

Suraj Vs. K.S.E.B.

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SooperKanoon Citation : sooperkanoon.com/727230

Court : Kerala

Decided On : Jul-28-2005

Reported in : AIR2006Ker194; [2006(3)JCR324]; 2005(3)KLT865

Judge : Rajeev Gupta, C.J.,; K.S. Radhakrishnan and; Kurian Joseph, JJ.

Acts : Kerala Revenue Recovery Act - Sections 2, 3, 5 and 60; Electricity (Supply) Act, 1948 - Sections 49 and 79; [Indian Electricity Act, 1910](#) - Sections 2; State Financial Corporations Act - Sections 29; [Companies Act, 1956](#); Conditions of Supply of Electrical Energy Regulation - Regulations 3, 14 and 15

Appeal No. : W.A. No. 2889 of 2002

Appellant : Suraj

Respondent : K.S.E.B.

Advocate for Def. : P. Santhalingam, Adv.

Advocate for Pet/Ap. : M. Rajasekharan Nayar, Adv.

Disposition : Appeal dismissed

Judgement :

K.S. Radhakrishnan, J.

1. The question that is posed for consideration in this case is whether the Electricity Board can demand arrears of electricity dues including penalty incurred by a previous consumer from a new owner/occupier/allottee of the same premises as a pre-condition for electricity connection under Regulation 15(e) of the Conditions of Supply of Electrical Energy.

2. Three Division Benches of this Court in Ramachandran v. K.S.E. Board, 2000 (2) KLT 694, K.J. Dennis v. Liquidator, 2001 (2) KLT 75 and Seena B. Kumar v. Asst. Executive Engineer, 2003 (3) KLT 987 have upheld the right of the Board, correctness of which was doubted by another Division Bench and referred the matter to a larger Bench for an authoritative pronouncement and hence the matter was placed before us.

3. Writ petitioner has purchased about 3 acres and 191/4 cents of land in Porathusseri Village in Mukundapuram Taluk in public auction conducted under the provisions of the Kerala Revenue Recovery Act for an amount of Rs. 15,65,000/-. Electricity connection was not available in the premises when it was purchased. Electricity supply was disconnected from the premises due to non-payment of electricity charges by the previous owner of the premises. Petitioner after purchasing the premises submitted an application in November 2001 to the Board for fresh electricity connection. Petitioner was informed that the application would be entertained only if the electricity arrears due from the previous consumer is cleared. Petitioner has therefore approached this Court seeking a writ of mandamus directing the Board to provide him with electricity connection stating that he is not obliged to pay the arrears due from the previous consumer.

4. Learned single judge dismissed the Writ Petition placing reliance on Regulation 15(e) of the Conditions of Supply of Electrical Energy holding that the liability of the previous consumer would not be wiped off even if the petitioner is an auction purchaser in a revenue sale. Petitioner took up the matter in appeal before the Division Bench. The Bench felt that Regulations 15(d) and 15(e) mainly deal with reconnection and those provisions cannot be made applicable to a person who has applied for a new connection. The Bench felt none of the earlier decisions has considered the validity of Regulation 15(e) especially in the light of the definition of

the word 'consumer', or from the stand point of a person who has purchased the premises in a public auction free from all encumbrances as per Section 60 of the Kerala Revenue Recovery Act and hence the matter was placed before the Full Bench.

5. The Electricity (Supply) Act, 1948 provides for the rationalisation of the production and supply of electricity and generally for taking measures conducive to electrical development. Section 79 enables the Board to make regulations. Section 79(j) of the Electricity (Supply) Act enables the Electricity Board to lay down principles governing supply of electricity by the Board to persons other than licensees under Section 49. Section 49 of the Act enables the Board to supply electricity to persons other than licensee. The Board in exercise of its powers conferred by Section 79(j) of the Electricity (Supply) Act, 1948 and other enabling provisions of the statute has issued the Regulations relating to Conditions of Supply of Electrical Energy. Regulation 3 states that prospective consumers shall furnish the details as per the Application for supply of electricity in Form 1 and after completing the formalities and on approval of service connection estimate the applicant will have to furnish security deposit as provided under Regulation 14. Along with the remittance of security deposit the consumer should execute the service connection agreement in Form No. 7 as provided under Regulation 15(a) and the premises will not be connected unless and until the agreement is executed. Regulation 15(d) states that the Board shall have first charge on the assets of the consumer for all dues to the Board. Regulation 15(e) deals with reconnection and new connection. Regulation 15(d) and (e) are extracted below for easy reference.

'(d) All dues to the Board from a consumer shall be the first charge on the assets of the consumer. All dues including penalty shall be realised as public revenue due on land.

(e) 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.'

