

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1196 of 2019
In
Civil Writ Jurisdiction Case No.4141 of 2019

1. M/s Jalan Polyubes Private Limited a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Modi Bhawan, Ghagha Gali Chouk, Patna City, through its Director, Krishna Kumar verma aged about 68 years (Male) son of Moti Lal Verma, resident of Sari Vasiawab Gali, Pani Tanki Rani Milki Chak, Patna City P.S. Khajekalan, District-Patna-800008.
2. Krishna Kumar Verma Son of Moti Lal Verma resident of Sari Vasiawab Fali, Pani tanki, Rani Milki Chak, Patna City P.S. Khajekalan, District Patna-800008.

... .. Appellant/s

Versus

1. The South Bihar Power Distribution Company Limited Vidyut Bhawan, Bailey Road, Patna, through its Managing Director.
2. The Electrical Executive Engineer, Electric Supply Division, Patna. City, Patna.
3. The Assistant Electrical Engineer, Electric Supply Sub-Divisional, Katra, Patna City, Patna.
4. The Junior Electrical Engineer, Electric Supply Section, Malsalami, Patna City, Patna.
5. M/s Saket PVC Pipes Industries Private Limited, a Company incorporated Under the Provisions of the Companies Act, 1956, having its Registered Office at Surya Vihar, Exhibition Road, P.S. Gandhi Maidan, Patna, through its Director, Vikas Kumar Jalan, Son of Late Narayan Prasad Jalan , Resident of 811, Shanti Vihar Apartment, Off Fraser Road, P.O. G.P.O., P.S. Kotwali, Patna-800001.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Suraj Samdarshi, Advocate
For the Respondent/s : Mr. Prakash Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 22-01-2024



The present appeal is directed against the order dated 16.08.2019 passed by the learned Single Judge in CWJC No. 4141 of 2019 by which the relief sought for by the writ petitioners was rejected holding that the petitioner no. 1, the company having gone beyond the rights conferred upon it as a lessee, allowed family of Narayan Prasad Jalan to enter into the lease premises, obtain electricity to run the family business and then after accumulating the energy bills, when the electricity has been disconnected, fresh application for electricity connection has been made showing it to be a separate entity, which the Court is not ready to accept.

2. The facts relating to the present appeal is/are as follows:

3. The appellant no. 1 is a Private Limited Company registered under the Companies Act, 1956 and was earlier contesting the matter through one Sachin Modi, the petitioner no. 2 in the writ petition. He has now been replaced by Krishna Kumar Verma as appellant no. 2 in the present appeal.

4. On 26.03.2018, Sachin Modi submitted an application with the respondent South Bihar Power Distribution Company Limited (henceforth for short, 'the SBPDCL') for grant of electric connection under non-



domestic category.

5. The respondents in turn informed on 09.04.2018 that in view of outstanding dues of Rs. 20,40,464/- in the name of Narayan Prasad Jalan, fresh electric connection cannot be granted to the said premises.

6. The case of the appellants-petitioners is/are that the said Narayan Prasad Jalan was also the Proprietor of M/s Saket PVC Pipes Industries Private Limited (henceforth for short, 'Saket Industries') and is now no more. There was a certificate proceeding against Narayan Prasad Jalan for recovery of Rs. 20,14,213/- vide certificate case no. 05/2015-16 but as the same was filed after his death, the certificate case was quashed by the Patna High Court in CWJC no. 17455 of 2015 vide an order dated 01.10.2018.

7. Further, the land on which the electricity connection was granted to 'the Saket Industries' was leased out by Sri Krishna Goshala Prabandhak Committee to Narayan Prasad Jalan, the Director of M/s Jalan Polytubes Private Ltd. (henceforth for short, 'Jalan Polytubes') vide lease deed dated 30.01.1999 for a period of thirty years from 01.04.1998 to 31.03.2028.

8. Sachin Modi who was petitioner no. 2 in the writ



petition made a claim that subsequently, there had been change of hands with the new set of Directors and as such they were legally entitled to the electric connection and only because late Narayan Prasad Jalan was also the Director of Jalan Polytubes beside being the Director of 'the Saket Industries', the electricity connection cannot be denied.

