

(2009) 02 JH CK 0035

Jharkhand High Court

Case No: Writ Petition (C) No. 3 of 2009

Shashi Kumar Singh

APPELLANT

Vs

Jharkhand State Electricity Board
and Ors

RESPONDENT

Date of Decision: Feb. 10, 2009

Acts Referred:

- Electricity (Supply) Act, 1948 - Section 49, 79
- Electricity Act, 1910 - Section 2, 22

Citation: (2009) 57 BLJR 1407 : (2009) 2 JCR 3777

Hon'ble Judges: Ajit Kumar Sinha, J

Bench: Single Bench

Advocate: M.A. Khan and Jawed Sultan, for the Appellant; D.K. Pathak and Rahul Kumar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ajit Kumar Sinha, J.

The petitioners have preferred these writ petitions for issuance of appropriate writ / order / direction in the nature of mandamus directing the respondent board to accept the application form for grant of the electrical connection along with requisite fee to grant separate electrical connection to the petitioner's commercial allotted premises having holding No. 17, Plot No. 965, Ward No. 46 situated at Dhobi Mohalla, Doranda, P.O. & P.S. Doranda, District - Ranchi which the petitioner has hired on rent from Md. Arif Ahmad as the respondents have refused to accept the petitioners application for grant of electrical connection on account of the dues of erstwhile owner / landlord of the said premises.

2. The main contention raised by the petitioner is that the respondent were not justified in refusing the application form for new electrical connection to the

petitioner on the ground that there are dues towards electrical consumption of the erstwhile owner / landlord.

3. The counsel for the petitioner further submits that the petitioner cannot be made liable to meet the liability of the landlord to secure separate connection of electric line and thus the refusal was on the face of it illegal, arbitrary and he cannot be fastened with the liability of the landlord for hiring the commercial premises on rent from the legal owner.

4. To support the contention the counsel for the petitioner has referred to and relied upon a decision of the Hon"ble Supreme Court, rendered in the case of [Isha Marbles Vs. Bihar State Electricity Board and Another,](#).

5. The facts of the aforesaid case are quite different from the present facts of the case. Isha Marbles and connected matters were a case where the premises came to be owned or occupied by the purchaser since the previous units owners who had the benefit of electric supply borrowed from the Corporation and to secure those lines they mortgaged / hypothecated the property. The aforesaid arrears in relation to those premises had fallen due since they had neglected to pay and that is why the Hon"ble Supreme Court held that it was impossible to impose on the purchasers a liability which was not incurred by them and they cannot be termed as consumer or occupier within the meaning of the provisions applicable at that point of time.

6. Another case referred to and relied upon is a decision of a Division Bench of this Court, rendered in the case of *Bijay Kumar Tantia v. Jharkhand State Electricity Board* as reported in 2002 (3) JCR 368 (Jhr.) wherein while considering a similar issue this Court held that the liability to pay consumption charges of the consumer for the outstanding dues of electricity consumption cannot be imposed as a pre-condition for obtaining his own electric connection. In the same order it has also been observed at paragraph - 7 of the judgment that if the Board suspects that the new application has been set up by the erstwhile consumer or the erstwhile consumer is a new incarnation then the Board in such case is always at liberty to examine such aspects by passing a reasoned order and accordingly a liberty was granted and the matter was directed to be examined in view of the aforesaid observation.

7. The counsel for the petitioner has further referred to 1999 (3) PLJR 222 and [Villagers of Barki Punu Vs. Jharkhand State Electricity Board and Others,](#) which arises out of a Public Interest Litigation with regard to Rural Electric connection wherein the intending consumers applied to consume power with requisite deposits for electric connections.

8. Be that as it may, the issue in question is no more res integra and has been conclusively decided in a recent judgment of the Hon"ble Supreme Court reported in 2006 (13) SCC 101 wherein the Hon"ble Supreme Court also considered the case of [Isha Marbles Vs. Bihar State Electricity Board and Another,](#) and held that in view of insertion of Clause 21A of the Terms and Condition of Supply of Electrical Energy

by the appellant in that case i.e. Dakshin Haryana Bijli Vitran Nigam Ltd., Isha Marble's case does not apply. The Hon'ble Supreme Court at paragraph-15 held as under;

15. We must observe that the decision in Isha Marbles" is by itself not an answer to the validity of Clause 21-A of the Terms and Conditions inserted by the notification. u/s 49 of the Supply Act, the licensee or rather, the Electricity Board, is entitled to set down the Terms and Conditions of Supply of electrical energy. In the light of the power available to it, also in the context of Section 79(j) of the Supply Act, it could not be said that the insertion of Clause 21-A in the Terms and Conditions of Supply of electrical energy is beyond the power of the appellant. It is also not merely contractual. This Court in Hyderabad Vanaspatti Ltd. v. A.P. SEB has held that the Terms and Conditions of Supply of electricity notified by the Electricity Board u/s 49 of the Electricity (Supply) Act are statutory and the fact that an individual agreement is entered into by the Board with each consumer does not make the Terms and Conditions of Supply contractual. This Court has also held that though the Electricity Board is not a commercial entity, it is entitled to regulate its tariff in such a way that a reasonable profit is left with it so as to enable it to undertake the activities necessary. It in that process in respect of recovery of dues in respect of a premises to which supply had been made, a condition is inserted for its recovery from a transferee of the undertaking, it cannot ex facie be said to be unauthorized or unreasonable. Of course, still a court may be able to strike it down as being violative of the fundamental rights enshrined in the Constitution of India. But that is a different matter. In this case, the High Court has not undertaken that exercise.

34. The law relating to electricity is principally contained in these two Acts:

(i) The Electricity Act: This provides for grant of licence in relating to supply of electricity and the purchase of the undertakings. It also provides for supply of electricity including the protective clauses.

(ii) The Supply Act: It provides for constitution of State Electricity Boards, the powers and duties of such Boards.

35. Section 2 of the Electricity Act in Clause (c) defines a "consumer" thus:

"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 licensee, the Government or such other person, as the case may be;

Undoubtedly, this is an inclusive definition. It consists of two parts:

(i) The person who is supplied with energy; and

(ii) It includes within it any person whose premises are connected for the purpose of receiving energy with the works of a licensee.

36. Rule 2(af) defines an "occupier" as under:

"occupier" means the owner or person in occupation of the premises where energy is used or proposed to be used;

37. Section 22 of the Electricity Act runs:

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 term and conditions of the licence, be entitled, on application, to a supply on the same as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply.

In a recent judgment of the Hon'ble Supreme Court, rendered in the case of Dakshin Haryana Bijli Vitran Nigam Ltd. and Anr. v. Excel Buildcon Private Ltd. and Ors. as reported in (2008) 10 SCC 720 the Hon'ble Supreme Court distinguished Isha Marble's case and held that unless the legality / validity of the condition in Clause 21-A therein importing such bar which was under challenge was decided the unconditional stay was legally unsustainable. However, it permitted the reconnection of electricity on deposit of significant part of the arrears i.e. Rs. 35 lakhs out of the total dues of Rs. 85 lakhs.

9. Considering the aforesaid facts and circumstance of the case and the settled law, it will be in the interest of justice that the respondent Board considers the merit of the petitioner's claim for new electric connection and in case, if he is not a set up or a reincarnation of the landlord / owner in question against whom certain dues are outstanding or is not connected with him then the same can be considered on its own merits for grant of fresh electrical connection.

10. This writ petition is accordingly allowed and the matter is remitted back to the General Manager, to be considered within a period of one month from the date of receipt of a copy of this order on its own merits by a speaking order and will communicate the same.