



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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CWP-32877-2019

Date of Decision: 23.07.2024

SANTOSH KUMARI

..... Petitioner

VERSUS

PUNJAB STATE POWER CORPORATION LIMITED AND OTHERS

... Respondents

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

Present: Mr. D.V.Sharma, Senior Advocate with
Ms. Shivani Sharma, Advocate and
Ms. Sunder Kumari, Advocate
for the petitioner.

Mr. Alok Mittal, Advocate with
Mr. Sylvester, Advocate for respondents No.1 to 4.

VINOD S. BHARDWAJ, J. (ORAL)

The present writ petition has been filed challenging the permanent disconnection of the electricity connection bearing Account No. SP58/0017 vide Memo No. 373 dated 26.06.2019 and for seeking issuance of direction to the respondents to restore the electricity connection forthwith.

2. Learned Senior Counsel appearing on behalf of the petitioner contends that Madan Lal son of Shri Kirpa Ram- father of the petitioner, had taken a plot measuring 18 Marlas approximately in Nakodar, District Jalandhar on rent on 21.11.1951 by way of a registered rent note, for a period of 10 years from Shri Dharam Nath Swami, Jain Mandir Trust,

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Nakodar. As per the terms and conditions of the rent note, late Madan Lal-father of the petitioner was to construct a building thereon at his own expenses for running an atta chakki. Despite expiry of the lease deed on 21.11.1961, Madan Lal kept occupying the premises and continued to pay the rent. The same was also accepted by the landlord –Murti Shri Dharam Nath Swami Jain Mandir, Nakodar. Hence, the petitioner continued as a tenant holding over, in view of the provisions of Section 116 of the Transfer of Property Act, 1882. He submits that Madan Lal-father of the petitioner had applied for an electric connection and one S.P. electric connection of 11.350 kw bearing Account No. SP58/0017N (New Number 3001402098) was installed in the premises for running the Atta Chakki and Cotton Cinnamon Machine. There had been no default in payment of the consumption charges by the father of the petitioner who unfortunately expired on 05.07.2002. Petitioner being the only daughter of late Madan Lal, inherited the tenancy and stepped into the shoes of her late father. She had since then been looking after the said Atta Chakki and operating the same under the name and style of ‘Madan Atta Chakki’, alongwith other properties left by her late father and had been using the electricity connection. She also never committed any default in paying the electricity bills. It is contended that a communication dated 21.05.2018 was sent by the Assistant Engineer, Distribution, City Sub Division, Nakodar conveying that the landlord Murti Shri Dharam Nath Swami Jain Mandir, Nakodar had not extended the lease period and that

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fresh lease documents ought to be produced before the Electricity Department, failing which the electricity supply shall be disconnected.

3. Response to the above said letter was sent by the petitioner giving details about the petitioner being in possession as also seeking the copy of the complaint sent by the said Sabha. It was pointed out that the petitioner cannot be deemed to be in an illegal occupation of the premises and that no order of ejectment had been passed by the competent Court. Hence, the electricity supply could not be disconnected and that any such act would be an abuse of the process of law and amount to forcible eviction of the petitioner from the said premises in a clandestine manner by disconnecting the amenities.

4. Notwithstanding the said reply submitted by the petitioner, another communication No. 450 dated 31.07.2018 was sent by the respondent-PSPCL reiterating the same aspects to which reply was sent again by the petitioner on 31.07.2018. Thereafter, a subsequent Memo No. 790/950 dated 14.12.2018 (Annexure P-9) was served upon the petitioner for directing installation of the kvah compliant energy meter. Counsel contends that the said meter has also been installed in the premises and the contract demand has also been enhanced.

5. Later, letter No. 29 dated 10.01.2019 was served upon the petitioner pointing out that the electricity connection is running in the name of late Madan Lal and that in view of the instructions issued by the respondent-Distribution Licensee, the connection is required to be transferred

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in the name of the living consumer. The petitioner was directed to seek a transfer of the above said connection. Since the petitioner apprehended an illegal disconnection of the electricity supply, Civil Suit No. C.S. No. 61-2019 for permanent injunction was filed by her.

6. Despite knowing about the pendency of the Suit, the respondents disconnected the electricity connection temporarily vide Memo No. 151 dated 16.03.2019. A letter was sent immediately on 17.03.2019, by the petitioner, apprising the respondent-Distribution Licensee that on account of the sentiments attached with her, she did not want to get the connection to be changed in her name.

7. No reply to the above Civil Suit was however filed by the respondent-distribution licensee although the electricity supply was permanently disconnected on 18.04.2019 without any notice. An application for seeking amendment of the Civil Suit under Order 6 Rule 17, was accordingly filed by the petitioner for which notice was served upon the respondents. A Civil Revision No. 3452 of 2019 titled as "*Santosh Kumari versus Sub Divisional Officer and others*" was also filed by the petitioner for seeking interim indulgence for release of the electricity connection. The said Civil Revision was got dismissed as withdrawn as the application for immediately taking up the suit had not been filed by the petitioner before the Civil Court.

