

Dennis Vs. Official Liquidator

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Court : Kerala

Decided On : Jul-18-2001

Reported in : [2002]108CompCas353(Ker)

Judge : Mr. K.S. Radhakrishnan and; Mr. G. Sasidharan, JJ.

Acts : Kerala Regulations relating to Conditions of Supply of Electrical Energy Regulations - Regulation 15; Electricity Supply Act - Sections 26, 49, 79 and 79-J; Companies Act - Sections 529; Insolvency Act - Sections 48; [Constitution of India](#) - Article 14

Appeal No. : M.F.A. Nos. 100 and 187 of 2001

Appellant : Dennis

Respondent : Official Liquidator

Advocate for Def. : K. Moni,; Asok M. Cherian and; R.K. Venu Nayar, Advs

Advocate for Pet/Ap. : Chacko George,; Franklin Arackal and; Antony Dominic

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, J.

1. Appellants in both the appeals are challenging Regulation 15(e) of the Regulations relating to Conditions of Supply of Electrical Energy as arbitrary, illegal and ultra vires of the powers conferred on the Board under S. 79-J of the Electricity Supply Act. On the basis of Regulation 15(e) the Board could deny reconnection or new connection to any premises where there are arrears on any account due to the Board. However, if the new owner/occupier/allottee remits the amount due from the previous consumer, the Board shall provide reconnection or new connection depending on whether the service remains disconnected/dismantled. The regulation also enables the Board to refund the amount to the new owner or occupier on realisation of the same from the previous consumer through revenue recovery or other legal proceedings.

2. Appellants in these appeals admit that there were arrears of electricity dues from the previous consumers. As far as M.F.A. No. 100 of 2001 is concerned, admittedly an amount of Rs. 86,54,711.41 was due as on 30.6.1999. In the case of M.F.A. No. 187 of 2001, an amount of Rs. 5,08,000/- is said to be due to the Board from the previous consumer. Appellants maintain the stand that they are not bound to clear those arrears and that the Board is legally obliged to provide electric connection to the premises or house where they are the owners in possession. Identical question came up for consideration before a Bench of this Court in Ramachandran v. K.S.E.B. (2000 (2) KLT 694) wherein this Court upheld the powers of the Board to lay down Regulation 15(e). The Bench took the view that the Board is not bound to give reconnection or new connection to the premises where there are arrears on any account due to the Board unless the arrears including penalty are cleared in advance. The court held that if the new owner/occupier/allottee remits the amount due from the previous consumer, the Board shall provide reconnection or new connection depending on whether the service remains disconnected/dismantled, as the case may be.

3. Counsel for the appellants Sri. Chacko George submitted that the Division Bench has not considered all the aspects of the matter when it decided Ramachandran's case (supra). Counsel contended that under clause VI to the Schedule to the Electricity Act where a requisition is made by the owner or occupier of any premises situate within the area of licensee requiring the licensee

to supply energy for such premises the Board has a statutory duty to supply energy to the said premises unless the licensee is prevented from doing so, by exceptional circumstances specified therein. Counsel further submitted that S. 26 of the Electricity Supply Act vests the Electricity Board with the personality of a licensee with all attendant powers and obligations. Counsel submitted that though by virtue of proviso (1) to S. 26 certain provisions in the Electricity Act have been excluded from the application to the Board in its capacity as licensee, Clause VI of the Schedule has not been so excluded. It is also pointed out that the second proviso S. 26 of the Electricity Supply Act subjects application of Clause VI of the Schedule to the Electricity Act to the Board. Counsel also submitted that since distribution mains have been laid by the Board and supply commenced provisions of Clause VI of the Schedule to the Electricity Act would apply.

4. Counsel for the appellant in M.F.A. No. 100 of 2001 submitted that appellant has purchased the land and building together with plant and machinery of the previous consumer, Peerlite Wire Products Limited, on the basis of a sale conducted by the Official Liquidators on orders of the Company Judge and the appellant deposited Rs. 1,40,00,000/- and the sale was confirmed in his name. Counsel submitted that the Board had charge over the property which was purchased by the appellant. That property has been converted into money and the amount paid by the appellant is with the Official Liquidator and the Board could realise the amount if any due from the Official Liquidator as per the provisions of S. 529 of the Companies Act read with S. 48 of the Insolvency Act. Counsel submitted that since the property is free of all charges purchased by the appellant, the Board is bound to provide electrical energy to the premises in question.

5. Counsel for the appellant in M.F.A. No. 187 of 2001 Sri. Antony Dominic submitted that appellant has purchased the property in question on a sale conducted by the Official Liquidator on the basis of the order passed by the Company Court for an amount of Rs. 50 lakhs. He also submitted that electric connection to the said premises was refused by the Board on the basis of Clause 15(e). Counsel submitted that Clause 15(e) of the Regulations enables the Board to realise the arrears from the previous consumer and not from the appellant who has not committed any default. Failure to supply electricity supply is beyond the

regulation making power conferred under S. 49 of the Electricity Supply Act and violation of Art. 14 of the [Constitution of India](#).

6. Standing Counsel appearing for the Electricity Board on the other hand submitted that the Board has got power under clause 15(e) of the Regulations to deny energy to the premises which are in huge arrears. Such a provision is incorporated to safeguard the interest of the Board or else the property could be transferred or sold by a person in arrears and the Board will not be in a position to realise the amount. Counsel submitted that appellants have no legal right to compel the Board to provide supply of electrical energy.

