

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.1853 of 2023

Saluja Steel and Power Private Limited and another
Vs.
Damodar Valley Corporation and others

For the petitioners : Mr. Jayanta Kumar Mitra,
Mr. Rajarshi Dutta,
Mr. Rahul Poddar,
Mr. Rahil Auddy,,
Mr. Aditya Goptu

For the DVC : Mr. Anirban Ray,
Mr. Prasun Mukherjee,
Mr. Deepak Agarwal

Hearing concluded on : 13.03.2023

Judgment on : 24.03.2023

Sabyasachi Bhattacharyya, J:-

1. The present writ petition has been filed against a claim made by the respondent no.1-Damodar Valley Corporation (DVC) *vide* communication dated November 29, 2022 whereby the petitioner no.1-Company was requested to make two payments for the periods up to April, 2010 and from May, 2010 to August, 2012, which were outstanding dues in respect of M/s. Biswanath Ferro Alloys, the

petitioner's vendor, as a condition for giving a new electricity connection to the petitioners.

2. It was also indicated in the said communication that Delayed Payment Surcharge (DPS) would be applicable as per the prevailing Jharkhand State Electricity Regulatory Commission (JSERC) Regulations.
3. The Learned Senior Advocate appearing for the petitioners argues that the dues were for a period much prior to the purchase of the property by the petitioner no. 1 by direct sale from its vendor.
4. The dues were for the period April, 2010 to August, 2012, whereas the petitioner no.1 purchased the property-in-question by four deeds between the years 2019 and 2020.
5. It is contended that such claim was made despite the petitioners having made the usual payments and complying with all formalities as required under law to get a new electricity connection at the purchased premises, which is situated in the State of Jharkhand, which is one of the States where the DVC operates as a Distribution Licensee.
6. It is contended by learned senior counsel for the petitioners that electricity is not a charge on the land and, as such, does not go with the transfer of a land. Hence, the petitioners cannot be held liable for outstanding dues left by the vendor of the petitioners.
7. It is next argued that Section 43 of the Electricity Act, 2003 (for the sake of brevity, "the 2003 Act") is mandatory and the electricity connection sought by the petitioners cannot be withheld by the DVC

on the ground of non-payment of outstanding dues for a much prior period by the vendor.

- 8.** It is next argued, by placing reliance on Clause 5.3.3 of the JSERC Regulations, 2015 (for short, “the 2015 Regulations”), that where the applicant has purchased an existing property, if electricity connection has been disconnected, it shall be the applicant’s duty to verify that the previous owner has paid all dues to the Distribution Licensee and to obtain a “no-dues certificate” from him. In the event such certificate is not obtained, however, the said Clause provides that the new owner “may approach the Distribution Licensee for such a certificate”. It is highlighted by learned senior counsel for the petitioners that its language makes the said provision directory inasmuch as the question of approaching the Distribution Licensee is concerned.
- 9.** Clause 5.3.3 further stipulates that the Distribution Licensee shall acknowledge receipt of such request and shall either intimate in writing the dues outstanding on the premises, if any, or issue a “no-dues certificate” within one month from the date of receipt of such application. However, it is argued that no sanction has been provided in the said Clause for non-compliance of such provision regarding seeking a no-dues certificate from the Distribution Licensee by the new owner. The provision only stipulates that if the Distribution Licensee does not intimate the outstanding dues or issue such a certificate within time, new connection to the premises shall not be denied on grounds of outstanding dues of the previous consumer. In

such an event, the Distribution Licensee shall have to recover its dues from the previous consumer as per provisions of law.

- 10.** Clause 5.3.3, it is submitted, clearly leaves an option for the new owner to approach or not to approach the Distribution Licensee for a no-dues certificate. The provision also leaves an option for the Distribution Licensee to recover its dues from the previous consumer as per provisions of law, which could easily be resorted to in the present case.
- 11.** It is contended that Clause 5.3.3 has to be read in conjunction with Clause 6.10(a) of the 2015 Regulations. Such provision, it is contended, clearly stipulates that liability of payment of electricity dues or other dues for the premises where the new connection is applied for and payable to the licensee shall only be cast on the new consumer in the event the new occupant has nexus with the previous owner/occupant in any manner and applies for a new electricity connection.
- 12.** In the present case, it is argued, there is no scope of any nexus having been pleaded or proved by the DVC at any point of time.
- 13.** Rather, the sale-deeds between the petitioners and the erstwhile owners clearly contain clauses indicating that the petitioners would be indemnified from all claims of past dues by the erstwhile owners and that the property was being sold without any encumbrance. Hence, there arose no question of the petitioners seeking a no-dues certificate from the erstwhile owner.