9. In support of the case, learned counsel for the petitioner, Mr. Suraj Samdarshi referred to the Gazette notification dated 18.05.2015 of Bihar Electricity Regulatory Commission, Patna in which **Clause 2 sub-Clause (i)** read as follows:

Amendment in Chapter 4 of the code

Third Proviso of clause 4.1 shall be substituted by the following:-

“(i) If there are arrears of electricity dues against the owner or occupier or tenant of a premises as a consumer, new connection shall not be denied to subsequent owner, occupier or tenant, and the arrear of electricity dues on the premises shall be recovered from the defaulting consumer under the provisions of Bihar and Orissa Public Demands Recovery Act, 1914 or alternately the arrears may also be transferred to another running accounts of the defaulting consumer after adjustment of amount of security



deposit and interest there on and giving fifteen days notice.

10. This Court has also taken note of sub-Clause (iii) of Clause 2 which read as follows:

(iii) If there are arrears of electricity dues on a premises, a new connection may be refused to a new applicant on the same premises if the applicant being an individual is an associate or relative as defined in Section 2 and 6 respectively of the Companies Act, 1956 of the defaulting consumer, or where the applicant being a company or body corporate or association, or body of individuals, whether in corporate or not, or artificial judicial person, is controlled, or having controlling interest in the defaulting customer. Provided the Licensee shall not refuse electric connection on this ground, unless an opportunity to present his case is provided to the applicant and reasoned order is passed by an officer designated by the licensee for this purpose and the order of refusal shall be communicated within one month of receipt of the application.”

11. The further case of the appellants-petitioners is that the respondents were unjustified in not providing the fresh electricity connection to the M/s. Jalan Polyubes Private Limited and as such the relief be extended to them and as the learned Single Judge erred in dismissing the writ



petition, the same be set aside.

12. Learned counsel appearing on behalf of the respondents, on the other hand, submits that the lease deed dated 30.01.1999 is very clear. It has been executed between Sri Krishna Goshala Prabandhak Committee and M/s. Jalan Polytubes Private Limited through its sole Director, Narayan Prasad Jalan for a period of thirty years. He further submits that Narayan Prasad Jalan was also the Proprietor of 'Saket Industries' and had taken an electricity connection on which electricity dues of around twenty lakhs was not cleared. The application for fresh connection was made only to put 'the SBPDCL' to a loss as aforesaid.

13. His submission is that when Narayan Prasad Jalan entered into the premises on the basis of said lease agreement with Sri Krishna Goshala Prabandhak Committee claiming himself as the Director of M/s. Jalan Polytubes Private Limited, the electricity dues on him has to be cleared by the subsequent Directors.

14. Learned counsel took this Court to the order dated 30.07.2018 passed by the Consumer Grievance Redressal Forum, SBPDCL, Vidyut Bhawan, Patna on a petition preferred by Sachin Modi who was petitioner in writ



petition. The Redressal Forum in its order recorded as follows:

“We are of considered view that everything has been done in a planned manner only to avoid legitimate charges of electricity viz. execution of agreement by M/s Jalan Polytubes Pvt. Ltd. through its director Sri N.P.Jalan from 1.4.1998 to 31.3.2028, taking connection in the name of M/s Saket Tubes Ltd. through its proprietor Sri N.P.Jalan, leaving huge amount of arrears of electricity and now application for new connection in the name of M/s Jalan Polytubes Pvt. Ltd. with a new set of directors in the same premises and on the same agreement and all the three parties are connived with each other. We also sense connivance of opposite parties in the whole episode otherwise connection could not have been released to M/s Saket Tubes Ltd. on the agreement of M/s Jalan Polytubes Pvt. Ltd. and the electricity arrears could not have piled up to Rupees 25 lacs and odd. Managing Director of South Bihar Power Distribution Company Ltd, may get the matter enquired and punish the defaulter employees. In view of the discussions made above we find and held that this premises is under the control of M/s Jalan Polytubes Pvt. Ltd since 1998 and the electric connection was given to M/s Saket Tubes Ltd, on the consent of M/s Jalan Polytubes Pvt. Ltd. and the outstanding arrears on the premises is payable by M/s Jalan



Polytubes Pvt. Ltd. defaults in payment. We are of view that the petitioner company with new set of directors cannot be treated as successor occupier/tenant of the premises as the agreement is still alive in the name of M/s Jalan Polytubes Pvt. Ltd. through its director Sri N.P.Jalan & its heirs since 1.4.1998 and are not eligible for new electric connection till the arrears on the premises are recovered fully. We also held that the undertaking submitted by Sri Sachin Modi on 20/6/2018 is vague and not acceptable as he has undertaken for payment of the certificate amount if it is found recoverable from Sachin Modi in capacity of his being a director of M/s Jalan Polytubes Pvt. Ltd. As such, we approve the action of opposite parties not to release the electric connection to the petitioner company.

