

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12223 of 2023**

1. M/s. RQ group, a Partnership Firm, having its office at 5th Floor, Nutan Plaza, Srinivas Path, Bandar Bagicha, P.O. G.P.O., P.S. Kotwali, Town and District Patna, through one of its Partners, Sneha Kumari, aged about 26 Years (Female), wife of Vikas Kumar Jha, resident of D/O Ranjeet Prasad, Chinakothi, Harijan Colony, Exhibition Road, P.S. Kotwali, P.O. G.P.O, District Patna 800001.
2. M/s, Nutan Construction, A Partnership Firm, having its place of business at Hari Om Apartment, Exhibition Road, Patna, through its Partner, Sanjay Kumar Sinha, aged about 53 years (Male), son of Shri Dharmendra Prasad Singh, resident of Radha Krishna Complex, Flat No. 601, R. K. Bhathacharya Road, Rajendra Path, P.S. Gandhi Maidan, P.O. G.P.O, District Patna 800001

... .. Petitioner/s

Versus

1. The South Bihar Power Distribution Company Limited Vidyut Bhawan, Bailey Road, Patna, through its Managing Director.
2. The Chief Engineer (Commercial), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The General Manager (Revenue), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Electrical Executive Engineer, Dak Bungalow Division, South Bihar Power Distribution Company Limited, Patna.
5. The Assistant Electrical Engineer, Dak Bungalow Division, South Bihar Power Distribution Company Limited, Patna.

... .. Respondent/s

**Appearance :**

|                      |   |                                |
|----------------------|---|--------------------------------|
| For the Petitioner/s | : | Mr. Suraj Samdarshi, Adv.      |
|                      | : | Mr. Rohit Singh, Adv.          |
|                      | : | Mr. Piyush Ranjan, Adv.        |
|                      | : | Mr. Vijay Shanker Tiwari, Adv. |
|                      | : | Mr. Avinash Shekhar, Adv.      |
| For the Respondent/s | : | Mr. Vinay Kirti Singh, Adv.    |
| For SBPDCL           | : | Mr. Kunal Tiwary, Adv.         |

**CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY**  
**ORAL ORDER**

9      18-03-2024                      Heard the learned counsel for the parties.

The present writ petition has been filed for the  
following reliefs:-



*“(i) For quashing of the order dated 01.08.2023 passed by the Consumer Grievances Redressal Forum, PESU (W) Cricle, whereby and whereunder the request of the petitioner no. 1 for grant of fresh electrical connection, has been rejected on the ground of outstanding dues of previous consumer*

*(ii) For a direction to the respondent authorities to grant fresh electrical connection to the petitioner no. 1, in furtherance of its application under Section 43 of the Electricity Act, 2003, read with Clause 4.1 of the Bihar Electricity Supply Code, 2007.*

*(iii) For a declaration that the decision relied upon by the Consumer Grievances Redressal Forum does not apply to the case of the petitioner no. 1, in view of a specific provision which is distinct and diametrically opposite to the provision as contained in the Bihar Electricity Supply Code, 2007 considered by the Hon'ble Apex Court, issued under Section 50 of the Electricity Act, 2003.*

*(iv) To grant any other relief or relief for which the petitioners may be found entitled to in the facts and circumstances of the case.”*

3. Learned counsel for the petitioners has stated that the petitioner No. 1 is a tenant of the petitioner No. 2 and he has taken the subject premises on lease for a period of five years on a monthly rent of Rs. 5,45,000/- (Five Lakh Forty Five Thousand). Further, it is stated that pursuant to the lease deed executed in favour of the petitioner No. 1, the petitioner No. 1 has approached the respondents for grant of fresh electricity connection and to that effect an application has been made. That the petitioners have applied for commercial category of 25 K.W. electricity connection, however, the respondents on 20.12.2022 have issued a message to the petitioners that the previous tenant