8. On legal advice and noticing a formal defect in the suit, a fresh suit was filed on 17.06.2019 raising a challenge to the order of disconnection

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dated 16.03.2019 and for a mandatory injunction directing the respondents to restore the supply. Earlier Civil Suit No. 61 of 2019 was thereafter withdrawn on 01.07.2019.

9. The petitioner had however also sought for transfer of the electricity connection in her name, in view of the communication dated 10.01.2019 sent by the respondents, which was duly received by the respondent-PSPCL on 20.06.2019 to comply with the requirement. Without giving any intimation to the petitioner about the status of the said application, a communication dated 26.06.2019 was sent by the respondents informing the petitioner that the connection had been permanently disconnected on 18.04.2019.

10. A written statement was thereafter filed by the respondent-distribution licensee in the subsequent Civil Suit as well intimating about the permanent disconnection. As a result thereof the said Civil Suit also became infructuous and the same was dismissed as withdrawn vide order dated 15.10.2019. The petitioner thus thereafter approached this Court for seeking setting aside of the communication dated 26.06.2019 alongwith permanent disconnection of the electricity supply to the premises of the petitioner vide Note dated 18.04.2019. The writ petition came up for preliminary hearing on 14.11.2019 when the following order was passed.

Notice of motion, returnable on 24.02.2020.

In the meanwhile, there shall be a direction to respondent Nos.1 and 3 to take necessary steps for



restoring power supply to the petitioner, after completion of formalities with regard to the transfer of the electricity connection as per due procedure, subject to payment of arrears by the petitioner, if any, and without reference to any dispute that the petitioner may have with her landlord.

11. Learned Senior Counsel contends that the respondents have thereafter restored the electricity supply and have also transferred the electricity connection in the name of the petitioner and further that the load has also been enhanced. He further submits that all statutory dues and admissible charges have been duly deposited by the petitioner and she is not in default of any dues payable to the respondents.

12. Learned Counsel for the respondent-Distribution Licensee, however, has placed reliance on the averments contained in the written statement. The relevant extract thereof reads thus :-

“9. That in reply to the contents of para 9 of the writ petition it is submitted that the On 04.05.2018, a letter was received from the President of Sh. Atma Nand Jain Sabha, Nakodar, requesting to permanently disconnect A/C No. SP58/17 of Sh. Madan Lal, father of the petitioner herein, on the ground that the place where A/C No. SP58/17 of Sh. Madan Lal is running was formed on the basis of a lease deed between Jain Sabha & Sh. Madan Lal, which stood expired after the death of Sh. Madan Lal S/o Kirpa Ram and that after the death of Sh. Madan Lal some unauthorized people are using the above connection In Letter it was mentioned that the place



where madan atta chakki is installed is the property of Murti sh. Dharam Nath swami jain mandir. That in response to the above mentioned letter this office vide Letter no.276, dated 07.05.2018 sought further clarification on the issue and asked the President of Jain Sabha Sh. Atma Nand Jain to provide for Attested copy of Fard of the Jain Mandir Property from Revenue Department and the Lease Deed which had taken place between Jain Sabha & Sh. Madan Lal regarding the place where Atta Chakki Installed. That President of Jain Sabha, Nakodar, submitted above mentioned documents in this office on 15.05.2018. Thereafter, which that letter dated 21.05.2018 was issued to by the Respondent Corporation.

Xxx xxx xxx xxx xxx xxx xxx

12. That is reply to the present paragraph it is submitted that the reply of the petitioner given in response to letter dated 21.05.2018 was duly considered, and thereafter the petitioner was asked the petitioner to apply for a change of name of the connection and obtain extension of the lease deed as a valid proof of ownership or occupation of a premises was mandatory for an electricity connection. The relevant provisions in this regards are reproduce as follows for a ready reference:

"11.6 Procedure for Change of Title or Transfer of Agreement

11.6.1 A consumer shall not, without the consent in writing of the distribution licensee, assign, transfer or part with the benefit of the agreement for obtaining a



connection. The consumer shall also not in any manner part with or create any partial or separate interest except in the event of:-

(a) Change in partnership,

(after supplying a certified copy of the new partnership deed and execution of a new agreement).

b) Change in the name of a company,

(after supplying a certified copy of the new Memorandum of Association/Articles of Association along with supporting documents and execution of a new agreement).

11.6.2 A consumer may transfer the connection and its liabilities to any other person with the consent of the distribution licensee. After obtaining such consent the transferee shall execute a new agreement on the A&A form and shall deposit the Security (consumption) and Security (meter) at the prevalent rates after accounting for the Security (consumption) and Security (meter) already deposited by the previous consumer with his consent. The new consumer shall also undertake to pay/bear the current and past outstanding liabilities of the old consumer or those detected in the future.

11.6.3 (a) In the event of death of a consumer (except AP supply), the heirs may apply for the connection to be transferred in the name of one of the heirs. The application (A&A form) shall be accompanied by the following documents: (i) Death certificate

(ii) Succession certificate.

(iii) No objection from other heirs for transferring the connection in the name of one of the heirs.



