NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 322 of 2011

Raj Gaurav Goel, S/o. Shri Rajendra Prasad, Aged about 27 years, Secretary, Mangalam Education Society, R/o. Near State Bank of India, Janjgir-Champa, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. Chhattisgarh State Power Distribution Co. Ltd. Through: its Chief Managing Director, Dangania, Raipur, District Raipur, Chhattisgarh
2. Junior Engineer, Chhattisgarh State Power Distribution Co. Ltd. Saragaon, Tehsil Dharsiwan, District Raipur Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Kshitij Sharma, Advocate
For Respondents	:	Mr. Amit Soni, Advocate under instructions of Mr. Sunil Otwani, Advocate

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Hon'ble Shri Justice P. Sam Koshy

Order on Board

03/07/2020

1. The present writ petition has been filed challenging the demand note dated 10.01.2011 raised by the respondent No.2 for an amount of Rs.1,16,449/-

2. The facts of the case relevant for the adjudication of the present writ petition is that according to the petitioner he is in possession and in ownership of the land measuring 0.365 hectare situated at village Saragaon in P.H. No. 83/10, khasra No. 593/1 in Tehsil Dharsiwan, District Raipur. According to the petitioner, he had purchased the land to operate a college under the aegis of "**Mangalam Education Society**" and the petitioner is the Secretary of the said society. According to the petitioner, the aforesaid patch of land was an agriculture land, which was duly diverted on 31.10.2009. In order to

establish the college proposed to be run by the petitioner, the petitioner approached the respondent No.2 for grant of electricity connection and the petitioner to his utter surprise was issued with the impugned demand note (Annexure P/1). Vide the demand note the respondents had claimed for payment of dues to the tune of Rs.1,16,449/- which is alleged to have been illegally consumed by the contractor engaged by the petitioner for the construction of the college building. According to the petitioner, the respondent No.2 had informed the petitioner that until and unless the demand of Rs.1,16,449/- is not cleared by the petitioner, electricity connection would not be given.

3. The grounds of challenge by the petitioner to the impugned demand note was that firstly the alleged contractor, who is said to have used the electricity was not associated to the petitioner in any manner and according to the petitioner any liability of the contractor should not be saddled upon the petitioner. According to the petitioner, an outstanding amount against the contractor in respect of the alleged theft committed by the contractor should be one which should be recovered only from the contractor. The requirement of law is for initiating proceedings against the contractor either under Section 126 or under Section 135 of the Electricity Act, but the said amount cannot be recovered from the petitioner. According to the petitioner, there has also not been a proper assessment made by the respondent authorities before issuance of the impugned demand notice so far as the petitioner is concerned and neither was the petitioner present on the alleged date of inspection that was conducted. According to the petitioner, an application for grant of electricity connection has to be done in terms of Section 43 of the Electricity Act and as per the wordings of the provision, the

respondents were duty bound to provide for the electricity supply. The respondents could not have put conditions before grant of electricity connection, particularly when he was not the alleged defaulter.

4. The counsel for the petitioner referred to judgment passed in the case of **“Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) & another v. Sri Seetaram Rice Mill” (2012) 2 SCC 108** and **“Sangita Wd/o Suresh Chandra Gupta & another v. State of M.P.” 2009 (1) MPLJ 366** and also a judgment of this Court in **WPC No. 3341/2017 (N.R. Sharma v. Chhattisgarh State Power Distribution Company Limited & Others)** and other connected petitions, decided on 02.01.2018.

5. The counsel appearing for the respondents opposing the petition submits that firstly the petitioner does not have the locus in filing the present writ petition. According to the petitioner, he has filed the petition in his individual capacity and in the writ petition he has mentioned himself to be the registered owner of the property and also he is in possession of the same. However, according to the petitioner from the records particularly the sale-deed executed between the parties, which has been enclosed as Annexure P/2 in the writ petition, it would reveal that it is not the petitioner who is the registered owner, but the property stands in the name of a society and the petitioner happens to be a Secretary of that society, but that by itself would not mean that he is the consumer or he is the owner of that property. The further contention of the counsel for the respondents is that when on an inspection that was conducted on 17.04.2010 in the premises of the society, it was found that a contractor Sikarwar had illegally taken electricity connection and

