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Subhendu Banerjee and ors. Vs. the C.E.S.C. Ltd. and ors.

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Court : Kolkata

Decided On : Mar-08-2002

Reported in : AIR2002Cal242,(2002)2CALLT196(HC)

Judge : Prabir Kumar Samanta, J.

Acts : [Constitution of India](#) - Article 226; ;[Indian Electricity Act, 1910](#) - Sections 21, 21(2), 22, 23, 24(1) and 49B; ;Public Demands Recovery Act, 1913; ;Electric Supply Act, 1948

Appeal No. : W.P. No. 6614 (W) of 2001

Appellant : Subhendu Banerjee and ors.

Respondent : The C.E.S.C. Ltd. and ors.

Advocate for Def. : Subir Sanyal, Adv.

Advocate for Pet/Ap. : Indranath Mukherjee, Adv.

Disposition : Petition allowed

Judgement :

P.K. Samanta, J.

1. Whether the auction purchasers of a premises are liable to make payment of outstanding dues for consumption of electricity supplied to that premises prior to

such auction sale is the question, which has come up for consideration in this writ petition.

2. The facts which are not in dispute in this case are that the petitioners are owners and occupiers of their respective dwelling units situated at Holding No. 2, Ghoshpara, Badamtala, Bengal Enamel. North 24-Pgs. In a housing complex called 'Antarlk'. The said holding belonged to Hindusthan Development Corporation Limited (hereinafter called as the said Corporation). The said Corporation was a consumer of electricity supplied through high-tension line by the Respondent, CESC Ltd. at the above premises No. 2. Ghoshpara Lane. Such supply of energy through high tension line stood disconnected since the month of March, 1986 for non-payment of monthly energy bills for the period from November, 1985 to February, 1986 amounting to Rs. 1,39,627.29 paise. Such disconnection was effected upon due service of notice under Section 24(1) of the [Indian Electricity Act, 1910](#) to the said Corporation. The said Corporation went into liquidation as a result of which the parcel of land appertaining to the said holding No.2, Ghoshpara Lane was sold out to the writ petitioners and other individuals by dividing the same into small plots of land by the official Liquidator, High Court at Calcutta. The petitioners having thus purchased their respective plots of land in such Court sale constructed their respective dwelling units. They accordingly applied for supply of electricity for their respective domestic uses to the respondent, CESC Ltd. The respondent CESC Ltd. by a letter dated 1st October, 1999 demanded that the petitioners to get supply of electricity in their respective dwelling units must pay off the above arrear dues of said Corporation being the ex-consumer of electricity at the said holding No.2, Ghoshpara Lane. Such demand has been challenged in this writ petitioner.

3. Mr. Subir Sanyal, learned advocate appearing on behalf of the CESC Ltd. upon reference to the provisions of Section 49B of the Electricity Supply Act, 1948 as introduced by West Bengal Act 50 of 1994 contended that because of the said provision the CESC Ltd. is not obliged to supply electricity to the petitioners unless all arrear charges for consumption of electricity in that premises by previous consumer are paid. The said contention would not have detained this Court any further for a decision thereof in view of the decision of the Supreme Court in the

case of Isha Marbles v. Bihar State Electricity Board and Anr. : [1995]1SCR847 except for the aforesaid provision. The Supreme Court at paragraphs 55 and 56 of the said report held as under:

55. 'In all the present cases the supply of electricity to a particular premises, which had the benefit of enjoying electricity, had been disconnected under Section 24 of the Electricity Act. The auction purchasers want reconnection. The Board says no; unless and until the consumption charges in relation to that property which came to be incurred during the ownership of the previous incumbent are cleared of. Is the stand of the Board correct? The High Court, in the main Judgment in Suman Packaging (CWJC No. 5358 of 1992) gives the following reasons for answering the question against the Board;

1. Section 24 stipulates discontinuance of supply of electrical energy to the consumer in respect of a sum due from him. We are afraid the High Court had not read Section 24 in conjunction with other statutory provisions though they had been noted, namely, Section 26 of the supply Act; Section 22 of the Electricity Act and Clause VI of Schedule to the Electricity Act. They clearly postulate the obligation to supply energy for such premises. At the risk of repetition we hold that the premises had enjoyed the benefit of electricity. The owner of the premises or even the occupier of the premises, as stated under Rule 2(af) of the Indian Electricity Rule, becomes liable to pay the consumption charges together with other dues. In other words, the liability is in respect of the dues of electricity which came to be supplied pursuant to the contract with the former owner. The discharge of such liability will be on such owner of occupier.

