**IN THE HIGH COURT AT CALCUTTA**
**CIVIL APPELLATE JURISDICTION**
**APPELLATE SIDE**

**Before:**
**The Hon'ble The Chief Justice T. S. Sivagnanam**
**and**
**The Hon'ble Justice Hiranmay Bhattacharyya**

**M.A.T. 611 of 2023**
**With**
**I.A. No. CAN 1 of 2023**
**Damodar Valley Corporation & Anr.**
**Versus**
**Saluja Steel and Power Private Limited & Ors.**

For the Appellants : Mr. S.N. Mookherjee, Sr. Adv.
Mr. Prasun Mukherjee
Mr. Deepak Agarwal
Mr. Subhrojyoti Mookherjee ....advocates

For Respondents : Mr. Jayanta Kumar Mitra, Sr. Adv.
Mr. Rajarshi Dutta,
Mr. Sarbajit Mukherjee,
Mr. Rahul Auddy,
Mr. Aditya Gooptu .........advocates

Reserved on : 24.06.2024

Judgment on : 02.07.2024

**Hiranmay Bhattacharyya, J.:-**

1. This intra Court appeal is at the instance of Damodar Valley Corporation (for short "DVC") and is directed against the Judgment and Order dated March 24, 2023 passed by a learned Single Judge in WPA 1853 of 2023.

2. By the impugned judgment and order, the writ petition was allowed thereby quashing the demand for outstanding dues of the erstwhile consumer dated November 29, 2022 made by DVC from the writ petitioners/respondents herein. DVC was directed to forthwith give new electricity connection to the

respondents at the premises-in-question upon compliance of all other formalities by the respondents.

3. Facts giving rise to the writ petition and this appeal, in a nutshell, are as follows.

   The respondents herein purchased an immovable property situated at village Mahathadih Gadi Sirampur, Giridih being Plot Nos. 412, 413, 414, 415, 416, 418, 404, 233, Dag No./Khesra Nos. 30, 25, 33, Mauja Mahathadih measuring about 10 acres 18.5 decimals (hereinafter referred to as the "said premises") from M/s Biswanath Ferro Alloys along with Nirbhay Kumar Shahabadi by 4 registered deeds of sale for valuable consideration. The respondents intended to operate a factory unit from the said premises. Respondents claim to have submitted copies of the application form along with other relevant documents under a covering letter dated 26th November, 2019 making a request for supply of electricity at the said premises. On the advise of the officials of DVC, respondents claim to have submitted another application for new High Tension (for short "HT") power connection from DVC on 27th September, 2022. The respondents also claim to have submitted further documents on September 28, 2022, as sought for by the officers of DVC after scrutiny. DVC issued a letter dated November, 29, 2022 calling upon the respondents to make payment of an amount which was due from M/s Biswanath Ferro Alloys i.e., the erstwhile consumer prior to initiation of power supply connection process.

4. Alleging that the aforesaid demand of DVC is wholly illegal, unjust and arbitrary, the respondents herein approached the writ Court praying for setting aside the letter dated 29th November, 2022 and sought for a writ of mandamus commanding DVC to supply electricity to the said premises without requiring the respondents to clear the outstanding dues of erstwhile consumer.

5. The writ petition was allowed by the impugned judgment and order, and being aggrieved, DVC has approached this Court.

6. Mr. Mukherjee, learned Senior Counsel appearing in support of the appeal, contended that the request for supply of electricity shall have to be by an application by the owner or occupier of any premises for supply of electricity to

