IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

226 **CWP-12065-2019 (O&M)**
Date of Decision: 05.01.2023

SUKHWINDER SINGH AND ANOTHER

... Petitioners

VERSUS

PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

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Present: Mr. Harkirat S. Jagdev, Advocate for
Mr. Aalok Jagga, Advocate for the petitioners.

Mr. Sahil Sharma, Advocate for respondents.

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<u>VINOD S. BHARDWAJ, J. (ORAL)</u>

The present writ petition has been filed under Articles 226/227 of the Constitution of India, 1950 seeking issuance of a writ in the nature of Mandamus directing the respondent No.1 to grant fresh electricity connection to the petitioner without insisting on payment of the previous dues of Rs.4,02,020/- on the ground that the petitioners are auction purchasers of the property conducted by the respondent No.2 i.e. the Debt Recovery Tribunal-III.

Briefly summarized, the facts of the present case are that the petitioners wanted to purchase a factory premises at Ludhiana. While searching for one, they came across a sale notice under the provisions of Recovery of Debts & Bankruptcy Act, 1993 for the property measuring 555 Sq. Yards situated at Beant Colony near Gopal Nagar.

The borrower – respondent No.3 had availed credit facility from Canara Bank and failed to repay the debt. The Bank approached the DRT by filing O.A. under Section 19 of the Act of 1993 to recover the same. The recovery suit was decreed and a recovery certificate No.1332/2019 was issued by Presiding Officer.

Sale notices were issued and e-auction was conducted in which petitioners submitted the highest bid of Rs.48.10 lacs and sale was confirmed on 10.01.2019. After being put in peaceful possession of the property, the petitioners intended to set up an industrial unit and approached the respondent No.1 for supply of New Connection on 08.04.2019 alongwith all documents. The petitioners were thereafter informed by respondent No.1 that there were previous dues of Rs.4,02,020/- of previous owner of property and were called upon to deposit the dues.

It was admitted that the property was sold on "as is where is" basis.

Learned Counsel for the petitioners has argued that having purchased the property from DRT in an open auction, they cannot be fastened with any other liability or financial burden. The petitioners had submitted the highest bid for the property and fastening of any other liability amounts to making the petitioners pay more than they had bid for.

Learned counsel for the petitioner, however, argued that the electricity connection has already been released in favour of the petitioners as the petitioners have deposited the amount demanded by the respondent No.1-PSPCL under protest and without prejudice to their rights.

Short reply by way of affidavit of Er. Jagdeep Singh, Sr. XEN, Focal Point, PSPCL has been filed wherein it has been averred that the property in question was sold on 'as is where is' basis and that the petitioners have deliberately chosen not to annex the complete terms and conditions of the Auction Notice. It is further mentioned therein that the property in question was sold for effecting recovery of the dues of the bank and that any such sale transaction carried out by the Debt Recovery Tribunal does not absolve the bidder of the obligation to clear the dues payable to the PSPCL against the electricity charges. The respondent No.1-PSPCL is entitled under the applicable Regulations to recover the same against the premises in question and that in the event the petitioners intended to seek release of electricity connection, the outstanding dues had to be deposited. Reference is also made to the provisions of the Electricity Supply Code and Related Matters, Regulations, 2007 to contend that such demand would not be illegal or in violation of any law.

Learned counsel for the parties fairly concede that the Hon'ble Supreme Court has already dealt with the controversy in the matter of ***'Telangana State Southern Power Distribution Company Limited and Another Vs. Srigdhaa Beverages'*** reported as ***(2020) 6 Supreme Court Cases 404*** wherein it was held that the electricity dues, where they are statutory in character under the Electricity Act and as per the terms and conditions of supply, cannot be waived and cannot partake the character of dues of purely contractual nature. Further, where the electricity dues, whether quantified or not, have been specifically mentioned as a liability of the purchaser in the auction notice and the sale is on "as is where is, whatever there is and without recourse basis" the liability to pay the electricity dues exists on the subsequent purchaser. The relevant extract of the aforesaid judgment is reproduced hereinafter below:

*"11. We can draw strength from the observations of this Court in **Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd.** reported as **(1998) 4 SCC 470,** where there was a similarity as in the present case, of a specific clause dealing with electricity dues. It was observed that in such a scenario if a transferee desires to enjoy the 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.*

12. We may also notice that as an auction purchaser bidding in an "as is where is, whatever there is and without recourse basis", the respondent would have inspected the premises and made inquiries about the dues in all respects. The facts of the present case, as in the judgment aforesaid, are more explicit in character as there is a specific mention of the quantification of dues of various accounts including electricity dues. The respondent was, thus, clearly put to notice in this behalf.

*13. The same view in case of a similar clause has been taken in **Paschimanchal Vidyut Vitran Nigam Limited & Ors. v. DVS Steels and Alloys Private Limited** reported as **(2009) 1 SCC 210.** It has been further observed that if any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations so long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable. A condition for clearance of dues cannot per se be termed as unreasonable or arbitrary.*

14-15. XXX XXX XXX XXX

16. We have gone into the aforesaid judgments as it was urged before us that there is some ambiguity on the aspect of liability of dues of the past owners who had obtained the connection. There have been some differences in facts but, in our view, there is a clear judicial thinking which emerges, which needs to be emphasized:

16.1. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature.

16.2. Where, as in cases of 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 respondent (purchaser).

16.3 The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply."

Taking into consideration the binding judicial pronouncement by the Hon'ble Supreme Court as well as the fact that the auction notice for sale on "as is where is" basis has not been appended by the petitioner alongwith the instant petition and that there is no averment to contend that the liability was not statutory in nature, it cannot be held that the demand raised by the respondent No.1-PSPCL for the statutory charges/clearance of the outstanding dues is untenable or unsustainable. Such demand thus is legal, valid, enforceable and within the domain of the Electricity Act, 2003 and the Rules/Regulations framed thereunder.

The present petition is accordingly dismissed as being without any merits. The petitioner is, however, at liberty to seek recovery of the said dues against the previous owner and/or to claim reimbursement of the said amount, if/as and when the said amount is deposited by the previous owner with the respondent No.1 -PSPCL.

Any other misc. application(s) also stand(s) disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

05.01.2023
rajender

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No