56. From the above it is clear that the High Court has chosen to construe Section 24 of the Electricity Act correctly. There is no charge over the property. Where that premises comes to be owned or occupied by the auction-purchaser, when such purchaser seeks supply of electric energy he cannot be called upon to clear the past arrears as a condition precedent to supply. What matters is the contract entered into by the erstwhile consumer with the Board. The Board cannot seek the enforcement of contractual liability against the third party. Of course, the bona fides of the sale may not be relevant.'

4. True, Section 49B of the Electricity (Supply) Act, 1948 as introduced by West Bengal Act, 50 of 1994 was not under consideration by the Supreme Court in the said decision. Said section reads as under:

Section 49B: Recovery of dues as public demand in certain circumstances. Where any sum is due from a consumer on account of supply of electricity or other charges and where such defaulting consumer, being an Industrial or commercial concern or establishment, becomes sick financially or otherwise and is wound up or closed or put to sale, or transfers its ownership or management, or is amalgamated with any other Industrial or commercial concern or establishment, or where any scheme is drawn up for re-opening or revitalizing or restructuring such industrial or commercial concern or establishment, either under its own ownership or management or under any new ownership or management whether in the former name or in a new name, for continuing the same process or function or production as was in vogue prior to its becoming sick or for any other purposes, either on its own or by the order of any Court, Tribunal or other authority, then notwithstanding the foregoing provisions of this section or the order of the Court, Tribunal or other authority, the sum due to the Board or a licensee shall stand recoverable and shall be recovered from the sale proceeds or from the former owner or manager or new owner or manager, as the case may be, as being a charge recoverable as a public demand under the Public Demand Recovery Act, 1913, and the authority under whose order such Industrial or commercial concern or establishment is wound up, closed or put to sale, or the ownership or management is transferred, or is amalgamated, or any scheme is drawn up for its re-opening or revitalization or restructuring, as the case may be, shall take such steps as may be necessary for expeditious recovery and payment of the dues of the board or the licensee, as the case may be, from such sale proceeds or from the owner or manager together with interest at the rate of current bank rate on the outstanding sum as aforesaid for the period commencing from the date on which such sum became due till the date of payment.

5. It speaks about the recovery of the outstanding dues for the electricity supplied to a consumer who may be an individual, or an establishment, or an industrial or commercial concern. Amongst others, the important aspects with which this Court

is concerned are that it stipulates that if for any reason ownership or management of an industrial or commercial concern or of an establishment or an Individual who is a defaulting consumer is transferred either voluntarily or involuntarily or for any purpose whatsoever then the sum due from the defaulting consumer shall be recoverable from the new owner or the manager as the case may be as being a charge recoverable as a public demand under the Public Demands Recovery Act, 1913. It is therefore for consideration in this case whether Section 49B would permit the CESC Limited to demand from the petitioners the sum outstanding for the electricity consumed in the said premises by erstwhile consumers as a condition precedent for supplying electricity to them.

6. In this connection reference may be made to Sections 22, 23 and 24 of the Indian Electricity Act. 1910 which are quoted hereunder :-

'Section 22 : Obligation on licensee to supply energy. Where energy is supplied by a licensee, every person within the area of supply shall, except insofar as is otherwise provided by the terms and conditions of the licensee, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply.

Provided that no person shall be entitled to demand or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration.

Section 23. Charges for energy to be made without undue preference.-

(1) A licensee shall not, in making any agreement for the supply of energy, show undue preference to any person.

(2) No consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a

higher method of charging is in force.

(3) in the absence of an agreement to the contrary, a licensee may charge for energy supplied by him to any consumer.

(a) by the actual amount of energy so supplied, or

(b) by the electrical quantity contained in the supply, or

(c) by such other method as may be approved by the State Government.

(4) Any charges made by a licensee under Clause (c) of sub section (3) may be based upon, and vary in accordance with, any one or more of the following considerations, namely :-

(a) the consumer's load factor, or

(b) the power factor of his load, or

(c) his total consumption of energy during any stated period, or

(d) the hours at which the supply of energy is required.

Section 24. Discontinuance of supply to consumer neglecting to pay charge.-- (1) where any person neglects to pay any charge for energy or any (sum other than a charge for energy) due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear day's notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute (which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector) before notice as aforesaid has been given by the licensee, the licensee shall not exercise

the powers conferred by this section until the Inspector has given his decision:

(Provided that the prohibition contained in this sub-section shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request.)'

7. Upon conjoint reading of the said sections it appears that a person who makes requisition for supply of electricity, shall for such supply of electricity be under obligation for payment of the minimum annual sum as may be agreed between him and the licensee or the charges for energy that shall be supplied to him as may be fixed in the manner provided therein. In case of failure by such person to pay such charges for the energy supplied to him, the licensee shall have the power to cut off the supply. These provisions therefore make it clear that the very person supplied with the energy is solely responsible for paying the charges therefor that may be fixed either by way of an agreement between him and the licensee or under the provisions of the Act.

