

(2002) 06 JH CK 0017

Jharkhand High Court

Case No: LPA No. 267 of 2002

Bijay Kumar Tantia

APPELLANT

Vs

Jharkhand State
Electricity BoardRESPONDENT

Date of Decision: June 24, 2002**Acts Referred:**

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

Hon'ble Judges: Vinod Kumar Gupta, C.J; Tapen Sen, J**Bench:** Division Bench**Advocate:** M.S. Mittal and A.K. Yadav, for the Appellant; A.K. Mehta, for the Respondent**Final Decision:** Allowed

Judgement

1. A very short and simple point is involved for consideration and determination in this appeal. The appellant- Writ Petitioner applied for a fresh electricity connection in his status as a tenant of the premises situated on Holding No. 1866(A). Ward No. 20 at Ranchi but he was not granted the electricity connection on the ground that an earlier consumer owed some amount of money to the Board with respect to the aforesaid premises. The Board also informed the appellant-Writ Petitioner that electricity connection could be granted to him if he cleared the aforesaid outstanding dues of the erstwhile occupier/ consumer. Feeling aggrieved, the appellant-Writ Petitioner filed a writ application for appropriate relief, but the learned single Judge vide the judgment dated 22nd March, 2002 (under challenge in this appeal) and in the facts and circumstances of the case, declined to grant any relief to the appellant in the sense that he observed that if any amount was lying due with respect to the aforesaid property and if the same was deposited either by the appellant or by some one else, the Board shall grant electricity connection to the appellant in the aforesaid premises. The learned single Judge, therefore, made the condition of deposit of the outstanding dues of the earlier consumer as a sine qua non for the grant of new connection to the Appellant. Feeling aggrieved the

Appellant-Writ Petitioner has come up in this appeal before us against the aforesaid judgment.

2. There are cases, where an erstwhile consumer, after committing defaults in the payment of electricity dues disappears or vanishes and sets up another individual or another juristic person and this newly set up individual or juristic person applies for a fresh electricity connection, pretending or showing that he has nothing do with the earlier occupier/consumer. In such cases, it is permissible for the Board, if either prima facie or upon an inquiry or investigation, the Board does find that the applicant for the fresh connection is none else but the reincarnation of the erstwhile occupier/consumer and that he has been set up by the erstwhile consumer only because there is a clear intention of not clearing the outstanding dues. Such permissibility however will not be applicable to a bona fide new applicant for a fresh electricity connection, who admittedly has had nothing to do with the erstwhile consumer. We are saying so because in law as well as based on established norms the liability to pay the electricity consumption charges is upon a consumer. The definition of the word "consumer" can be found in Section 2(c) of the Indian Electricity Act, 1910 and the same reads as follows :

" "consumer" means any person who is supplied with energy by a licensee or Government or by any other person engaged in the business of supply 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 some other person as the case may be."

3. The provision for the sale of electricity by the Board to persons other than licensee is to be found in Section 49 of the Electricity (Supply) Act, 1948 which reads as follows :

"49. Provision for the sale of electricity by the persons other than licensee.---(1) Subject to the provisions of this Act and of regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.

(2) In fixing the uniform tariff as, the Board shall have regard to all or any of the following factors, namely :--

(a) the nature of the supply and the purposes for which it is required;

(b) the coordinated development of the supply and distribution of electricity within the State in the most efficient and economic manner with particular reference to such development in areas not for the time being served or adequately served by licensee;

(c) the simplification and standardization of methods and rates of charges for such supplies;

(d) the extension and cheapening of supplies of electricity to sparsely developed areas.

(3) Nothing in the foregoing provision of this Section shall derogate from the power of Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for supply of electricity, the Board shall not show undue preference to any person.

4. Thus from the perusal of the aforementioned two statutory provisions, it is apparently clear that Section 49 of the Electricity (Supply) Act, 1948 authorizes the Board to fix tariffs for sale of energy to persons other than licensees, i.e. consumers and the corresponding liability of the consumer to pay electricity charges to the licensee/Board.

5. Thus from a perusal of the aforementioned it is evident that the liability to pay the electricity consumption charges is upon the "consumer" and not upon or with respect to the "premises". Therefore, if a consumer defaults in the payment of electricity charges, it is the Board which has to be blamed for failing to realise the charges. We are saying so because at the time of grant of the connection or at the stage of entering upon an agreement with the consumer, if the Board does not take protective steps or safeguards its own interests adequately protect itself in the event of the consumer disappearing without clearing the outstanding dues the Board, apart from disconnecting the electricity supply, cannot insist upon a fresh occupier of the same premises to first clear the dues of the erstwhile consumer as a precondition for obtaining his own electric connection. Such stand of the Board is wholly against all established principles of law. The Board cannot be permitted to do so in any situation, whether the premise is purchased by a bona fide purchaser from its previous owner or the premise is taken on rent by a bona fide lessee/tenant etc. and if neither of them has had any connection with the erstwhile consumer and if the Board has no material before it to either suspect or establish that the new applicant is the reincarnation of the erstwhile consumer. In such a situation the Board cannot at all insist on the new applicant to clear off the dues of the erstwhile consumer before consideration his request for the grant of fresh electricity connection.

6. The learned single Judge, therefore was not correct in his view in making the aforesaid condition as a sine qua non for the grant of new electricity connection to the new bona fide occupier of the premises.

7. It goes without saying that it is always open to the Board in all such cases where an erstwhile consumer owing dues to the Board has disappeared and the electricity supply has been disconnected and a new applicant puts in his application for a new electric connection and if the Board suspects, as observed hereinabove, that this new applicant has been set up by the erstwhile consumer or the erstwhile consumer has a new incarnation in this new applicant and has assumed a new identity with a view to avoid its liability to pay the outstanding charges, the Board in all such cases is always at liberty to

examine such aspects and by passing a reasoned and speaking order, communicate to the new applicant its decision in writing to the effect that based on the reasons and grounds mentioned in its order, it would not grant new connection to the new applicant unless the new applicant or any one else clears the outstanding dues with respect to the premises in question. Only in such and similar situations and in no other cases the Board can refuse to grant a new connection.

8. In the present case, based on the aforesaid observations even though the Board has not taken the stand either before the learned single Judge or before us that the applicant has been set up by the erstwhile consumer, we are giving four weeks time at the request of Mr. A.K. Mehta, learned counsel appearing on behalf of the respondent-Board, to examine the aforesaid aspects and take a decision in the light of the observations made hereinabove and if it finds that the applicant has had nothing to do with the erstwhile consumer, it shall grant electricity connection to the applicant, immediately at the expiry of four weeks from today and within one week thereafter.

9. For the aforesaid reasons, judgment of the learned single Judge is hereby set aside and the appeal is allowed but without any order as to costs.