

Prafulla Kumar Sahoo Vs. Central Electricity Supply Company of Orissa Ltd. and ors.

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Court : Orissa

Decided On : Jul-27-2004

Reported in : AIR2005Ori54; 98(2004)CLT783

Judge : A.K. Patnaik and ;A.K. Parichha, JJ.

Acts : Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 1998

Appeal No. : Writ Petition (Civil) No. 3520 of 2002

Appellant : Prafulla Kumar Sahoo

Respondent : Central Electricity Supply Company of Orissa Ltd. and ors.

Advocate for Def. : D.R. Ray, Adv.

Advocate for Pet/Ap. : S.K. Dash, S.K. Mishra, B. Mohapatra, S.K. Dash and A. Dhalsamanta

Judgement :

A.K. Patnaik, J.

1. The case of the petitioner in this Writ Petition is that he is in occupation of part of holding No. 396 in Ward No. 27 (presently renumbered as Ward No. 13) of Cuttack Municipal Corporation. He submitted an application on 27.6.2002 to the SDO II, CESCO, Badambadi, Cuttack Town for supply of electricity to the residential portion of the holding occupied by him and another application dated 23.7.2002 for separate connection to the commercial establishment, namely, 'Laxmi Ladies Tailors', run by the wife of the petitioner in one of the rooms of the said holding. He deposited a sum of Rs. 1650/- towards security, Rs. 100/- towards the connection charges and Rs. 10/- towards processing fees on 10.8.2002 on the instruction of the Junior Engineer (Elect.), CESCO. Thereafter, the electricity supply was given for the commercial establishment, but was not given for domestic purpose. The petitioner approached the Executive Engineer II (Electrical), CESCO, City Distribution Division for supply of electricity to the residential portion of the building, but to no avail. Aggrieved, he has filed this Writ Petition with a prayer to direct the opposite parties to give electricity connection to the residential house of the petitioner in the said Municipal holding.

2. A preliminary counter affidavit has been filed by the opposite parties, stating therein that to the very premises now under the occupation of the petitioner, power supply was given to the grand father of the petitioner, namely, Late Raghunath Sahoo and as per the ledger of CESCO of April, 2000 a total sum of Rs. 8195.50 was outstanding towards energy charges, out of which an amount of Rs. 1500/- has been paid and the amount has accumulated to Rs. 14,908.31 P. in December, 2002. In Paragraph 7 of the said counter affidavit, it is further stated that the father of the present petitioner, namely, Paramananda Sahoo who is the son of Late Raghunath Sahoo had also applied to get power supply to the premises, but power supply was not given to him for non-payment of arrear dues against his father Late Raghunath Sahoo.

3. Mr. Biswajit Mohapatra, Learned Counsel for the petitioner brought to our notice the decision in Lakshman Kumar Lenka v. Central Electricity Supply Co, and Anr., AIR 2004 Orissa 74 wherein this Court has already held that for supply of electricity, it is only the consumer, who has agreed to take the supply of electricity from the licensee, who is liable for the bill for supply of electricity to the licensee

and that provisions however may be made in the statute, rules or regulations fixing the liability on any other person in specific exceptional circumstances. He pointed out that in the said decision this Court referred to Clause 10 of the OERC Distribution (Conditions of Supply) Code, 1998 (in short, 'Code, 1998'), which provided that an application for supply of electricity will not be allowed by an Engineer until the arrears in respect of the earlier agreement executed in his name or in the name of his spouse or in the name of a firm or company with which he was associated either as a partner, director or managing director are paid in full. Mr. Mohapatra submitted that Clause 10 of the Code, 1998 does not provide that an application for supply of electricity will not be allowed by the Engineer if the applicant has not paid arrears of supply of electricity under an earlier agreement executed by his grand father,

4. Mr. Ray, Learned Counsel for the opposite parties on the other hand referred to the provisions of Clause 101 of the Code, 1998 according to which in case of death of a consumer, who is an individual, his legal heir or successor in interest or legatee may be given recognition as a consumer in place of the deceased. He submitted that in the present case the grand father of the petitioner Late Raghunath Sahoo died in the year 1992 whereas supply of electricity continued to the premises right upto 2000 and bills for energy charges from time to time were also paid upto April, 2000. According to Mr. Ray, the petitioner as a legal heir or successor in interest is liable to pay the arrears of energy charges standing in the name of his grandfather Late Raghunath Sahoo.

5. Clauses 10 and 101 of the Code, 1998 are quoted herein below :

' 10. If the applicant in respect of an earlier agreement executed in his name or in the name of his spouse or in the name of a firm or company with which he was associated either as a partner, Director or Managing Director, is in arrears of electricity dues or other dues for the same premises payable to the licensee, the application for supply shall not be allowed by the Engineer until the arrears are paid in full.

101. Assignment without permission : No consumer shall assign the agreement or transfer or part with the benefits under the agreement in favour of any other

person without the express consent or approval of the Engineer in respect of domestic and commercial consumers and the designated authority of the licensee in respect of other categories of consumers. In case of death of a consumer who is an individual, his legal heir or successor in interest or legatee may be given recognition as a consumer in place of the deceased.'

It is clear from the plain language of Clause 10 of the Code, 1998 that the applicant applying for supply of electricity shall not be supplied electricity until arrears in respect of an agreement executed in his name, or in the name of his spouse or in the name of a firm or company with which he was associated either as a Partner, Director or Managing Director are paid in full. There is no mention therein that until the arrears in respect of earlier agreement executed by the grand father of the applicant are paid in full, application for supply of electricity shall not be allowed. Clause 101 of the Code, 1998 further provides that no consumer shall assign the agreement or transfer or part with the benefits under the agreement in favour of any person without the express consent or approval of the Engineer or designated authority, as the case may be. But in the case of death of a consumer, who is an individual, his legal heirs or successors in interest or legatee 'may' be given recognition as a consumer in place of the deceased. Thus, assignment of an agreement for supply of electricity or succession to an agreement for supply of electricity is not automatic and is fully dependent upon the express consent or approval of the Engineer or designated authority, as the case may be, or the recognition by the concerned authority of the licensee. In this case, it is not the case of the opposite parties that any consent or approval of the Engineer has been given for transfer of the agreement for supply of electricity which was executed by the grand father of the petitioner Late Raghunath Sahoo. It is also not the case of the opposite parties that the authorities of the opposite parties gave recognition to the petitioner as a consumer in place of Late Raghunath Sahoo as his legal heir, successor in interest or legatee when his son Paramananda Sahoo was still surviving. Thus, it is difficult to fasten the liability of Late Raghunath Sahoo under an earlier agreement for supply of electricity on the petitioner.

6. For the aforesaid reasons, we direct the opposite parties to forthwith supply electricity to the residential house of the petitioner located in the aforesaid

Municipal holding within 15 days from the date the petitioner complies with all necessary formalities. It is however open for the opposite parties to take recourse to any other remedy available under law to recover the amount of arrears under the earlier agreement for supply of electricity with Late Raghunath Sahoo.

A.K. Parichha, J.

7. I agree.

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