such premises. He further contended that such a request has to be made in the format prescribed therefor and an applicant shall mean an application complete in all respects along with document showing payment of necessary charges and other compliances. In support of such submission he placed reliance upon Section 43 of the Electricity Act, 2003 (for short "the 2003 Act") and the Explanation appended thereto. He further contended that the State Commission is empowered to specify an Electricity Supply Code (for short "ESC") to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity etc. By referring to Section 181 of the 2003 Act, Mr. Mukherjee contended that the State Commission may, by notification, make regulations and the Jharkhand State Electricity Regulatory Commission, Ranchi (for short the "Commission") framed the (Electricity Supply Code) Regulations, 2015 (for short the "2015 Regulations") in exercise of the power conferred by Clause (x) of Sub-section (2) of Section 181 read with Section 50 of the 2003 Act. Mr. Mukherjee contended that the expression "other compliances" appearing in Explanation to Section 43 of 2003 Act would include the conditions stipulated for grant of connection under Clause 5.3.3 of the 2015 Regulations. He contended that by virtue of Clause 5.3.3 of the 2015 Regulations, an applicant who has purchased an existing property whose electricity connection has been disconnected, has to submit the "No Dues Certificate" along with application for supply of electricity connection. He submitted that an application form submitted without the No Dues Certificate as contemplated under Clause 5.3.3 cannot be said to be an application form to be complete in all respects in the appropriate format. He contended that the duty of the distribution licensee to supply electricity to a premise shall arise only upon an application form complete in all respects in the appropriate format is submitted. He contended that since the application submitted by the respondents herein cannot be said to be completed in all respects as the "no dues certificate" was not submitted along with the application form, no mandamus directing supply of electricity to the respondents could have been issued as there was no statutory obligation of the

Distribution Licensee to supply electricity to the respondents on the basis of an incomplete application. By placing reliance upon a decision of the Hon'ble Supreme Court in the case of ***K.C. Ninan vs. Kerala Electricity Board and Ors.*** reported at ***2023 SCC Online SC 663***, Mr. Mukherjee contended that the 2003 Act has been enacted to promote development of electricity industry as well as to protect the interests of the consumers and to ensure the supply of electricity to all areas. He further submitted that Clause 5.3.3 of the 2015 Regulations providing for obtaining "No Dues Certificate" is in furtherance of the object of the 2003 Act. He contended that the learned Single Judge failed to take note of the object of the 2003 Act while holding that Clause 5.3.3 is directory. He submitted that Clause 5.3.3 is to be considered strictly to achieve the aim and object of the 2003 Act as held by the Hon'ble Single Judge of the Jharkhand High Court in the case of ***Om Prakash Garg Vs. Jharkhand Vijli Vitran Nigam Limited through its Chairman and Ors.*** reported at ***2019 SCC OnLine Jhar 1218***, Mr. Mukherjee, in his usual fairness, submitted that the Hon'ble Division Bench in the case of ***Om Prakash Garg Vs. Jharkhand Bijli Vitran Nigam Limited through its Chairman, Ranchi*** in ***LPA No. 748 of 2019*** was pleased not to interfere with the interpretation of Clause 5.3.3 but the judgment of the learned Single Judge was set aside only on the ground that the said Clause 5.3.3 did not have retrospective effect. Mr. Mukherjee concluded by submitting that Clauses 5.3.3 and 6.10 of the 2015 Regulations operate at different stages as Clauses 5.3.3 comes into play at the stage of filing of the application and Clause 6.10 gets attracted at the stage of verification of such application.

7. Mr. Mitra, learned Senior Counsel for the respondents seriously disputed the submissions of Mr. Mukherjee. He submitted that DVC did not take any steps to collect the dues of the erstwhile consumer from 2010. By placing reliance on Clause 10.15 of the 2015 Regulations which deals with recovery of arrears, Mr. Mitra contended that the amount demanded from the respondents have become barred by limitation and, therefore, cannot be realised from the respondents. Mr. Mitra submitted that DVC having proceeded to process the

application for electricity connection of the respondents, cannot take the plea that the said application was not complete for non submission of "No Dues Certificate" at this stage.

8. Mr. Mitra contended that arrear electricity dues of the erstwhile consumer can be demanded from the transferee only if nexus is established. He submitted that the arrear electricity dues of the previous owner/occupier can be recovered from a purchaser only if the statutory rules or the terms and conditions of supply authorise the supplier of electricity to demand from the purchaser of the premises such arrears due. In support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of ***Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa (NESCO) & Anr. Vs Raghunath Paper Mills Private Limited & Anr.*** reported at ***(2012) 13 SCC 479*** and ***Telangana State Southern Power Distribution Company Limited & Anr. Vs. Srigdhaa Beverages*** reported at ***(2020) 6 SCC 404***. He further contended that the observation of the learned Single Judge of the Jharkhand High Court cannot be relied upon as the said decision has been set aside by the Hon'ble Division Bench.