14. It is next contended by the petitioners that the new service connection sought by the petitioners does not amount to a reconnection of the old line by the DVC. Hence, the DVC acted without jurisdiction in claiming outstanding dues left in respect of the previous connection by the previous owner from the new purchaser/petitioner no. 1.
15. It is next argued that the petitioners have spent huge amounts of money to the tune of about Rupees Fifteen Crore for being invested in the new property. The price paid by the petitioners for the property, along with the amount spent subsequently to develop the property for the purpose of setting up industry by the petitioners took into account the fact as represented by the erstwhile owners in the sale-deeds, that there were no encumbrances on the property. Such situation cannot be resiled from by the erstwhile owner at the present juncture.
16. Hence, as provided in Clause 5.3.3 as an alternative, the Licensee shall have to recover its dues, if otherwise payable, from the previous consumer as per provisions of law.
17. Learned senior counsel for the petitioners also hints at the stipulation in Section 56(2) of the 2003 Act which debars the Licensee from making any claim for alleged dues of more than two years prior to claim, unless such amount was shown to be due continuously in the bills raised by the Licensee. In the present case, nothing has been shown or pleaded by the DVC to indicate that such procedure was resorted to by the DVC in respect of the erstwhile consumer.

18. Learned senior counsel places reliance, in this context, apart from on Section 56(2) of the 2003 Act, on Clause 10.15 of the 2015 Regulations, which contains an exactly similar provision.
19. Since the property is situated in Jharkhand, it is argued that the 2015 Regulations are applicable to the present case.
20. The learned Senior Advocate for the petitioners cites, in support of his submissions, three judgments which are as follows:
 - (i) *(2012) 13 SCC 479 [Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa (NESCO) and another Vs. Raghunath Paper Mills Private Limited and another];*
 - (ii) *(2020) 3 Cal LT 185 (DB) [Damodar Valley Corporation and others Vs. Shree Ramdoot Rollers Private Ltd.]; and*
 - (iii) *(2020) 6 SCC 404 [Telangana State Southern Power Distribution Company Limited and another Vs. Srigdhaa Beverages].*
21. Learned counsel appearing for the DVC argues that the judgments cited by the petitioners are all on auction purchase, whereas in the present case, the petitioners acquired the property by direct purchase from the erstwhile owner. Hence, the ratio laid down in the said judgments is not applicable to the present case at all.
22. It is contended that since the Jharkhand Regulations were promulgated in the year 2015 but the sales in favour of the petitioners as well as the applications for new electricity connection were filed subsequently in the years 2019-20 and 2022, the said Regulations are applicable to the present case in its full rigour.

- 23.** By placing reliance on the expression “no-dues certificate” used in Clause 5.3.3 of the said Regulations, it is submitted that in the absence of any verification from the previous owner, it is the incumbent duty of the purchaser/applicant to obtain a no-dues certificate from the Distribution Licensee. Such provision is a pre-condition for the next portion of the Clause to follow. Only if the Licensee does not intimate the outstanding dues or issue a no-dues certificate within one month from the date of receipt of the application filed by the new applicant, the question of non-denial of the new electricity connection and recovery of dues from the previous consumer by the Licensee arises.
- 24.** In the present case, since no application was filed in the first place for obtaining such a certificate from the Licensee, the petitioners are not entitled to get electricity connection at the premises.
- 25.** It is next contended that Clauses 5.3.3 and 6.10 of the 2015 Regulations operate at different stages of the application for new connection. Whereas the no-dues certificate has to be produced under Clause 5.3.3 at the juncture when the application for new connection is itself filed, that is, the first stage of filing of the application, Clause 6.10 is attracted at the second stage of verification of such application. Learned counsel places reliance on the respective languages of the said two Clauses to harp on such point.
- 26.** It is argued that since the petitioners failed to cross the first hurdle of compliance with pre-requisites for filing the application, the question

of applicability of Clause 6.10 at the second stage of verification does not apply at all.