As per Clause (d) all dues to the Board from a consumer shall be the first charge on the assets of the consumer and all dues including penalty shall be realised as public revenue due on land. On execution of the agreement the prospective consumer would be bound by the Regulations relating to Conditions of Supply of Electrical Energy. The Agreement also stipulates that all sums found due to the Board from the consumer under or by virtue of the agreement by reason of breach or otherwise are recoverable under the provisions of the Revenue Recovery Act, as if they are arrears of public revenue due on land or in such other manner as the Board may deem fit. Provisions of the Kerala Revenue Recovery Act are therefore applicable to the consumers by virtue of Condition 15(d) read with various provisions of the agreement entered into between the Board and the consumer. Consumer who is in default if transfers his assets including the premises to which electricity connection was provided, the Board is legally entitled to proceed against the consumer personally as well as his assets including the premises to which electricity connection was provided. 'Public revenue due on land' has been defined in Section 2(j) of the Kerala Revenue Recovery Act which means that the land revenue charged on the land and includes all other taxes, fees and cesses on land, whether charged on land or not, and all cesses or other dues payable to the Government on account of water used for purposes of irrigation. Section 3 of the Revenue Recovery Act states that the public revenue due on any land shall be the first charge on that land, the buildings upon it and on the produce thereof. As per Section 5 whenever public revenue due on land is in arrear, such arrear together with interest, if any, and cost of process may be recovered by attachment and sale of the defaulter's movable property, by attachment and sale of the defaulter's immovable property, etc. Section 60 of the Act provides that all immovable property brought to sale on account of arrears of public revenue due on land shall

be sold free of all encumbrances, and if any balance shall remain after liquidating the arrears with interest thereon and cost of process, it shall be paid over to the defaulter.

6. We are however in this case concerned with the question as to whether person who has purchased the premises in public auction is entitled to get electricity connection to the same premises without clearing the amounts due to the Board either by previous consumer or by the prospective consumer. Regulation 15(e) stipulates that reconnection or new connection shall not be given to 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.

7. The word 'consumer' has been defined in Section 2(c) of the [Indian Electricity Act, 1910](#), which reads as follows:

(c) 'consumer' means any person who is supplied with energy by a licensee or the Government or by any other person engaged in the business of supplying energy to the public under this Act or any other law for the time being in force, and includes any person whose premises are for the time being connected for the purpose of receiving energy with the works of a licence, the Government or such other person, as the case may be.'

Petitioner becomes a consumer within the meaning of Section 2(c) only if he is supplied with electrical energy by the Board. The word 'consumer' also takes in a person whose premises are for the time being connected for the purpose of receiving energy with the works of a licensee. Petitioner, in our view, would not fall under both the limbs of the definition clause 'consumer'. Petitioner is only a prospective consumer as per Regulation 3 which enables him to submit an

application under Form No. 1 for supply of energy. Regulation 15 (a) enables a prospective consumer to execute the service connection agreement in Form No. 7 in a stamp paper worth Rs. 15. Clause 10 of the agreement reads as follows:

'10. The consumer hereby declares that the Book containing 'Conditions of Supply' of the Board has been carefully perused by him/her read to him/her and he/she agrees to be bound by the said conditions of supply in force from time to time, which shall always form an integral part of this agreement.'

A prospective consumer becomes a consumer only after executing the agreement declaring that he will be bound by the Conditions of Supply of electrical energy which takes in Regulations 15(d), 15(e) and the relevant provisions.

8. Petitioner, it is averred, has purchased the premises in a public auction free from all encumbrances. Section 60 of the Revenue Recovery Act states that all immovable property brought to sale on account of public revenue due on land shall be sold free of all encumbrances and therefore petitioner submits he is not entitled to clear electricity dues to the Board. We are in this case not called upon to decide the legality or otherwise of the revenue sale or whether the Board has got first charge on the premises or not. The Board is not proceeding against the premises or against the petitioner. But the question is if there are arrears from the previous consumer with regard to the electricity supplied to the premises, whether electricity supply could be given to the same premises without clearing the arrears either by the previous consumer or by the prospective consumer. Board is not concerned with the provisions of the Revenue Recovery Act or as to how the prospective consumer has come into possession or ownership of the property. Regulations make no distinction between an auction purchaser and others in the matter of supply of electricity. Regulations 15(d) and (e) have been incorporated with a purpose, or else by successive transfer of the premises the Board's right to recover the amount from the previous consumers as well as from the assets could be effectively defeated at the same time the Board is called upon to provide electricity to the same premises. Regulation 15(e) has a reasonable nexus with the object sought to be achieved, that is to save public property so as to subserve the general interest of the community. Once electricity is disconnected and the

equipment dismantled, it is unjust to compel the Board to give electricity connection to the very same premises at the instance of a third party which will not be in public interest especially when electricity is considered as a public property. Further petitioner has also not challenged the validity of Regulation 15(d) and 15(e) in this Writ Petition.

