

Panchanan Sandibigrah Vs. General Manager, Nesco and ors.

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Court : Orissa

Decided On : Feb-24-2010

Reported in : 109(2010)CLT808

Judge : S.K. Mishra, J.

Appellant : Panchanan Sandibigrah

Respondent : General Manager, Nesco and ors.

Judgement :

S.K. Mishra, J.

1. Whether the licensee is justified in insisting upon payment of the arrear dues including that of seller of the premises, from the Petitioner as a condition precedent for providing new service connection to the premises is to be determined in this case.

2. The Petitioner purchased a piece of land along with the house standing thereon from one Smt. Saraswati Kar on 09.08.1994 by virtue of a registered sale deed. After taking over the possession the Petitioner stayed there & mutated the land in his favour. Record of rights has been issued in his favour. There was an existing electricity supply line to the premise of the Petitioner in the name of the previous owner but it is pleaded that there was no current to that line because the predecessor did not clear up the arrear electrical dues to the tune of Rs. 63,924.

The Petitioner wanted electrical supply to the premise & hence he approached the Opp. Party No. 2 for fresh connection. The Opp. Party No. 2 suggested to take new connection. The Petitioner further pleads that the previous owner had deposited Rs. 8,000 in the name of the Petitioner as per receipt as at Annexure-3. After some months the Petitioner applied for new service connection to his plot. The Petitioner deposited the form along with necessary documents in order to take electricity to new plot. All on a sudden, the Opp. Parties sent a letter to the Petitioner requesting him to clear up dues of Rs. 63,924, which was in the name of the previous owner of the plot. His case is that the bill for consumption of electricity by an erstwhile consumer is not a charge on the premises which is purchased by him, bona fide. Therefore, the Petitioner seeks to quash Annexure-5 & also prays that the Opp. Party No. 2 be directed to give new service connection to him immediately.

3. The Opp. Parties 1 & 2 have filed their written counter, inter alia, alleging that since there is an alternative forum, the Petitioner should approach the grievance redressal forum & a Writ Petition is not maintainable. The Opp. Parties, further, pleaded that the premises in question stands on plot No. 1034/1594, Khata No. 393/138 measuring an area Ac. 0.044 decimals. The consumer No. JTT 757 at 3 KW load under domestic tariff was supplied/extended to one Smt. Saraswati Kar W/o D.N. Kar, i.e., previous owner of the premises, from whom the Petitioner has purchased the said premises on 0V 08.2004 & availing power supply without any intimation to the Opp. Parties & or application for change of ownership as per the provisions of the Orissa Electricity Regulatory Commission, Distribution (Conditions of Supply) Code,-2004, (in short the 'Code'). The Opp. Parties further claimed that the outstanding energy dues of the premises in which the Petitioner resided prior to the purchase of the same on 09.08.2004 is Rs. 63,924, as calculated up to 06.08.2009.

The Opp. Parties further claimed that the Petitioner has not approached the Court in clean hands as he has been intimated by the Project Engineer of ENZEN, Opp. Party No. 3 (franchise holder of NESCO under Jaipur Town) to clear up the arrear outstanding energy charges amounting to Rs. 63,924 against the said premises for which fresh connection/charge is sought for. Thus, it is pleaded that the question

of refusal to new connection does not arise. It is further pleaded that, as per the provision of the Code, disconnection notice was issued to the Petitioner on 26.03.2009 demanding arrear dues of Rs. 63,924 calculated up to December, 2008 which was acknowledged by the Petitioner on 26.03.2009. The Petitioner in response to disconnection notice furnished an undertaking that he would pay a sum of Rs. 5,000 per month along with current energy charges. Apart from this, the order to avoid disconnection, the Petitioner deposited a sum of Rs. 8,000 out of the arrear dues with reconnection fees of Rs. 50, on 26.03.2009. The Opp. Parties claimed that the amount of Rs. 8,000 has been paid by the Petitioner & not by the previous owner. Copy of the undertaking dated 26.03.2009 has been annexed as Annexure A/1. The Opp. Parties further pleaded that the application for fresh connection cannot be considered unless & until the arrear energy charges against the said premises is paid along with the current bills for which Petitioner has been noticed to clear up the arrears.