of the subject premises had an outstanding due amount of Rs. 15,20,458/- (Fifteen Lakh Twenty Thousand Four Hundred Fifty Eight) against the electricity connection taken by the said tenant. That unless and until the petitioners clear the aforesaid amount, a fresh electricity connection cannot be granted for the subject premises. Thereafter, the authorities have rejected the application of the petitioner. Learned counsel has stated that the petitioner aggrieved by the rejection of the application for electricity connection have approached the Consumer Grievances Redressal Forum (CGRF) who vide order dated 01.08.2023 has dismissed the complaint of the petitioner on a totally erroneous and legally unsustainable grounds. Learned counsel has stated that as per the Bihar Electricity Supply Code, 2007, more particularly, Clause 4.1, the petitioner is entitled to a fresh electricity connection irrespective of the due of the previous owner, tenant etc. That in case any outstanding dues are there, the authorities can take necessary steps for recovery of the due amount from the previous tenant/owner but cannot deny the electricity connection. Further, it is stated that the rejection of the complaint relying on Clause 4.15 (iii & vi) is without any legal basis and the same is not applicable to the facts of the present. Learned counsel has stated that the CGRF has relied on



the judgment of the Hon'ble Supreme Court in the case of ***KC Ninan Vs. Kerala State Electricity Board & Ors.*** reported in ***2023 SCC Online SC 663*** which is also not applicable to the facts of the case and rejected the complaint of the petitioner. Further, it is stated that the Respondent-Corporation has already initiated necessary steps against the previous tenant for recovery of the amount due to them under Bihar Orrisa Public Demands Recovery Act, 1914 and therefore, the rejection of the application made by the petitioner for electricity connection and subsequent rejection of the appeal by the CGRF is illegal, bad, arbitrary and contrary to the provisions of the Bihar Electricity Supply Code, 2007. Learned counsel has therefore prayed this Hon'ble Court to allow the present CWJC and consequently direct the respondents to give a fresh electricity connection to petitioner in the subject premises.

4. *Per contra*, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the authority concerned duly taking into consideration the provisions of the Electricity Act, 2003 and the Bihar Electricity Supply Code, 2007 have rejected the application made by the petitioner for fresh electricity connection. Learned counsel has



stated that under Section 49 of the Electricity Act, 2003, the owner of the building is liable to clear the outstanding dues of the previous tenant. That the petitioner No. 2 who is the owner of the building was well aware that the previous tenant was about to vacate the premises but he failed to intimate the same to the authority concerned. Learned counsel has stated that the order of CGRF does not suffer from any infirmity and the same is in consonance with the provisions of Bihar Electricity Supply Code, 2007, and also the law laid down by the Hon'ble Supreme Court in the case of ***KC Ninan Vs. Kerala State Electricity Board & Ors.*** reported in ***2023 SCC Online SC 663***.

5. Admittedly in the present case, the petitioner No. 1 is the tenant of the petitioner No. 2 and the petitioner No. 2 is the owner of the subject premises. The petitioner No. 1 has taken the subject premises on lease and applied for a fresh electricity connection to the Respondent authority. However, the same has been rejected on the ground that the previous tenant is due an amount of Rs. 15,20,458/- to the Corporation. Complaining about the rejection of his application, the petitioner has approached the CGRF who vide order dated 01.08.2023 has rejected the complaint of the petitioner on the following grounds;

*“Para: b. The duty to supply electricity under*



*Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities,*

*c. For an application to be considered as a 'reconnection", the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;*

*d. A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;*

*e. The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;*

*f. The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;”*

6. In order to appreciate the issue involved in the present writ petition, it is necessary to extract the provisions of the Bihar Electricity Supply Code, 2007, more particularly, Clause 4.15 (iii & vi) ,which reads as under;

#### **4.15 No Dues Certificate**

- i. ....*
- ii. ....*
- iii. In the event of non payment of the outstanding dues, the dues shall be recoverable as public demand under the Bihar and Orissa Public Demand Recovery Act, 1914[1] as amended from time to time.*
- iv. ....*
- v. ....*
- vi. In case the electricity connection to the said*