7. Counsel for the Official Liquidator relying upon the statement filed in M.F.A. No. 100 of 2001 maintained the stand that the amounts realised by sale of the properties are not sufficient to discharge the liability of the Board from the Company in liquidation. The amounts have to be distributed *pari passu*. Therefore it will not be possible to discharge the dues to the Board by the previous consumer.

8. On the basis of the above contentions, we have examine the validity of Clause 15(e) of the Regulations. Clause 15(e) reads as follows:

'Reconnection or new connection shall not be given into any premises where there are arrears on any account due to the Board pending payment, unless the arrears including penalty, if any, are cleared in advance (If the new owner/occupier/allottee remits the amount due from the previous consumer, the Board shall provide reconnection or new connection depending on whether the service remains disconnected/dismantled, as the case may be. The amount so remitted will be adjusted against the dues from the previous consumer. If the Board gets the full dues from the previous consumer through R.R. action or other legal proceedings the amount remitted by the new owner/occupier to whom connection has been effected shall be refunded. But the amount already remitted by him/her shall not bear any interest.)'.

Clause 15(e) of the Conditions of Supply of Electrical Energy was incorporated in exercise of the powers conferred under S. 79(j) of the Electricity Supply Act and

other enabling provisions. S. 79(j) of the Electricity Supply Act would enable the Board to make regulations in various matters incorporating the principles governing the supply of electricity by the Board to persons other than licensees under S. 49. S. 49 of the Electricity Supply Act also enables the Board to supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit subject to the provisions of the Electricity Supply Act and Regulations. It is in exercise of the powers conferred under S. 79(j) of the Act the Board has framed the Regulations relating to conditions of supply of electrical energy. These regulations are subject to the provisions of the Act and Rules. Clause VI of the Schedule to the Indian Electricity Act states that where after distributing mains have been laid down under the provisions of clause IV and Clause V and the supply of energy through those mains or any of them has commenced, a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition, or within such longer period as the Electrical Inspector may allow supply electrical energy in accordance with the requisition. It is true on completing the formalities under the Act the Board has to supply electrical energy. Board cannot deny electrical energy on arbitrary or whimsical reasons.

9. The question to be considered is whether denial of supply of electrical energy in this case is due to unjustifiable reasons. As held by the Apex Court in *Isha Marbles v. Bihar State Electricity Board* (1995 (2) SCC 648) 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. It is to safeguard the public property S. 79(j) read with S. 49 of the Electricity Supply Act has given ample power to the Board to make regulations in the matter of supply of electricity by the Board to various persons. S. 49 of the Electricity Supply Act uses the expression 'may supply' electricity 'to any person' not being a licensee upon such terms and conditions 'as the Board thinks fit'. These expressions give considerable amount of latitude to the Board to lay down appropriate regulations so as to save public property. Even though all the formalities laid down in the Act and the Rules have been satisfied by the prospective consumer in accordance with Schedule VI to the Electricity Act, the

Board has the power to lay down regulations in the best interest of the Board. S. 49 also uses the expression 'subject to the provisions of this Act and regulations' if any made in this behalf. Regulations have been laid down under S. 79(j) of the Electricity Supply Act. Regulations as made would form part of S. 49 of the Electricity Supply Act. In other words, clause 15(e) of the Conditions of Supply laid down under S. 79(j) would form part of S. 49 of the Electricity Supply Act. Consequently the Board could effect supply of electricity to any person upon such terms and conditions as the Board thinks fit, ie., in accordance with clause 15(e) of the Regulations.

10. We are therefore, not inclined to accept the contention of the counsel for the appellants that Clause 15(e) of the Regulations is illegal and violative of Art. 14 of the [Constitution of India](#). There is not discrimination as far as the appellants are concerned. There is no demand by the Board to pay arrears of the previous consumer. If they are occupying the premises to which electrical energy has been given and subsequently dismantled due to arrears of electricity charges and the occupier fails to pay the same the Board can always deny supply of electrical energy. No electrical energy will be given to such premises. Premises has been defined in clause 4(ab) to mean either a building, part of it, or permanent structure situated in an immovable property details of which have been specified in the applications or agreements prescribed for grant of electric connection. The expression 'consumer' has also been defined in clause 1(d) as the owner or occupier of the premises which are for the time being connected for supply of electrical energy with the Board's power system and in whose name the installation stands registered. When large amounts are due to the Board from a consumer to which electrical connection was given the Board can deny electricity supply to that premises when there is default. We find no legal infirmity in clause 15(e) of the Regulations in the matter of conditions of supply.

11. We may also notice that the Apex Court in Isha Marbles' case (supra) (1995 (2) SCC 648) has noted there is no such provision in the State of Bihar as the one we got in Clause 15(e) of the Regulations relating to the Conditions of Supply. Unlike in the Bihar State, the Kerala State Electricity Board has provided provisions in the Conditions of Supply to meet such contingencies. The Apex

Court in that case held that dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness. The above decision of the Apex Court was considered by a Bench of this Court in Ramachandran v. K.S.E.B. (2000 (2) KLT. 694). We fully endorse the view expressed by the Division Bench. In such circumstances we find no reason to interfere with the order passed by the Company Judge. The appeals lack merits and they are accordingly dismissed.

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