioner with regard to the electricity dues of the premises and therefore cannot disown the liability of paying the electricity dues relating to the property purchased by them. He further submitted that the apportionment of liability by the Forum is contrary to the Judgments of the Supreme Court and this Court in the case reported as ***AIR 2009 SC 647, Paschimanchal Vidyut Vitran Nigam Ltd. and Ors. v. M/s. DVS Steels and Alloys Pvt. Ltd; AIR 2010 Delhi 14, BSES Rajdhani Power Ltd. v. Saurashtra Color Tones Pvt. Ltd. and Anr. and 129 (2006) Delhi Law Times 213 (DB), Madhu Garg and Anr. v. North Delhi Power Ltd.***

7. On the other hand, learned counsel appearing for respondent nos. 1 and 2 justified the order of the Forum and

stated that the said order needs to be upheld. He has relied upon the judgments of this Court in the case of ***M/s Rakesh Kumar Sharma and Ors. v. BSES Rajdhani Power Ltd. and Anr., W.P.(C) 5208/2010*** & ***Rakesh Kumar Sharma & Sons (HUF) v. BSES Rajdhani Power Ltd. and Anr. REV. PET. 30/2012*** in support of his contention.

8. Respondent no.3 has also filed its counter-affidavit wherein it is stated that they are the erstwhile owner of the property no. R-551, Rajinder Nagar, New Delhi and the same has been sold by them to the respondent nos. 1 and 2 by virtue of different sale deeds. At the time of the sale of the said property, five electricity meters were installed in the property. However, out of the five meters only three meters being K. Nos. 114041111888, 114041111794 and 114041061945 were alive, which were supplying electricity to the said property. As per the terms of contract and mutual understanding with the new buyers, respondent no.3 has handed over all the original documents pertaining to the ownership / property tax files, water and electricity connection files to them. Thus, respondent no.3 being the erstwhile owner is not in the power and possession of any of the bills and other documents pertaining to the connections. Since the execution of the sale deed dated June 5, 2008, the possession of the property and the electricity meters installed therein are in possession of respondent nos. 1 and 2. In December 2008 / January, 2009, respondent nos.1 and 2 received bills pertaining to the aforesaid electricity connection being CRN No. 1140100253 to the tune of ₹3,940/- and CRN. No. 1140100381 to

the tune of ₹12,619/-, which have been paid by them. That sometime in the month of February, 2009 respondent nos. 1 and 2 received the revised / amended bills pursuant to the aforesaid electricity connection CRN. No. 1140100253 for an amount of ₹6,35,330/- and CRN. No. 1140100381 for an amount of ₹10,80,110/-, which the respondent nos. 1 and 2 did not pay. Respondent no.3 also states that the order of the Forum is in clear contravention of law and facts of the case. The disputed bills have been raised in clear violation of law.

9. I have heard the learned counsel for the petitioner as well respondent nos. 1 and 2. There was no appearance for respondent no.3 despite having filed a counter-affidavit.

10. The only issue which arises for consideration is whether the Forum could have apportioned the liability between the respondent nos. 1 & 2 and respondent no.3. The admitted facts are that the electricity connections bearing CRN. Nos. 1140100253 and 1140100381 were registered in the name of respondent no.3 in the premises bearing no. R-551, Rajinder Nagar, New Delhi and up to the billing month of June, 2005 and the total amount payable in respect of these meters was Rs.3,940/- and Rs.12,619/- respectively. The old meter no. 0008613D5 for connection bearing CRN. No. 1140100253 was replaced with new electronic meter no. 17014933 on May 9, 2005 and the old meter bearing no. 0020663D6 for connection bearing CRN. No. 1140100381 was replaced with new electronic meter bearing no. 17014931 on November 25, 2005, both under mass replacement of meters at initial reading 01.

11. It is the case of the petitioner that due to technical error, the computer system charged with the billing process showed the connections as disconnected and consequently, no bills were raised against the consumers. However, in January, 2009, when the reading from the meters was physically taken, it was observed that there has been electricity consumption on both the meters. Accordingly, impugned bills were raised against the owners of the property. It is an admitted fact that the property being R-511, New Rajinder Nagar, New Delhi was sold by respondent no.3 to respondent nos. 1 and 2 on June 5, 2008. Suffice it would be to state that the Forum has accepted the fact that the electricity bills have been rightly issued and has not disbelieved the case of the petitioner that there was mistake that the electricity connections in the computer system, were being shown as disconnected. The bills have been raised after the mistake was detected. The Forum has accepted the said case of the petitioner and in fact, has also held that the petitioner is within its competence to raise the bills for the electricity consumption. The only issue the Forum has decided is apportionment of liability between respondent nos. 1, 2 and 3. There is a finding of fact, inasmuch as the Forum has concluded that the respondent nos. 1 and 2 have not cared to obtain a no due certificate from the petitioner with regard to the electricity dues of the premises and therefore, they cannot disown the liability of paying the electricity dues relating to the property purchased by them. If that be so, in view of the law laid down by the Supreme in ***Paschimanchal Vidyut Vitran Nigam Ltd. and Ors. (supra),*** wherein the Supreme Court in para 11 has held as

under, the respondent nos. 1 and 2 are liable to pay the entire dues**:**

> *"11. ……….We do not find anything unreasonable in a provision enabling the distributor/supplier, to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premise. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may."*

12. Similarly, in ***Madhu Garg and Anr. (Supra)*** this court has in para 15 and 16 has held as under:

> *"15. In our opinion, whenever a person purchases a property, it is his duty to find out whether there are outstanding electricity dues in relation to the premises or not, and he cannot be allowed to say later that he was unaware of the fact that there were electricity dues of the previous owner / tenant.*
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> *16. In view of the General Condition of Supply, it is the duty of the new owner/occupant to himself make enquiries and find out whether there was such dues or not. The General conditions of Supply are statutory in nature (being delegated legislation), and hence the question of bonafide or malafide does not arise, and in either case the new owner/occupant of the premises has to pay the dues against the previous owner / tenant, if he wishes the electric*

supply to be continued/restored."

13. So, it must be held that, the liability to pay the electricity dues against the property squarely lies on the respondent nos.1 and 2. In other words, respondent nos.1 and 2 are liable to pay the impugned bills and they shall be at liberty to claim the amount of the bill paid by them till June 4, 2008 from respondent no.3. Therefore, the direction of the Forum against the respondent no.3 that the bills from the date of installation up to the execution of sale deed of the property on June 5, 2008 shall be paid by respondent no.3 is set aside. Even the direction of the Forum to the petitioner to refund the amount for the period of date of installation till June 4, 2008, i.e., one day before the execution of the sale deed of the property with 10% interest *per annum* is liable to be set aside. It is ordered accordingly.

14. In so far as the reliance placed by the respondent nos. 1 and 2 on the orders passed by this court in ***M/s Rakesh Kumar Sharma and Ors. (supra)*** and ***Rakesh Kumar Sharma & Sons (HUF) (supra),*** the said judgments have no relevance on the issue which arises for consideration in terms of the judgment of the Supreme Court and two judgments of this court which have been referred to above.

15. Before parting, I may only state that the respondent nos. 1 and 2 shall be at liberty to make a claim against the respondent no.3 in accordance with law.

In view of the above, the petition stands disposed of.

CM. No. 10585/2012 (for Stay)

Dismissed as infructuous.

V. KAMESWAR RAO, J

JULY 01, 2019/*jg*

HIGH COURT OF DELHI
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