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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 01.10.2019

\+ W.P.(C) 4955/2016 & CM APPL. 20599/2016

RAVINDER NATH SAHNI ..... Petitioner

Through Mr.Ajay Jain, Mr.Vikrant Singh and Mr.Devansh Gupta, Advs.

versus

BSES YAMUNA POWER LTD ..... Respondent

Through Mr.Manish Kumar Srivastava, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>JAYANT NATH, J. (Oral)</u>

1. This writ petition is filed by the petitioner seeking appropriate writ, order or direction to set aside the illegal demand of the respondent/BSES requiring the petitioner to clear the electricity dues of Rs.2,45,420/-.

2. The case of the petitioner is that the petitioner is the owner and is in possession of the property bearing No.C-295, Suraj Mal Vihar, Delhi-110092. The same was gifted to him by his father vide Gift Deed dated 03.03.2014.

3. Prior to 2014, the petitioner was residing on the ground floor and became the owner of the said property vide aforementioned gift deed. On 11.3.2016 the petitioner was given a bill showing an outstanding of Rs.2,45,420/-. The petitioner was informed by the respondent/BSES that it is a 10 year old bill that has been added to the petitioner's current bill and the complete payment is to be made. In the meantime, the electricity supply to

the house of the petitioner was disconnected on 18.03.2016.

4. Pursuant to the interim orders passed by this court vide order dated 01.06.2016, the court had noted that the petitioner had deposited a sum of Rs.1,50,000/-. Subject to the deposit of the remaining amount of Rs.89,653/- by the petitioner before the Registrar General of this court, the respondent was directed not to disconnect the electricity connection of the petitioner.

5. Respondent/BSES in their counter affidavit, have stated that the premises in question have two connections. The first connection bearing CA No.100676509 which was sanctioned for the first floor on 21.12.1993 for domestic purpose with load 2 K.W. and the meter was removed on 22.11.2006 for non-payment of Rs.2,39,653/-. The second connection bearing CA 100032410 was sanctioned for the ground floor on 21.12.1993 for domestic purpose with load 2 K.W. It is further stated that on 14.05.2014 the petitioner/Mr.Ravinder Nath Sahni had applied for change of name of connection bearing CA 100032410 but the same was rejected as there were outstanding dues of CA No.100676509 to the tune of Rs.2,39,653/- pending.

6. It is further stated that on inspection of the site, it was found that the petitioner is using the live connection bearing CA 100032410 to supply electricity to the disconnected premises upon which dues of Rs.2,39,653/- are outstanding. Hence, a show cause notice was sent to the petitioner on 23.07.2015. As no response was received, another show cause notice was sent on 03.12.2015 for personal hearing to be held on 22.12.2015. However, none appeared for the personal hearing. Hence, having no other option, after considering the evidence on record, a speaking order has been passed on 21.01.2016 transferring the dues of CA 100676509 to the live connection bearing CA 100032410.

7. I have heard learned counsel for the parties.

8. Learned counsel for the petitioner has vehemently sought to argue that in terms of the section 56(2) of the Electricity Act, 2003, the claim of the respondent/BSES is barred by limitation. Reliance is also placed on the judgment of the Supreme Court in the case of ***Haryana State Electricity Board v. Hanuman Rice Mills & Ors., AIR 2010 SC 3835,*** to contend that time barred dues cannot be claimed by the respondent or transferred to the petitioner.

9. Learned counsel for the respondent/BSES has relied upon the Rule 49 of the Delhi Electricity (Supply Code and Performance Standards) Regulation, 2007; judgment of the Supreme Court in the case of ***Paschimanchal Vidyut Vitran Nigam Ltd. & Ors. v. M/s DVS Steels & Alloys Pvt. Ltd. & Ors., AIR 2009 SC 647***; judgment of the Supreme Court in the case of ***Swastic Industries v. Maharashtra State Electricity Board, (1997) 9 SCC 465***; and judgment of the Full Bench of this court in the case of ***BSES Rajdhani Power Ltd. v. Saurashtra Color Tones Pvt. Ltd & Anr., AIR 2010 Delhi 14*** to contend that even time barred dues can be demanded under section 24 of the Electricity Act, and can be recovered from the petitioner, for continual supply of electricity. It is further pointed out by learned counsel for respondent that even after disconnecting the electricity supply of the first floor for non-payment of dues, the petitioner instead of making the payment, connected the live connection granted to the ground floor to the first floor. Hence, there was a need to transfer the dues from the old connection bearing CA 100676509 to the live connection bearing CA 100032410.

10. Section 56 (2) of the Electricity Act, 2003, reads as follows:

> "56. Disconnection of supply in default of payment.-
> 1......
> 2. Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

11. The Supreme Court in the case of ***Paschimanchal Vidyut Vitran Nigam Ltd. & Ors. v. M/s DVS Steels & Alloys Pvt. Ltd. & Ors.*** (supra), held as follows:

> "11. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor. 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 premises. 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."