(iv) In the absence of documents at (i) and (ii) above, all the heirs may submit an affidavit duly attested by a Magistrate confirming the death of the consumer, identification of the legal heirs and their consent to the connection being transferred in the name of a particular heir (v) The distribution licensee shall on the submission of above documents, transfer the connection subject to the condition that charges payable as indicated in the Schedule of General Charges approved by the Commission and the actual cost of providing service where such charges have not been specified, have been deposited by the transferee. The transferee shall also be eligible to get the connection shifted after depositing the specified charges and completion of other formalities

(b) In the event of death of an AP supply consumer, the heir(s) may apply for the connection to be transferred in the name of one or more of the heirs. The application (A&A form) shall be accompanied by the following documents:

(i) Death certificate

(ii) Succession certificate. Alternatively SajjraNasad certified by the revenue officers shall also be acceptable in place of succession certificate. The officer of the distribution licensee shall issue a notice to arrange for a gathering of the villagers of the concerned village for seeking objections from all claimants/legal heirs of the deceased consumer as appearing in Sara Nasad. The certification on plain paper regarding the death of the consumer by his/her legal heirs/claimants duly authenticated by Gram Panchayat/Nambadar will be



prepared in front of villagers and there will be no need of an affidavit. The distribution licensee shall on the basis of certification, transfer the connection in the name of the legal heir(s) subject to payment of charges as per Schedule of General Charges.

(iii) No objection from other the heirs for transferring the connection in the name of one or more of the heirs.

(iv) Authorization from all the heirs to appoint one of the heirs as 'principal heir to represent all of them for signing A & A form, payment of charges/dues and other matters relating to the electricity supply to the tubewell connection.

(v) In the absence of documents at (i) and (ii) above, all the heirs may submit an affidavit duly attested by a Magistrate confirming the death of the consumer, identification of the legal heirs and their consent to the connection being transferred in the name of heir(s).

(vi) The distribution licensee shall on the submission of above documents, transfer the AP supply connection subject to the condition that charges payable as indicated in the Schedule of General Charges approved by the Commission and the actual cost of providing service where such charges have not been specified, have been deposited by the transferee(s). The transferee(s) shall also be eligible to get the connection shifted after depositing the specified charges and completion of other formalities. Provided that in case of shifting of jointly owned AP supply connection, the 'principal heir' shall not be allowed to get the connection shifted unless NoC from all the legal heir(s) is obtained.



(c) In case the transfer of the connection is not obtained within 6 months of the death of a consumer and later on the same is detected by distribution licensee, a notice shall be issued by the distribution licensee requiring that any of the heirs should submit an application for transfer of the connection within 30 days of the service of notice. The connection is liable to be disconnected in case no application is submitted to the distribution licensee within the period indicated in the notice.

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6.4.3 The conditions for registration of A&A form shall be as under:-

(a) XXX

(b) Proof of Ownership/Occupancy of Premises:

The applicant shall submit proof of ownership/occupation of the premises for which the connection is applied. Any of the following documents shall be acceptable as proof of ownership or occupancy of premises:-

(i) Copy of sale deed or lease deed or rent deed and in the case of agricultural connections a copy of khasra / girdawari/jamabandi/fard of the land;

(ii)..."

Xx xxx xxx xxx xxx xxx xxx xxx xxx

24. That That the contents of the present paragraph are denied for want of knowledge. It is however submitted that as per the Supply Code of 2014, in a case if the transfer of connection is not sought within 6 months of the death of the consumer, the connection is liable to be disconnected.

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13. I have heard learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

14. The factual aspects as regards the father of the petitioner being a tenant of the premises and the petitioner being a tenant holding over is not a subject matter of dispute. There is also nothing on record as would suggest that any competent Court has passed any order of eviction of the petitioner from the said premises. None of the notices issued by the respondents or any communication generated at their end also does not allege that the petitioner has been in any failure or in default of payment of any statutory dues.

15. The process of disconnection of the electricity supply was initially undertaken on account of non-renewal of the lease and subsequently on account of the electricity connection not being transferred in the name of the petitioner, after demise of her father Madan Lal. So far as the aspect of the non-production of lease agreement as renewed by the landlord Shri Atma Nand Jain Sabha is concerned, the same has not actually being made the foundation for causing an order of permanent disconnection and rather, the disconnection had been carried out on account of the electricity connection having not been transferred in the name of the petitioner. Even in the reply filed before this Court, reliance has been placed on Clause 11.6 which relates to procedure for change of title and transfer of agreement.

16. The electricity connection as per the claim made by the petitioner has already been released currently in favour of the petitioner and

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as such, the requirements prescribed for seeking transfer of the electricity connection already stand fulfilled. Even subsequently, the load has been enhanced. The objection thus raised for carrying out disconnection of the electricity exists no further and the foundation for carrying out the permanent disconnection ceases to exit.

17. In view of the aforesaid undisputed position, the order dated 14.11.2019 passed by this Court is made absolute. The writ petition is accordingly allowed.

JULY 23, 2024*Vishal sharma***(VINOD S. BHARDWAJ)
JUDGE**

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