- 27.** It is further contended that when the application was sought to be verified by the DVC at a subsequent stage, it was discovered that there were dues with regard to the premises-in-question, which was suppressed by the petitioners in their application.
- 28.** Thus, the said verification was undertaken at the second stage, which is covered by Clause 6.10, and it was detected that the outstanding dues were still left unpaid in respect of the same premises. Hence, it is submitted that in the absence of any such deposit of outstanding dues being made by the petitioners, there is no scope of applicability of the benefit of Clause 6.10 to the petitioners.
- 29.** Since the petitioners did not produce any no-dues certificate from the DVC with the application, the petitioners are not entitled to get any new electricity connection at the same premises unless they clear all the outstanding dues of the previous owner.
- 30.** Learned counsel for the DVC, in support of his contentions, places reliance on a Single Bench Judgment of the Jharkhand High Court reported at *(2019) SCC OnLine 1218 [Om Prakash Garg Vs. Jharkhand Vijli Vitran Nigam Limited through its Chairman and others]*.
- 31.** Although a Division Bench of the same High Court subsequently reversed the judgment of the learned Single Judge, such reversal was only on the point of alleged retrospective operation of the 2015 Regulations.

- 32.** In the said case, the application was made prior to the 2015 Regulations and, as such, it was held by the Division Bench that said Regulations did not apply retrospectively. However, in the present case, the transfers in favour of the petitioners as well as the applications happened post-2015 and, thus, the said reversal by the Division Bench is not applicable in terms.
- 33.** Heard learned counsel for the parties. Before entering into the merits of the present matter, let us consider how far the cited judgments apply to the present case. *Raghunath Paper Mills Private Limited and another (supra)*, in paragraph no.12 thereof, observes that sub-clause 10(b) of Regulation 13 of the Electricity Supply Code of Orissa applies to a request for transfer of service connection but not to a fresh connection.
- 34.** In the said judgment, by placing reliance on *Paschimanchal Vidyut Vitran Nigam Limited Vs. DVS Steels and Alloys (P) Ltd.*, it was observed that electricity arrears do not constitute a charge over the property; therefore, in general law, the transferee of a premises cannot be made liable for the dues of the previous owner/occupier.
- 35.** However, it was also observed in paragraph 12 of *Paschimanchal Vidyut Vitran Nigam Limited (supra)* that if any statutory rules govern the condition relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirement of such rules and regulations. Only if the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings.

- 36.** So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, Courts will not interfere with them.
- 37.** As opposed to the said case, in the present case, specific provisions are stipulated in Clause 5.3.3, read with Clause 6.10, of the Jharkhand Regulations, 2015.
- 38.** Hence, even as per the said cited judgment of *Raghunath Paper Mills Private Limited and another (supra)*, the general proposition as laid down therein is not applicable. The proposition that electricity arrears do not constitute a charge over the property pertains to general law as per the judgment itself, as opposed to the 2003 Act, which is a special statute governing the present situation.
- 39.** In *Telangana State's case (supra)*, the Supreme Court observed that if a transferee desires to enjoy service connection, he shall pay the outstanding dues, if any, to the supplier of electricity and a reconnection or a new connection shall not be given to any premises where there are arrears on account of dues to the supplier unless they are so declared in advance. The said judgment deals with the Andhra Pradesh Regulations, as opposed to the Jharkhand Regulations, which are applicable in the present case.
- 40.** Paragraph 16.2 of the said report specifically mentions that in cases where in the e-auction notice-in-question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on "as is where is, whatever there is and without recourse basis", there can be no doubt that the liability to pay electricity dues exists on the purchaser.