9. In reply Mr. Mukherjee contended that Clause 10.15 is reproduction of Section 56(2) of the 2003 Act. He submitted that Section 56 deals with disconnection of supply and as to the starting point of limitation, Mr. Mukherjee placed reliance upon a decision of the Hon'ble Supreme Court in the case of ***Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. Vs. Rahamatullah Khan alias Rahamjulla*** reported at ***(2020) 4 SCC 650***.

10. Heard the learned Counsels for the parties and perused the materials placed.

11. The respondents submitted an application for new HT Power Connection dated 27/28.09.2022 from DVC. Immediately thereafter DVC issued a letter dated 29.11.2022 to the respondents requesting the respondents to make payments of the amounts indicated in the said letter which are outstanding dues in respect of M/s Biswanath Ferro Alloys prior to initiation of the power supply connection process. M/s Biswanath Ferro Alloys was the erstwhile consumer in respect of the said premises and the respondents have purchased the said

premises from M/s Biswanath Ferro Alloys by virtue of four registered deeds of sale for valuable consideration.

12. The respondents have alleged the demand raised by DVC vide letter dated November 29, 2022 to be illegal, unjustified and arbitrary and approached the Writ Court for quashing of the said demand and sought for a mandamus commanding DVC to give new electricity connection at the said premises.
13. The issue that falls for consideration in this appeal is whether DVC can recover arrears of electricity dues of the previous owner of the premises from the purchaser of such premises.
14. For the purpose of deciding the aforesaid issue it would be beneficial to recapitulate some of the provisions of the 2003 Act which are extracted hereinafter.

> ***"43**. **Duty to supply on request**.- (1) Save as otherwise Provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*
>
> *Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:*
>
> *Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.*
>
> *[**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]"*

> *"**50**. **The Electricity Supply Code**.–The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply*

*and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters."*

*"**181**. **Powers of State Commissions to make regulations**.-1) The State Commissions may, by notification, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.*
*(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:*

*(a)* ***********

*:*

*(x) electricity supply code under section 50;*

*:*
*(zh)* ******** "

15. In exercise of the power conferred by Clause (x) of Subsection (2) of Section 181 read with Section 50 of the Electricity Act, 2003, the Jharkhand State Electricity Regulatory Commission, Ranchi (for short "the Commission") framed (Electricity Supply Code) Regulations 2015 (for short "the 2015 Regulations"). Clauses 5.3.3 and 6.10 of the 2015 Regulations will be relevant for the purpose of deciding the aforesaid issue for which those are extracted hereinafter.

"**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 owners has paid all dues to the Distribution Licensee and obtain 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 the 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 view, new connection to the premises shall not be denied on grounds of outstanding dues of the previous consumers. 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, ahs any arrears of electricity dues or other dues for the premises where 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 or 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."*

16. In ***K.C. Ninan*** (supra), three Hon'ble Judges of the Supreme Court reiterated the observations of its Constitution Bench in ***PTC India Ltd. vs. Central Electricity Regulatory Commission*** reported at ***(2010) 4 SCC 603*** that holistic reading of the 2003 Act leads to the conclusion that regulations can be made so long as two conditions are satisfied, namely, that they are consistent with the Act and that they are made for carrying out the provisions of the Act.
17. The Hon'ble Supreme Court further observed that the regulatory power of the State Commission also extend to stipulating conditions for recovery of electricity arrears of previous owners from new or subsequent owners.
18. In paragraph 91 of ***K.C. Ninan*** (supra), the Hon'ble Supreme Court succinctly stated as to what is the object of the 2003 Act. The said paragraph is extracted hereinafter.

*"91. The 2003 Act has been enacted to promote the development of the electricity industry as well as to protect the interests of the consumers and to ensure the supply of electricity to all areas. The Supply Conditions providing for recoupment of electricity dues of a previous consumer from a new owner are necessary to recover the costs incurred for laying down the infrastructure as well as the ongoing current liabilities towards the electricity generation and transmission companies. In the absence of such conditions, it may be difficult for the distribution licensees to recover defaulted payments, adding to the revenue deficits. This may adversely impact the financial health of the distribution licensees to the detriment of the interests of the consumers.*

19. As observed in ***K.C. Ninan*** (supra), the object of the 2003 Act is to promote the development of the electricity industry as well as to protect the interests of the consumers as rightly argued by Mr. Mukherjee.