4. A transferee of the premises or a subsequent occupant of premises with whom the supply has no privity of contract cannot obviously be asked to pay dues of his predecessor in title or possession & the amount of payment of electricity dues does not create a charge on the premises. A purchaser of the premises cannot be foisted with electricity dues on any previous occupant, merely, because he happens current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceeding against a purchaser of a premise for the outstanding electricity dues of the vendor of the premises, in the absence of any contract to the contrary (*Paschimanchal Vidyut Vitran Nigam Ltd. and Ors. v. DVS Steels & Alloys Private Ltd. and Ors.* : AIR 2009 S.C. 647 relied on. Similar view has also taken by this Court in *Ajaya Kumar Agarwalla v. OSFC and Ors.* : AIR 2007 Orissa 37.)

5. However, the Apex Court in *Paschimanchal Vidyut Vitran Nigam Ltd case* (supra) further proceeded to examine the legal position when the purchaser of a premise approaches the distribute of seeking a fresh electricity connection to its premises for supply of electricity. The Supreme Court held that the distributor, in such case, can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, for which arrear dues in regard to

supply of electricity made to the premises when it was in occupation of the previous owner, should be cleared up before the supply is restored to the premises or a fresh connection is provided to the premises. The Apex Court further held that, if any, statutory rule governed the conditions relating to sanction of connection or supply of electricity, distributor can insist upon fulfillment of the requirement of such rules & regulations. If the rules are silent, it is further held, it can stipulate such terms as deem fit & proper for regulating its transaction & dealing. So long as such rules & regulations or the terms & conditions are not arbitrary & unreasonable the Court will not interfere with them.

6. In exercise of the powers conferred upon it by Section 181(2)(t)(v)(w) & (x) read with part (vi) of the Electricity Act, 2003 the Orissa Electricity Reforms, 1995, the Orissa Electricity Regulatory Commission made the Orissa Electricity Regulatory Commission Distribution (conditions of supply) Code, 2004. Rule 13 provides for licensee's obligation to supply & power of recovery expenditure. In Sub-rule 10 of the Rule 13 at Clause (b) regulates transfer of service connection. The relevant clause is quoted below:

(10) Transfer of service connection

(a)(b) xxx The service connection from the name of a person to the name of another consumer shall not be transferred unless the arrear charges pending against the previous occupier are cleared. Provided that this shall not be applicable when the ownership of the premises is transferred under the provisions of the State Financial Corporation Act.

7. In the case of Ajaya Kumar Agarwalla v. OSFC and Ors. (supra) the purchaser of the premises had obtained title as well as possession over the premises in an auction sale conducted under the Orissa Financial Corporation Act. Therefore, factually that case is distinguishable then the present case.

Rule 103 appearing in Chapter -XII read as follows:

103- 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 & General purpose consumers & 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.

9. (SIC) It is clear from the chart annexed by the Opp. Parties as Annexure-A/3 that as on date of purchase in August, 2004 a sum of Rs. 38,554.60 was outstanding against the original owner of the premises. Thereafter also the electricity supply continued & by the end of August, 2009 an arrear dues of Rs. 68,682.50 had already accrued. In the meantime, in February, 2007 Rs. 4,000 has been paid & on 26.03.2009 a sum of Rs. 8,000 has been paid. It is not the case of the Petitioner that at the time of purchase, the seller of the property had intimated the licensee i.e., Consumer Distribution Commissioner about the transfer of ownership & possession of the property. There is clear violation of Section 103 of the Code.

10. It is also evident from AnnexureA/1 that the present Petitioner on 26.03.2009 after depositing a sum of Rs. 8,000 committed himself to repay the outstanding dues of Rs. 66,303 up to 12.02.2008 by depositing monthly installments of Rs. 5,000 along with current dues regularly/Keeping in view the facts of the case & the ratio laid down by the Supreme Court in Paschimanchal Vidyut Vitaran Nigam Ltd. case (supra), this Court is of the opinion that if the Petitioner does not want to a service connection for supply of electricity, then the Opp. Parties cannot recover the same, from him. However, the condition of clearing up all dues for connection of a new supply line or transfer the earlier service connection is a reasonable restriction which requires no interference. The Petitioner, however, is at liberty to repay the entire arrear dues in monthly installment of Rs. 5,000 as undertaken by him along with the current dues. In such a case, the Opp. Parties shall restore supply of electricity to his premises.

The Writ Petition is accordingly disposed of.