9. We may in this connection refer to the decision of the Apex Court in Hyderabad Vanaspathi Ltd v. A.P. State Electricity Board, : [1998]2SCR620 , wherein the Court took the view that even in the absence of an individual contract, the terms and conditions of supply notified by the Board will be applicable to the consumer and he will be bound by them. After examining Section 79(j) of the Electricity (Supply) Act, the Court held as follows:

'The Section in the Act does not require the Board to enter into a contract with individual consumer. Even in the absence of an individual contract, the terms and conditions of supply notified by the Board will be applicable to the consumer and he will be bound by them. Probably in order to avoid any possible plea by the consumer that he had no knowledge of the terms and conditions of supply, agreement in writing are entered with each consumer. That will not make the terms purely contractual. The Board in performance of a statutory duty supplied energy on certain specific terms and conditions framed in exercise of a statutory power. Undoubtedly the terms and conditions are statutory in character and they cannot be said to be purely contractual.'

The Apex Court therefore reversed the decision of the Full Bench of the Andhra Pradesh High Court which held that the terms and conditions of supply are contractual. The Apex Court also declared that the terms and conditions framed by the Board in exercise of the power under Sections 49 and 79(i) of the Electricity (Supply) Act are statutory in character. The Apex Court in Hyderabad Vanaspathi Ltd. v. A.P.S.E.B., : [1998]2SCR620 , held that electricity is a public property, and law in its majesty, benignly protects public property and behoves everyone to respect public property and the Courts must be zealous in this regard and that the terms and conditions framed by the Board in exercise of the power under Sections 49 and 79(j) of the Act are statutory.

10. A Bench of this Court in Ramachandran v. K.S.E. Board, 2000 (2) KLT 694, examined the scope of Regulation 15(e) of the Conditions of Supply and took note of the fact that the Apex Court in Isha Marbles v. Bihar State Electricity Board, : [1995]1SCR847 was dealing with a case where there was no similar provision like condition 15(e) of the Regulations Relating to Conditions of Electrical Energy framed by the Kerala State Electricity Board. The Court held that any applicant who is desirous of getting electricity connection to the premises should abide by the regulations relating to conditions of supply of electrical energy. Only when the applicant agrees that he would comply with the statutory regulations he would get the status of a consumer under Section 2(c) of the Indian Electricity Act. S.L.P.No. 18603 of 2000 filed against the judgment in Ramachandran's case was later dismissed by the Apex Court on 27.11.2000. The principle laid down in Ramachandran's case, was later followed by another Division Bench in K.J. Dennis v. Official Liquidator, 2001 (3) KLT 75 and also by another Division Bench in Seena B. Kumar v. Asst. Executive Engineer, 2003 (3) KLT 987.

11. Counsel appearing for the writ petitioner brought to our notice an earlier Bench decision of this Court in Souriyar Luka v. K.S.E. Board, 1959 KLT 14 wherein the applicant was treated as a fresh applicant and not a successor in interest and directed to give electricity supply. When the Bench decided Souriyar Luka's case, Regulations relating to Conditions of Supply of Electrical Energy was not in existence just like the decision of the Apex Court in Isha Marble's case. Therefore the decisions in Souriyar Luka's case and Isha Marble's case are not applicable to the present case since we have to decide the present case in the light of the Regulations relating to Conditions of Supply of Electrical Energy framed by the Board.

12. We may in this connection refer to a recent decision of the Apex Court in Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd., : AIR 2004 SC217 . The Apex Court was dealing with the claims of auction purchasers of urban properties in the sales held in one case under Section 29 of the State Financial Corporations Act and in the other case by the Official Liquidator in winding up proceedings under the [Companies Act, 1956](#). Previous owners of the properties in both the cases were defaulters to Electricity Board in connection with the power supplied to

the premises which was the subject matter of the sales effected. Subsequently the new purchaser submitted application for power connection. Board insisted for clearing off the previous arrears. Portion of the arrears was paid by them and electricity supply was restored. Later dispute arose as to whether they should be held liable to pay arrears which were outstanding against the previous owners. Reference was made to Isha Marble's case, supra. While dismissing the appeal preferred by the Electricity Board, the Apex Court held as follows:

'We are clearly of the opinion that in case of fresh connection though the premises are the same, the auction purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supply to the premises in the absence of there being a specific statutory provision in that regard. Though we find some merit in the submission of the learned counsel for the appellant calling for reconsideration of the wide propositions of law laid down in Isha Marble's case, we think the present one is not a case for such exercise. We leave the plea open for consideration in an appropriate case.'

The Apex Court held that auction purchaser cannot be held liable in the absence of any specific statutory provision. So far as this case is concerned, there is a statutory provision like Regulation 15(a). Above being the legal position, we find no reason to reconsider the earlier three Bench decisions of this Court.

13. We therefore hold that the Board is entitled to insist payment of arrears of electricity charges as pre-condition for supply of electricity to the same premises to a prospective consumer. Reference is answered accordingly. Appeal therefore lacks merits and it is accordingly dismissed.