20. On the issue as to whether a regulations providing for recouping the arrears of a previous consumer from the subsequent owner has a reasonable nexus with the provisions of the 2003 Act, the Hon'ble Supreme Court in ***K.C. Ninan*** (supra) after noting its decision in the case of ***Paschimanchal Vidyut Vitran Nigam Limited vs. DVS Steels and Alloys Private Limited*** reported at ***(2009) 1 SCC 210*** held that the conditions of supply and Electricity Code which require the payment of electricity dues of a previous owner as a condition for the grant of an electricity connection have a clear nexus to the scheme of the parent legislations and the objectives sought to be achieved.

21. On the issue as to whether arrears of electricity can become a charge or encumbrance over the premises, the Hon'ble Supreme Court in ***K.C. Ninan*** (supra) noted the definition of charges as defined under Section 100 of the Transfer of Property Act, 1882, the meaning of "encumbrance" as well as several decisions of the said issue. The Hon'ble Supreme Court in paragraph 104 of the reports noted that the provisions of the 1910 Act, 1948 Act and the 2003 Act do not provide that the arrears of electricity dues would constitute a charge on the property or that such a charge shall be enforceable against a transferee without notice and reiterated that arrears of electricity cannot become a charge or encumbrance over the premises in the absence of an express provision of law in the 1910 Act, 1948 Act or the 2003 Act.

22. In paragraph 107 of ***K.C.Ninan*** (supra), the Hon'ble Supreme Court reiterated its observation in ***Paschimanchal Vidyut Vitran Nigam*** (supra) wherein it was held that in the absence of a contract to the contrary, the amount payable towards supply of electricity does not constitute a charge on the premises. The Hon'ble Supreme Court held thus-

> *"107. Consequently, in general law, a transferee of the premises cannot be made liable for the outstanding dues of the previous owner since electricity arrears do not automatically become a charge over the premises. Such an action is permissible only where the statutory conditions of supply authorise the recovery of outstanding*

*electricity dues from a subsequent purchaser claiming fresh connection of electricity, or if there is an express provision of law providing for creation of a statutory charge upon the transferee."*

23. The Hon'ble Supreme Court thereafter dealt with the issue whether an electricity charge can be introduced by way of statutory regulations or rules enacted by a regulatory commission under its rule making power in the 2003 Act. In paragraph 117 of the said reports, the Hon'ble Supreme Court opined that the electricity utilities can create a charge by framing subordinate legislation or statutory conditions of supply enabling recovery of electricity arrears from a subsequent transferee.
24. From the aforesaid discussion, this Court holds that the supplier of electricity can provide for recovery of electricity arrears of a previous consumer from the new owner of the premises and they can create a charge by framing regulations enabling recovery of electricity arrears from a purchaser of the premises.
25. Turning back to the case on hand, this Court finds that Clause 5.3 deals with conditions for grant of connection. Clause 5.3.3 comes into play in case of purchase of an existing property. The said Clause casts a duty upon the applicant to verify that the previous owner has paid all the dues to the Distribution Company and obtained a no-dues-certificate. It proceeds to state that in case the "No Dues Certificate" has not been obtained by the previous owner before change in ownership of the property, the new owner may approach the Distribution License for such a certificate.
26. The respondent seeks to justify its conduct for not obtaining the "No Dues Certificate" as contemplated under Clause 5.3.3 by making a statement in the writ petition that they have purchased the said premises on the representation of the said M/s Biswanath Ferro Alloys that there was no outstanding dues of M/s Biswanath Ferro Alloys in respect of the said premises and that if any outstanding dues would be discovered later, the same would be borne by the erstwhile consumer. Such a stand being a factual one, this Court cannot adjudicate the same in an intra court appeal arising out of a writ petition which was decided without exchange of affidavits. Moreover the erstwhile consumer is also not a party to this proceeding.

27. The question would be as to what is the effect of non-submission of the "No Dues Certificate".

28. By referring to the prescribed format of the application form, more particularly Clauses 22, 23 and 24, Mr. Mukherjee would contend that at the time of applying for new electricity connection, the applicant has to submit documents as to whether any electricity dues is outstanding in the consumer's name, the premises for which connection is applied for and also whether there is any electricity dues outstanding with the distribution licensee against any firm with which the consumer is associated as an owner, partner, director or managing director. Mr. Mukherjee would thus submit that an applicant for new electricity connection is under an obligation to obtain no dues certificate and submit the same along with the application form. He would contend that the duty to supply electricity connection would arise only upon submission of no dues certificate along with the said application.