*premises was given with the consent of house owner, such person shall ensure the payment of all arrears/ dues of electricity by the tenant before the tenant vacates the premises.*

7. A perusal of the above Clause 4.15 reveals that the Electricity Department is having every right to collect the arrears of electricity dues against the owner, occupier, the previous tenant of the premises or the consumer and whenever a new tenant applies for a fresh electricity connection, the same cannot be denied to them on the ground that there are outstanding dues of the previous owner/tenant. In this particular case, the respondents have already initiated action against the previous tenant under the Bihar Orrisa Public Demands Recovery Act, 1914 for recovery of the outstanding dues. Though, it is contended by the authorities that as per Clause 4.15 (vi), whenever an electricity connection is given to the premises with the consent of the house owner, then such person shall ensure the payment of arrears due of the electricity by the tenant before the tenant vacates the premises and therefore, the petitioner No. 2 is liable to pay the outstanding amounts due to the Corporation. That unless and until the outstanding amount is cleared, a new electricity connection cannot be given. However, it is pertinent to note that the petitioner No. 2 in the present writ petition has made a categorical statement that the previous



tenant during Covid-19 Pandemic had vacated the subject premises without any prior intimation and therefore, the petitioner No. 2 was not in a position to intimate the Corporation about the vacating of the premises by the tenant. In the counter-affidavit filed by the respondents at Para 15, though it is stated that the owner (petitioner No. 2) was aware of the vacating of the subject premises by the previous tenant as he was issued a termination notice, no proof of the same is filed. Except making a bland statement in their counter-affidavit, the authorities have not enclosed the copy of the alleged termination notice issued by the previous tenant. The order of the CGRF reveals that the CGRF has relied on Section 49 of the Electricity (Supply) Act, 1948 Act which mandates the new owner of the premises to clear the outstanding electricity arrears of the previous owner as a pre-condition to avail the electricity supply. However, it is to be noted that Section 49 of the Electricity (Supply) Act, 1948 Act has been repealed vide Section 185 of Electricity Act, Section 185 of Electricity Act, 2003 reads as under;

*“(1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.*

*(2) Notwithstanding such repeal,--*

*(a) anything done or any action taken or*



*purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act;*

*(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 (9 of 1910) and rules made thereunder shall have effect until the rules under section 67 to 69 of this Act are made;*

*(c) the Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 (9 of 1910) as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made.*

*(d) all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 (54 of 1948) shall continue to have effect until such rules are rescinded or modified, as the case may be;*

*(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall continue to apply for the period for which such directions were issued by the State Government.*

*(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.*

*(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.*

*(5) Save as otherwise provided in sub-section (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with regard to the effect of repeals."*

8. Therefore, the reliance on Section 49 of the Old Act

by CGRF for rejecting the complaint of the petitioner is misplaced and contrary to the provision of the Electricity Act, 2003. Once an act has been repealed, the provision of the



repealed act cannot be relied by the authorities to pass an order, the law which is prevalent as on the date of deciding the application has to be taken into consideration for all purpose. Further, Section 43 of the Electricity Act, 2003 obligates the respondent-Corporation to give an electricity connection whenever the owner/occupier makes an application within one month after receipt of the said application. In so far as the reliance by the CGRF on the judgment of the Hon'ble Supreme Court in the case of *KC Ninan Vs. Kerala State Electricity Board & Ors.* reported in *2023 SCC Online SC 663* is concerned, the same is not applicable to the facts of the present case as the said judgment was in respect of auction purchasers who had purchased property in auction sale on a as is where is basis and the Hon'ble Supreme Court has held that the new owner was liable to pay the outstanding dues, if any of electricity charges, taxes etc. in respect of the subject premises.

9. For the aforesaid reasons, the order of rejection of the complaint by the CGRF and the rejection of the application for fresh electricity connection made by the petitioner cannot be legally sustained and the same are accordingly set aside. The present writ petition is allowed and the authorities are directed to consider the application of the petitioner for fresh electricity



connection within a period of four weeks from today.

10. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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