- 41.** However, the present case does not deal with an auction purchase where the e-auction notice mentioned the existence of electricity dues. The direct purchases effected through sale-deeds in the present case clearly relieved the purchaser of liabilities, even if left by the erstwhile owner, and also stipulated that the property was unencumbered. Thus there was no way for the petitioners to know about such alleged liabilities. Moreover, in the present case, the interplay of Clause 5.3.3 and Clause 6.10 of the 2015 Regulations is also to be looked into.
- 42.** In the Division Bench judgment of this Court of *Damodar Valley Corporation and others Vs. Shree Ramdoot Rollers Private Ltd. (supra)*, it was held that in case of an auction sale on “as is where is basis”, a fresh connection ought to be preceded by payment of arrears of the past owner. In the said case, the Division Bench was considering the powers conferred under Section 20 of the Damodar Valley Corporation Act to fix charges and to specify the manner of the recovery of such charges which was held to yield to the provisions of the 2003 Act and the WBERC Regulations to the extent of its inconsistency with the new Act and the Regulations, in which case it would be inoperative in the State of West Bengal.
- 43.** The said judgment was rendered in the context of the West Bengal Regulations, whereas in the present case the 2015 Regulations of Jharkhand are applicable. That apart, there is no dispute here as to whether the DVC Act yields to the 2003 Act and/or the Jharkhand Regulations in the present case. Hence, the said decision cannot be germane for the present case.

- 44.** On the other hand, the learned Single Judge of the Jharkhand High Court held in *Om Prakash Garg (surpa)* adjudicated specifically on the legality of Clause 5.3.3 of the Jharkhand Regulations, 2015. In such context, the Court held that the provision made under Regulation 5.3.3 cannot be said to be unfair and “untransparent” (*sic*), rather, it has been held to be in consonance with the object and aim of the principal Act of 2003. Therefore, the court did not interfere with the said Regulation under Article 226 of the Constitution of India.
- 45.** Although a Division Bench of the Jharkhand High Court overruled the said decision, the same was restricted to the point of retrospective operation of the 2015 Regulation. In the said case, the relevant claim was made for a period prior to the coming into force of the 2015 Regulation, however, in the present case, the sales in favour of the petitioner (2019-20), as well as the two applications made by the petitioners for new electricity connection, dated November 26, 2019 and September 22, 2022, were all made subsequent to the enactment of the 2015 Regulation. As such, in the absence of any issue of retrospectivity, the Division Bench judgment does not affect the applicability of the ratio of the learned Single Judge of the Jharkhand High Court, which specifically upheld the legality and Constitutionality of Regulation 5.3.3.
- 46.** The next question which falls for consideration is the scope of applicability of Clauses 5.3.3 and 6.10(a) of the 2015 Regulations.
- 47.** In this context, certain relevant provisions of the 2015 Regulations are set out below:

“5.3.3 Purchase of existing property: *Where the applicant has purchased an existing property whose electricity connection has been disconnected, it shall be the applicant’s duty to verify that the previous owner has paid all dues to the Distribution Licensee and obtained a “no-dues certificate” from him. In case such “no-dues certificate” has not been obtained by the previous owner before change in ownership of property, the new owner may approach the Distribution Licensee for such a certificate. The Distribution Licensee shall acknowledge receipt of such request and shall either intimate in writing the dues outstanding on the premises, if any, or issue a “no-dues certificate” within 1 month from date of receipt of such application. In case the Distribution Licensee does not intimate the outstanding dues or issue a “no-dues certificate” within this time, new connection to the premises shall not be denied on ground of outstanding dues of the previous consumer. In such an event, the Distribution Licensee shall have to recover his dues from previous consumer as per provisions of law.*

.....

6.10 *During the inspection, the Distribution Licensee shall:*

(a) verify that there is no outstanding due in the applicant’s name or for the premise for which the new connection is being applied for. If the applicant, in respect of an earlier agreement executed in his name or in the name of a firm or company with which he was associated either as a partner, director or managing director, has any arrears of electricity dues or other dues for the premises there the new connection is applied for and such dues are payable to the licensee, the requisition for supply may not be entertained by the licensee until the dues are paid in full. But if the erstwhile consumer defaulted payment of dues and left the premises for good and the concerned premises has come in legal possession of a new occupant through transfer of a decree/order of the court/authority and who has no nexus with the previous owner/occupant in any manner, applies for connection of the electrical line in the same disconnected premises, the distribution licensee shall provide electrical connection without realization of the arrear/dues of the premises payable by the erstwhile consumer, from the subsequent transferee of the premises and he shall not be held liable to pay/discharge the liability of the previous consumer for securing a fresh connection;”