29. Upon reading Clause 5.3.3, this Court finds that it is the primary obligation of the previous owner to obtain no dues certificate from the distribution licensee. The said Clause also gives an option to the new owner to approach the Distribution Licensee for such Certificate and if upon such an approach being made, the Distribution Licensee fails to honour such request, the Distribution Licensee shall have to recover the dues from the previous consumer as per provision of law. Either Clause 5.3.3 or any other Clause in the 2015 Regulations do not provide for any consequences prejudicial to the applicant/subsequent transferee for non-submission of the no dues certificate along with application.

30. Clause 6.10 mandates the distribution licensee to verify that there is no outstanding due in the applicant's name or for the premises for which the new connection is applied for. The question of inspection arises only if the application for new electricity connection is processed. The mandate under Clause 6.10 to verify about the outstanding dues during the inspection is irrespective of the fact whether no dues certificate has been obtained or not. There may be circumstances for which the subsequent transferee may not

exercise the option for obtaining No Dues Certificate from the Distribution Licensee. Even if such option is not exercised, the Distribution Licensee is under an obligation under Clause 6.10 to verify as to whether there is any outstanding dues. Though the prescribed format stipulates that "No Dues Certificate" is to be submitted, to the mind of this Court, the same cannot be said to be a mandatory requirement. The purpose of Clause 5.3.3 as well as Clauses 22, 23 and 24 of the said application is for disclosure of facts with regard to arrear electricity charges in respect of any erstwhile consumer and the premises.

31. The object of the 2003 Act is also to protect the interests of the consumers. A subsequent purchaser of premises for value cannot be penalised for the failure on the part of its vendor to perform his obligation under Clause 5.3.3. The expression "may" used in the second limb of the said Clause makes the said Clause directory. For all the above reasons, this Court is of the considered view that the learned Single Judge was right in holding that the provision laid down in Clause 5.3.3 requiring obtaining a no dues certificate is directory and not mandatory.

32. This Court further holds that non submission of "No Dues Certificate" along with the application requesting supply of electricity connection cannot preclude the Distribution Licensee from recovering the arrear electricity dues from the subsequent transferee in case nexus as contemplated under clause 6.10 is established.

33. The action of distribution licensee suggests that the Clause 5.3.3 was also not considered to be mandatory by the distribution licensee as record reveals that the application for new electricity connection submitted by the respondents herein was processed and a feasibilty survey was conducted and the respondents were directed to pay the estimated survey charge and GST. The respondents were also directed to clear the outstanding dues of the erstwhile consumer in respect of the said premises. It is too late in the day for DVC to now contend that no mandamus can be issued in the case on hand as the

application submitted by the respondents for new electricity connection was incomplete as it did not contain the no dues certificate.

34. This Court finds that Clause 6.10 of the 2015 Regulations states 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 or 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 electricity line in the same disconnected premises, then 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 premise and he shall not be held liable to pay/discharge the liability of the previous consumer for securing a fresh connection.

35. This Court, therefore, holds that Clause 6.10 of the 2015 Regulations creates a charge and permits recovery of arrear electricity dues of the previous owner/occupier from the subsequent transferee only if the subsequent purchaser has nexus with the previous owner/occupant in any manner or if he was associated either as a partner, director or managing director in respect of earlier agreement executed in his name or in the name of a firm or a company. In other words, if the nexus is not established, the subsequent transferee cannot be fastened with the liability of the previous owner/erstwhile consumer in respect of arrear electricity dues.

36. The learned Single Judge rightly observed that the mere fact that the writ petitioners/respondents acquired the property by direct purchase through four sale deeds from the erstwhile consumer does not establish nexus of the purchaser and it is for the licensee to plead and prove such nexus, if any. It is not the case of the licensee that there is/was a nexus between the erstwhile consumer and the present owner in order to attract Clause 6.10.

37. This Court, therefore, holds that only if the nexus as contemplated under Clause 6.10 of the 2015 Regulations is established the distribution licensee

can recover arrear electricity dues of the erstwhile consumer from the subsequent transferee.