was using the same in the process of construction of the college building belonging to the society, of which the petitioner happens to be the Secretary and a notice in this regard was also issued to the contractor claiming for the penal cost for the illegal theft of electricity to the tune of Rs.1,16,449/-. According to the learned counsel for the respondents, in the notice itself it was specifically mentioned that unless this penalty was not deposited, they would not give the permanent connection, which was also duly intimated to the representative of the society i.e. ultimate consumer of the electricity. According to the counsel for the respondents, firstly the writ petition was not maintainable as it has been contested by a person, who is not otherwise the owner of the property, nor the ultimate consumer, secondly the writ petition is devoid of merit as the respondents have only asked the petitioner to clear the dues payable in respect of the unauthorized and illegal use of the electricity by the contractor engaged by the petitioner themselves and thus there is no illegality.

6. Having heard the contentions put forth on either side and on perusal of record, some of admitted factual positions as it stands is that the property undisputedly belongs to a society in which the petitioner is a Secretary. The society intended to construct a college in the said premises. For the purpose of construction of the college, the society had engaged a contractor namely Sikarwar. In the course of construction work carried out by the contractor, an inspection was made on 17.04.2010 and it was found that the contractor had illegally connected to the electricity connection of the respondents and was using the power supply unauthorizedly.

7. From the aforesaid factual matrix it stands established that the person using electricity illegally was engaged by the petitioner, the nature of work or the work order given to the contractor again was issued by the petitioner and the site where the alleged theft of electricity was also the petitioner's premises or the society in which the petitioner was the Secretary. In the process of the contractor engaged by the petitioner for the petitioner's work illegally takes electricity connection and consumes it for the purpose of the petitioner's work, it is pure logic that the ultimate liability for the alleged illegal act would be that of the petitioner.

8. Another aspect which needs consideration is that the application for grant of electricity connection is made under Section 43 of the Electricity Act, 2003. In the year 2007 by way of Electricity Amendment Act, 2007, an explanation has been inserted in the said Act, which in the opinion of this Court would be relevant in the context of the present case. For ready reference, the explanation is reproduced herein under:

> **"[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, along with documents showing payment of necessary charges and other compliances.]"**

9. The plain reading of the aforesaid explanation Clause would itself clarify the fact that any person interested in getting an electricity connection has to submit an application duly filled in along with documents showing payment of the necessary charges and other compliances. The terms used in the explanation payment of necessary charges and necessary compliances has a wide connotation, it would be inclusive of all charges payable by a person, which would be

inclusive of any penalty imposed by way of illegal use of electricity at the said premises. So far as the contention of the petitioner that in the event of a theft of electricity, it was the contractor, who was to be prosecuted and the amount due from the contractor cannot be saddled upon the petitioner, this Court is of the opinion that so far as the prosecution under the provisions of Section 135 is concerned that is an entirely different proceedings, and whereas if there is a misuse of the electricity connection at a particular premises, the recovery of the same is an entirely different proceedings altogether.

10. In the instant case, admittedly, the premises where the surprise check was made was that of the society, in which the petitioner is a Secretary. The person who was illegally using the electricity was one engaged by the petitioner. The nature of work executed by the said person engaged or the contractor engaged by the petitioner was that of the petitioner.

11. Under the given circumstances, the petitioner cannot escape the liability incurred by the person engaged by the petitioner for his own work. So far as the judgments refered to by the counsel for the petitioner, if we look at the factual matrix under which those cases were decided, it would clearly reveal that those were decided under an entirely different factual context and the ratio laid down also was under the said peculiar facts, which cannot be applied in a straight jacket formula in the present case. As regards of the facts of the Madhya Pradesh judgment that was again a case, where there was a clear tampering of the meter and thereby causing a theft of electricity.

12. The Electricity Supply Code of 2007 prescribes for a procedure for assessment of the bill for the Commission of theft of electricity and the

calculation in the instant case has been made applying the provisions of the Electricity Supply Act and the Electricity Supply Code.

13. Given the aforesaid facts and circumstances of the case, this Court is of the opinion that no strong case has been made out by the petitioner calling for an interference with the impugned demand notice (Annexure P/1) and the writ petition accordingly deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved