

Smt. Asha Devi Vs. B.S.E.B. and ors.

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Court : Patna

Decided On : Feb-12-2002

Judge : R.S. Garg, J.

Acts : [Constitution of India](#) - Article 226; [Electricity Act, 1910](#) - Sections 22 and 24

Appeal No. : C.W.J.C. No. 105 of 2000

Appellant : Smt. Asha Devi

Respondent : B.S.E.B. and ors.

Advocate for Def. : Mihir Kumar Jha, Adv.

Advocate for Pet/Ap. : Ajay Prasad and Raj Shekhar, Advs.

Disposition : Petition dismissed

Prior history : R.S. Garg, J. 1. Heard learned counsel for the parties. 2. The petitioner, an aspirant of a new electric connection, made an application to the State Electricity Board for supply of the energy, but as the State Electricity Board did not act favourably the petitioner came to this Court in C.W.J.C. No. 4124 of 1999. By order dated 16-7-99 the said petition was disposed of with the direction that the petitioner may file a representation before the respondent No. 2, the said respondent No. 2 shal

Judgement :

R.S. Garg, J.

1. Heard learned counsel for the parties.

2. The petitioner, an aspirant of a new electric connection, made an application to the State Electricity Board for supply of the energy, but as the State Electricity Board did not act favourably the petitioner came to this Court in C.W.J.C. No. 4124 of 1999. By order dated 16-7-99 the said petition was disposed of with the direction that the petitioner may file a representation before the respondent No. 2, the said respondent No. 2 shall consider the grievances of the petitioner and dispose of the said representation within two weeks by a reasoned order in accordance with law. It appears that thereafter the petitioner made some representations to the State Electricity Board. The petitioner has again come to this Court in the present writ petition making a complaint that though the Executive Engineer issued a demand notice for providing a fresh connection, received the money from the petitioner but was not issuing the new connection to the present petitioner. In the petition the submission is that the State Electricity Board be required to issue new electric connection in the name of the petitioner.

3. In the counter filed by the State Electricity Board, in paragraph 6 of the same, it is clearly mentioned that the earlier dues were against the husband of the present petitioner and the State Electricity Board cannot be compelled to grant new connection to the wife. Placing reliance upon Annexure-A annexed to the counter, it is submitted that the representation was decided by the Electrical Superintending Engineer and he had issued necessary orders.

4. Learned counsel for the petitioner submits that the earlier dues were against a 3rd party and as the dues cannot be recovered from the petitioner, which is a different legal entity, the Electricity Board is not entitled to reject the petitioner's application. It is further contended that after receiving the money for grant of the new electric connection, the respondent-Board cannot take somersault and refuse the grant.

5. Learned counsel for the State Electricity Board submitted that the present is not a case where the earlier defaulter is absolute stranger to the present petitioner, so

also the petitioner is proposing to run the very same industry/business which was being run by her husband in the demised premises.

6. To counter this argument, it is submitted by the petitioner that the petitioner's husband had taken a particular chunk of land on lease from the joint owners of the property and after the partition was effected between the four brothers, one of the owners has now leased out the same property to the present petitioner, therefore, the property has changed the character as the owner is not the same and as the petitioner cannot be asked to make the deposits of the dues standing against her husband, the Board is duty-bound to provide electric connection.

7. Learned counsel for the petitioner has placed his very strong reliance on a judgment of the Supreme Court in the matter of Isha Marbles v. The Bihar State Electricity Board, reported in 1995 (2) SCC 648, to contend, that the public property must be saved. but the public authority cannot be allowed to coerce a 3rd party to make payment of the dues, which the said party is not liable to pay. According to him the dues are against the husband and are not charge on the property, the State Electricity Board is obliged and duty-bound to provide the new connection.

8. Learned counsel for the State Electricity Board also placed reliance upon the very same judgment to contend that if the dues are against an absolute stranger, then the Board cannot recover the dues from the aspirant, but if a new entity has not come into light and there is direct nexus between the erstwhile consumer and the proposed consumer, then the Court should not exercise its discretion in favour of the proposed consumer.

9. Paragraph 63 of the said judgment which is reproduced below is material for the purpose of this petition. The Supreme Court observed that dishonest consumer cannot be allowed to play truant with the public property, but inadequacy of the law ' can hardly be a substitute for other zeal-ousness. In the said matter when the matter of M/s. Waxpol came up for consideration Before the Supreme Court, finding that the erstwhile Directors were relations of the present Directors, the Supreme Court in paragraph 64 of the judgment observed that 'factually, it appears that there is no new entity hence in this case M/s. New Chemicals and

Model Production Private Limited would be liable for the past dues.' From the said observations of the Supreme Court, it would clearly appear that if no new entity comes into existence, then the proposed consumer shall be duty-bound to discharge past arrears. Undisputedly in the present case, the husband, who is in the arrears of lacs of rupees has given the possession and, thereafter, the wife has taken the same premises on lease and is proposing to run the same business under a new connection. In the opinion of this Court the judgment in the matter of 'Isha Marble' would not help the petitioner, but would go against the interest of the petitioner.

10. Learned counsel for the petitioner has also placed reliance upon a judgment of this Court in the matter of Smt. Rekha Gupta v. Bihar State Electricity Board, 1999 (3) PLJR 222. The said judgment placed heavy reliance upon the judgment of the Supreme Court in the matter of Isha Marbles. A single Bench of this Court ultimately found that there was no fiduciary relationship between the erstwhile consumer and the present consumer, therefore, the State Electricity Board was duty-bound to provide the electric connection. Reliance was also placed upon an unreported judgment of this Court in the matter of Sri Udai Narayan v. The Bihar State Electricity Board, C.W.J.C. No. 9257 of 2000 decided on 20-9-2000 to contend that if the amount from the petitioner has already been accepted for providing the new electric connection, then the State Electricity Board is obliged to provide the connection. The reliance on the said judgment, in the considered opinion of this Court is misconceived. In the said matter nothing could be brought on the record to show that the erstwhile owner was somehow or the other related to the present consumer. In the said matter the High Court found as a fact that after scrutiny of everything, a proposal was sent, the money was received and, therefore, the Board was not entitled to wriggle out of its statutory obligation. In the present matter, the Electricity Board has come out with a straight case. According to them the husband was the earlier consumer did not pay the legal dues to the State Electricity Board and after facing disconnection has simply required his wife to make an application for grant of a fresh connection.

11. It would be useful to quote some observations of the Supreme Court in the Matter of Isha Marbles at this stage.

12. According to the Supreme Court 'Electricity is public property. Law, in its majesty benignly protects public property and behoves everyone to respect public property. Hence, the Courts must be zealous in this regard'. In the opinion of this Court, the above observations of the Supreme Court would clinch and conclude the issue. The petitioner has not come to this Court with clean hands. She is guilty of suppressing material facts and in fact has made an attempt to play fraud with the Court. It was expected of the petitioner to come out with a fair and honest case, but the petitioner did not do so. Till date the petitioner did not show that why her husband has not paid the dues and under what circumstances the entire workshop/factory has come under the hands of the present petitioner.

13. The law would not help a person, who lacks bona fide in action and projects mala fide in deeds. The defence taken by the Electricity Board and its stands are justified. The petitioner is not entitled to any relief in her favour. The petition is dismissed. As an exemplary cost, in view of the contumacious conduct of the petitioner, it is hereby directed that the petitioner shall pay Rs. 10,000/- (Ten thousand) to the State Electricity Board.

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