Under the observations made above this petition is dismissed.”

15. It is his submission that the appellants with ulterior motive chose to take connection in the name of ‘Saket Industries’ earlier for the same premises and now want another connection which cannot be allowed and the appeal be dismissed.

16. From the facts on record and the submissions put forward by the parties, it is clear that:

(i) Sri Krishna Goshala Prabandhak Committee



leased out the premises to late Narayan Prasad Jalan, the sole Director of the M/s. Jalan Polytubes Private Limited;

(ii) this was signed in the year 1999 for a period of thirty years i.e. from 01.04.1998 to 31.03.2028;

(iii) interestingly, though the agreement was signed with M/s. Jalan Polytubes Private Limited, the electricity connection was taken in the name of M/s Saket PVC Pipes Industries Private Limited in the same premises;

(iv) how and under what circumstance, M/s Saket PVC Pipes Industries Private Limited which was also headed by late Narayan Prasad Jalan as its Director came into the premises and got the electricity connection has not been clarified by the learned counsel for the appellant despite our repeated query.

17. It is surprising that though an agreement came to be signed in the year 1999 between Sri Krishna Goshala Prabandhak Committee and late Narayan Prasad Jalan effective 01.04.1998, M/s. Jalan Polytubes Private Limited submitted an application for electricity connection only in the year 2018 i.e. after lapse of almost twenty years. This Court is unable to understand the same unless we connect the link that in between, under the name of M/s Saket PVC Pipes



Industries Private Limited, they took electricity connection and carried on their business. Once the dues went upto around rupees twenty lakhs and electricity was disconnected, after the death of Narayan Prasad Jalan, they came up with this fresh electricity connection theory for M/s Jalan Poly tubes.

18. We cannot further ignore the fact that earlier in the writ petition, Sachin Modi was fighting for the cause of M/s. Jalan Poly tubes Private Limited but after the learned Single Judge dismissed the writ petition, now another person, Krishna Kumar Verma claiming himself to be Director has stepped in by filing the present appeal.

19. Learned counsel appearing on behalf of the appellant failed to clarify and/or provide any document as to how M/s Saket PVC Pipes Industries Private Limited came into the premises when it was handed over to M/s. Jalan Poly tubes Private Limited by Sri Krishna Goshala Prabandhak Committee. We have already incorporated sub-Clause (iii) of Clause 2 of the Gazette notification dated 18.05.2015 which permits the respondents to refuse new connection to an applicant on the same premises on the grounds mentioned therein.



20. The learned Counsel for the petitioners argued that M/s Saket Industries was inducted into the premises, validly, as is permitted by the lease agreement. The specific term pointed out by the learned Counsel from the lease agreement requires a sub-lease to be approved by the lessor; which approval, it is admitted, does not exist. This further fortifies the finding of a deliberate fraud having been employed to escape from the liability to pay electric charges.

21. This Court however is surprised to note that the respondents allowed 'the Saket Industries' to run the business and the electricity bill went upto around twenty lakhs without the same being disconnected. They as such are duty bound to look into this aspect and plug the holes.

22. In the aforesaid background, we are in complete agreement with the observation made by the learned Single Judge that the CGRF rightly appreciated the facts and circumstances of the case and affirmed the decision of the respondent company not to release the electricity in favour of the appellants-petitioners.

23. This game of hoodwinking the respondents by changing the nomenclature of the firm in the same leased premises and in the process putting the respondents to loss of



more than 20 lakhs cannot be given a stamp of the Court.

24. We do not find any reason to interfere with the order dated 16.08.2019 passed by the learned Single Judge in CWJC No. 4141 of 2019.

25. The LPA No. 1196 of 2019 is dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

kiran/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	29.01.2024
Transmission Date	