38. Our view is also supported by the decision of the Hon'ble Division Bench of the Jharkhand High Court in ***Om Prakash Garg*** (supra) wherein it was observed that fresh connection could be denied to a purchaser on the ground of nexus.

39. Therefore, DVC can recover arrear electricity dues of the erstwhile consumer from the purchaser of the premises, if nexus is established. The issue is answered accordingly.

40. In ***Raghunath Paper Mills*** (supra) the respondents herein purchased the property in auction sale. The issue that fell for consideration was whether a company which purchased the property of another company under liquidation through auction, is liable to pay the arrears of electricity dues outstanding against the erstwhile company. Sub-clause 10(b) of Regulation 13 of the Electricity Supply Code states that the service connection from the name of a person to the name of another consumer shall not be transferred unless the arrear charges pending against the previous occupier are paid. It was held in the said reported decision that the aforesaid clause applies to a request for transfer of service connection but not to a fresh connection. The Hon'ble Supreme Court after noting that the auction purchaser therein made a request for a fresh connection and not for the transfer of service connection from the previous owner, the auction purchaser is not liable to pay the arrears of electricity dues outstanding against the erstwhile company.

41. In ***Telangana State Southern Power Distribution Company Limited*** (supra) the auction purchaser applied for supply of new electricity connection. The point of law that fell for consideration therein was whether the liability towards the previous electricity dues of the last owner could be mulled on to the auction purchaser. The Hon'ble Supreme Court after noting the provisions of the general terms and conditions of supply of distribution and retail supply licensee for A.P more particularly Clause 8.4 thereof which deals with transfer of service connection held that electricity dues, where they are statutory in character under the Electricity Act and as per the terms and conditions of

supply, cannot be waived. In Clause 8.4 of the said general terms and conditions of supply it was specifically stated that if the seller did not clear the dues before selling such property, the distribution licensee may refuse to supply electricity to the premises through already existing connection or refuse to give a new connection to the premises till all dues to the company are cleared. The Hon'ble Supreme Court held that the outstanding electricity dues partake the character of statutory dues under the Electricity Act, 2003 read with the general terms and conditions of the State of Andhra Pradesh. The Hon'ble Supreme Court observed that if the e-auction notice states electricity dues as a liability of the purchaser and the sale is an "as is where is", whatever there is and without recourse basis, "the liability to pay electricity dues is upon the purchaser. The said decision being distinguishable on facts cannot be applied to the case on hand.

42. Mr. Mitra, learned Senior Counsel for the respondents challenged the authority of DVC to recover arrear electricity dues which, according to him have become time barred in view of Clause 10.15 of the 2015 Regulations. Mr. Mitra would contend that the DVC having slept over their rights to recover the electricity dues from the erstwhile consumer and allowed the electricity dues to have become time barred cannot be allowed to recover the same from the subsequent purchaser/respondents herein as that would amount to permitting an action being taken in an indirect manner which cannot be done directly.

43. In response to such contention, Mr. Mukherjee would contend that Clause 10.15 of the 2015 Regulations is nothing but the reproduction of Section 56(2) of the 2003 Act and reiterated the proposition of law laid down in **K.C. Ninan** (supra) wherein it was held that the bar of limitation under Section 56(2) restricts the remedy of disconnection under Section 56 and the licensee is entitled to recover electricity arrears through civil remedies or in exercise of its statutory power under the conditions of supply.

44. In ***Rahamatullah Khan*** (supra), it was held that Section 56(2) did not preclude the licensee company from raising an additional or supplementary

demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or *bona fide* error.

45. Since challenge in this writ petition is with regard to the demand raised against the respondents herein as a condition precedent for initiation of the power supply connection process and in view of the findings recorded hereinbefore and more particularly the fact that the erstwhile consumer is also not a party to this proceeding, this Court refrains from making any observation on the issue as to whether the claim for arrear electricity dues have become time barred and the applicability of the decisions cited at the Bar on such issue. The said issue is, thus, left open.

46. For the reasons as aforesaid, this Court is not inclined to interfere with the judgment and order passed by the learned Single Judge. Accordingly, the appeal stands dismissed. Consequently, the application stands disposed of. There shall be, however, no order as to costs.

47. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

**I agree.**

**(T.S. Sivagnanam, CJ.)** **(Hiranmay Bhattacharyya, J.)**

(P.A – Sanchita, Rinki)