8. The conditions of supply as framed and sanctioned by the Government under Sub-section (2) of Section 21 of the [Indian Electricity Act, 1910](#) also make similar provisions in condition No, 12 requiring a consumer to enter into a written contract with the licensee, otherwise the consumer shall be bound by the conditions and rates of supply in force from time to time.

9. In all such provisions the obligation to make payment of the charges or the energy supplied lies upon the person on whose requisition the energy has been supplied to him. The rate of payment shall be as per the agreement between him and the licensee or as under the provisions of the Act. All such obligations are in relation to the consideration for the energy that shall be made available to him. Therefore, these obligations are purely personal obligations and cannot have reference to the premises and the property to which the energy has been supplied. There is therefore an element of a contract for sale and as such no third party to such agreement shall be bound by it.

10. The Clause VI in the schedule to the [Indian Electricity Act, 1910](#) as amended by West Bengal Act, LV, 1994 also does not bring about any additional obligations other than the above. By such amendment Clause (a) I in the first proviso to Sub-clause (1) in Clause VI was substituted and Clause (c) after Clause (b) was inserted which read as under :-

'(a) within fourteen days after the service on him by the licensee of notice in writing in this behalf, tenders to the licensee a written contract in the form approved by the State Government, duly executed, and a security in cash equivalent to an estimated average of the amounts of bills for three months or for such longer period as the State Government may, by notification in the Official Gazette, determine from time to time, binding himself to take a supply of energy for not less than two years for such amount as will assure the licensee at the current rates charges by him, an annual revenue not exceeding fifteen per cent of the cost of the service line required to comply with the requisition against the said security which shall bear interest at the rate of five and a half per cent per annum.'

'(c) if any prospective consumer, who has been a beneficiary to a disconnected connection, applies for fresh connection or restoration of disconnected connection, he may be allowed such connection or restoration, as the case may be, if he makes payment of the outstanding dues along with late payment fees in respect of the disconnected connection to which he has been a beneficiary.

Explanation.--'Beneficiary' Includes any member of the family of the consumer and, in the case of Industrial or commercial supply, the employees of the consumer'

11. These provisions similarly create obligation upon the person who applies for supply of energy to make a security deposit for an estimated charge for the energy that may be supplied to him as may be agreed between the said person and the licensee. Only the Clause (c) as inserted by way of amendment makes a condition precedent for making payment of the outstanding dues and other charges in respect of a disconnected connection by the person who has been a beneficiary to such disconnected connection. This Clause (c) therefore in substance is directed towards a person who may try to defraud the licensee of it's lawful dues, that

accrued for the disconnected supply of energy to a consumer through whom the said person has consumed electricity and virtually placed himself in the position of a consumer of electricity, by applying for a new connection in his favour. This provision also therefore, does not create any obligation upon any person who applies for fresh connection for making payment of the outstanding dues for the energy supplied to any third person where he has not been benefited by any supply of energy to such third person and with whom he has no fiduciary relationship.

12. Therefore, neither Section 49B as introduced nor the amended provisions in Clause VI to the schedule of the [Indian Electricity Act, 1910](#) bring about any change in the very provisions of the Act upon which the above decision of the Supreme Court was based. The aforesaid amended provisions of the Indian Electricity Act or the Electric Supply Act, 1948 also do nowhere make the outstanding dues of the licensee for the energy supplied to person a charge on the premises or the property to which the electricity was supplied.

13. On the principles stated therein the Section 49B as Introduced by the State Legislature so far as it relates to the recovery of the sum as referred to therein due to the Board or a Licensee from a new owner or manager as the case may be, as being a charge recoverable as a public demand under the Public Demand Recovery Act, 1913 can have no manner of application. Same is the view expressed by a learned single Judge of this Court in the decision reported in (2001)3 Cal LT 292 (HC) (Arun Shaw and Anr. v. The CESC Ltd. and Ors.).

14. in all these views I quash the demand made by the CESC Ltd. by its letter dated 1st September, 1999 upon the petitioners as a condition precedent for supplying electricity to them. This writ petition is therefore, allowed. The CESC Ltd. Is hereby directed to supply electricity to each of the petitioners on their respective requisitions made for the same expedi-tlously without demanding any amount whatsoever as arrears for supplying electricity in the said premises to the erstwhile consumer or consumers. However, such supply of electricity to the petitioners would be made upon compliance of all other formalities in this regard by the petitioner. Supply of electricity being one of the essential supplies to life. The

CESC Ltd. will provide service connection for supply electricity to the petitioner preferably within a period of two months from the date of compliance of all necessary formalities in this regard by the petitioners.

There will be no order as to costs.

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