Hence, a distributor can stipulate that the dues with regard to the electricity supplied to the premises should be cleared before the electricity supply is restored or a new connection is given to a premises. Hence, where electricity supply has been disconnected for non-payment of dues the distributor can insist for clearance of arrears before a fresh electricity connection is given to the premises.

12. Similarly, in ***Swastic Industries vs. Maharashtra State Electricity Board (supra)***, the Supreme Court held as follows:

"**5.** It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same they have the power to discontinue the supply or cut off the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligations are mutual. The Board would supply electrical energy and the consumer is under corresponding duty to pay the sum due towards the electricity consumed. Thus the Electricity Board, having exercised that power, since admittedly the petitioner had neglected to pay the bill for the additional sum, was right in disconnecting the supply without recourse to filing of the suit to recover the same. The National Commission, therefore, was right in following the judgment of the Bombay

> High Court and allowing the appeal setting aside the order of the State Commission. Moreover, there is no deficiency of service in making supplementary demand for escaped billing. There may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers. That would be deficiency of service under the Consumer Protection Act. We do not find any illegality warranting interference."

13. Rule 49 of the Delhi Electricity (Supply Code and Performance Standards) Regulation, 2007 reads as follows:

> "49. Disconnection on non-payment of the Licensees Dues:
> i. The Licensee may issue a disconnection notice in writing, as per section 56 of the Act, to the consumer who defaults on his payment of dues giving him fifteen clear days to pay the dues. Thereafter, the Licensee may disconnect the consumer's installation on expiry of the said notice period by removing the Service Line / Meter or as the Licensee may deem fit. If the Consumer does not make the payment within six months of the date of disconnection, such connections shall be treated as Dormant Connection.
>
> ii. The Licensee may take steps to prevent unauthorized reconnection of such consumers disconnected in the manner as mentioned above. Wherever Licensee discovers that connection has been re-connected unauthorisedly, Licensee may initiate action as per provisions of section 138 of the Act. Further, in case Licensee discovers that the supply to such premises has been restored through another live connection, notice to registered consumer/user of such live connection shall be given to stop such illegal supply immediately failing which pending dues of disconnected connection shall be transferred to his account and non-payment of such transferred dues may be dealt with as per Sub Regulation (i) above."

14. Hence, where a licensee discovers that supply to a premises has been

restored through another live connection, the pending dues of the disconnected connection can be transferred to the live connection.

15. In the present case, it is admitted fact that bills for Rs.2,39,653/- were raised for disconnected connection bearing CA 100676509 connected to the first floor. There is no doubt, that the bills pertain to the period around 2006 when the meter was removed for non-payment of dues. However, that would not entitle the petitioner to bypass the said dues of the first floor and use the electricity connection granted for the ground floor to supply electricity to the first floor. It can clearly be seen that such an act was committed by the petitioner in order to circumvent the said legal position as noted above and to evade the dues of the first floor.

16. Reliance of the petitioner on the judgment in the case of ***Haryana State Electricity Board v. Hanuman Rice Mills & Ors.***(supra) is misplaced. In that case, the court in para 9 stated as follows:

> "12. The position therefore can be summarized thus:
>
> (i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.
>
> (ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity, the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser."

17. Hence, where statutory rules or terms and conditions of supply permit

a supplier of electricity to demand the dues of the previous owner from the purchaser of the property where a re-connection or fresh connection of electricity is required, such arrears can be recovered.

In para 10 the court held as follows:

> "13. The appellant did not plead in its defence that any statutory rule or terms and conditions of supply, authorized it to demand the dues of previous owner, from the first respondent. Though the appellant contended in the written statement that the dues of Durga Rice Mills were transferred to the account of the first respondent, the appellant did not specify the statutory provision which enabled it to make such a claim. The decision in Paramount Polymers shows that such an enabling term was introduced in the terms and conditions of electricity supply in Haryana, only in the year 2001.
>
> 14. The appellant did not demand the alleged arrears, when first respondent approached the appellant for electricity connection in its own name for the same premises and obtained it in the year 1991. More than three years thereafter, a demand was made by the appellant for the first time on 16.1.1995 alleging that there were electricity dues by the previous owner. In these circumstances the claim relating to the previous owner could not be enforced against the first respondent."

18. In those facts, the court had noted that the enabling provision which permits the recovery of outstanding dues was introduced in the terms and conditions of electricity supply in Haryana, only in 2001. The connection has been obtained by the consumer in 1991 and the arrears were demanded much later in the year 1995. The factual situation is entirely different as compared to the present case. There is no merit in the present petition and the same is dismissed.

19. The respondent/BSES can recover the sum of Rs.2,39,653/- from the petitioner. A sum of Rs.1,50,000/- already stands deposited with the

Registrar General of this court. The balance sum of Rs.89,653/- with proportionate accumulated interest shall be deposited with the respondent/BSES. The said sum of Rs.1,50,000/- with accumulated interest be released to the respondent/BSES.

20. Learned counsel for the respondent/BSES submits that this will be in full and final settlement of all the claims/dues of the respondent/BSES transferred to the name of the petitioner. He also submits that no further charges would be payable on account of the bill raised in 2006.

JAYANT NATH, J.

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