48. A perusal of Clause 5.3.3 shows that the same applies at the juncture of filing of an application for getting new electricity connection.
49. In the event “no-dues certificate” has not been obtained before change of any ownership of the property from the previous owner, over which the present petitioner had no hand, the new owner is given the option of approaching the Distribution Licensee for such a certificate.
50. However, it is relevant to mention that the expression used in Clause 5.3.3 in respect of new owner approaching the Distribution Licensee is the directory term “may” as opposed to the mandatory “shall”. Hence, it is *per se* evident that the said option is not mandatory but directory.
51. The rest of the Clause applies only if such a certificate is asked for from the Licensee. Even in such a case, unless such a no-dues certificate is issued within one month from date of receipt of such application by the Licensee or the Licensee does not intimate the outstanding dues, a new connection to the premises shall not be denied, as per the said Clause, on the ground of outstanding dues of the previous consumer. It is clearly stipulated that in such an event, the Distribution Licensee shall have to recover his dues from the previous consumer as per provisions of law.
52. That apart, there is no sanction provided in Clause 5.3.3 in case of default of obtaining such a no-dues certificate, which renders the said provision all the more directory.
53. In the present case, in any event, the Licensee itself did not insist upon such no-dues certificate while accepting the application and, thereby, waived their right to raise an objection thereto subsequently.

- 54.** Clause 6.10 of the 2015 Regulations, as rightly contended by the Licensee itself, applies to the subsequent stage of verification of the application for new connection. It is precisely at such stage that the DVC claims to have discovered that there were outstanding dues left by the erstwhile consumer in respect of the said premises.
- 55.** Hence, Clause 6.10 (a) is squarely applicable in the present case.
- 56.** It is clearly provided in the said sub-clause (a) that if the erstwhile consumer defaulted in payment of dues and left the premises for good and the concerned premises has come in legal possession of a new occupant through transfer who has “no nexus” with the previous owner/occupant in any manner, and the new occupant applies for connection of the electrical line in the same disconnected premises, the Distribution Licensee shall provide electrical connection without realization of the arrears/dues of the premises payable by the erstwhile consumer from the subsequent transferee of the premises and he shall not be held liable to pay/discharge the liability of the previous consumer for securing a fresh connection.
- 57.** Hence, even without going into the bar of Section 56(2) of the 2003 Act, read with Clause 10.15 of the Jharkhand Regulations, 2015, by operation of Clause 6.10 of the said Regulations, in the absence of any nexus whatsoever being alleged or proved by the DVC between the present petitioners and their vendor, the insistence of the DVC upon prior clearance of such alleged outstanding dues left by the vendor is *de hors* Clause 6.10(a) and patently unlawful.

- 58.** The mere fact that the petitioner acquired the property by direct purchase through four sale-deeds from the erstwhile consumer does not *ipso facto* cast a liability on or establish nexus of the new purchaser/petitioner on such score. It was for the Licensee to plead and prove such nexus, if any, and in the absence thereof, it does not lie in the mouth of the DVC/Licensee to claim such outstanding amount from the present purchaser/petitioner.
- 59.** In fact, the attending circumstances show that the vendor of the petitioner, in the sale deeds, clearly sought to indemnify the petitioners from any liabilities left by the vendor in respect of the property. It was also specifically mentioned in the sale-deeds that the property was being sold without any encumbrances.
- 60.** In normal course and under general law, as held by the Supreme Court, electricity dues do not operate as charge on the property. Since the relevant Clause, that is, Clause 6.10 (a) of the 2015 Regulations is squarely applicable to the present case, by operation of the same, the claim of the DVC for outstanding dues is patently illegal and is required to be set aside.
- 61.** Accordingly, WPA No.1853 of 2023 is allowed, thereby quashing the demand for outstanding dues of the erstwhile consumer dated November 29, 2022 made by the DVC from the petitioners. The DVC is directed to forthwith give new electricity connection to the petitioners at the premises-in-question upon compliance of all other formalities by the petitioners, without demanding such outstanding dues. Such connection shall be given to the petitioners within three (03) weeks

from date and/or from the date of compliance of formalities, whichever is later.

- 62.** There will be no order as to costs.
- 63.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)