
Rad Trade Private Limited and Another Vs The CESC Limited and Others

Writ Petition No. 31808 (W) of 2008

Court: Calcutta High Court

Date of Decision: July 30, 2010

Acts Referred:

Electricity Act, 2003 " Section 2(15), 43#West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2007 " Regulation 3.4.2

Hon'ble Judges: Syamal Kanti Chakrabarti, J

Bench: Single Bench

Advocate: Kishore Datta, Ranabir Roy Chowdhury and Debrup Chakraborty, for the Appellant;Subir Sanyal and G.S. Asopa, for the Respondent

Final Decision: Dismissed

Judgement

Syamal Kanti Chakrabarti, J.

In the instant writ petition it has been contended on behalf of the writ petitioner No. 1 Rad Trade Private

Limited that the writ petitioner No. 2 Anshuman Damani is the director of the said private limited company having its unit for bottle washing plant at

60J, J.N. Lahiri Road, Sreampore, District - Hooghly. It is further contended that the said unit was set up after a Memorandum of Understanding

was entered into with Shri Sitansu Lahiri, owner of the said premises on or about 9th day of November, 2008. The petitioner claimed that they are

occupying the said factory premises as tenant under the said Sitansu Lahiri and running the business with 30 employees with the help of Generator

Set for want of electricity. It is further contended that on or about 15th December, 2008 the writ petitioners applied for new electric connection at

the aforesaid premises for commercial purpose. But the District Engineer, Sreerampore District communicated their decision through letter dated

15th December, 2008 intimating that there was some outstanding dues in respect of consumption of electricity at the aforesaid premises and so he

was asked to contact the outstanding section of commercial department, Howrah Regional Office. Accordingly he contacted the commercial

department while they handed over two outstanding bills in the name of Sreampore Rubber Products for the month of November, 1998 for a sum

of Rs. 1,416/- and another bill for the month of December, 1998 for a sum of Rs. 60,679/-and demanded that unless the said outstanding amount

is paid by the petitioner No. 1, the respondents will not provide any new electricity connection in the said premises.

2. It is further case of the petitioners that u/s 43 of the Electricity Act, 2003 it is incumbent upon the respondents to supply electricity on application

by the owner or occupier of any premises within one month from the date of receipt of such application and since no electricity has been supplied

to the writ petitioners, who are new applicants, they cannot be treated as consumer within the meaning of Section 2(15) of the Electricity Act,

2003 and therefore, there is no liability on the part of the petitioner to liquidate the arrears left over by the erstwhile owner of the premises. It is

also contended that the petitioners have no connection with the said Sreampore Rubber Products and they are inducted as tenants in the said

premises by a separate agreement. Outstanding dues can be recovered from a defaulter and not from any new applicant. Such demand is the

outcome of arbitrary process of recovering the dues beyond jurisdiction. Therefore, by their illegal active refusal the respondents are trying to

prevent the petitioners from carrying out their fundamental rights of business and from enjoying their right of livelihood in violation of constitutional

provisions. Therefore, they have prayed for necessary direction upon the respondents to give new electric connection in the factory premises of the

petitioners on 60J, J.N. Lahiri Road, Sreampore, District - Hooghly immediately without insisting upon payment of the amount raised in the bills for

November and December, 2008 in favour of Sreampore Rubber Products in any manner whatsoever and to cancel the decision of the

respondents for such demand of outstanding dues of the previous consumer.

3. In their affidavit-in-opposition the respondent Nos. 1 to 4 have claimed that as per their usual practice CESC issued a letter on 15.12.2008

calling upon the writ petitioners or its authorised representative to pay the outstanding dues and assured that after settlement of the recoverable

dues they will take further steps to effect supply of electricity to the writ petitioners. They have further claimed that the said Sitansu Lahiri is the

landlord of the said premises and he used to run the Sreampore Rubber Products in the same premises. Such supply was disconnected for theft of

electricity on 23.07.1997 under LCC Ref. No. LCC/936/97 and a claim of Rs. 8,27,240/- was forwarded to the said Sreampore Rubber

Products. The demand was challenged before this Hon"ble Court in the writ petition being W.P. No. 15355(W) of 1997 and this Hon"ble Court

by order dated 07.08.1997 directed the said Sreampore Rubber Products to deposit 50 per cent of the total claim in two equal instalments. The

consumer deposited 25 per cent i.e., Rs. 2,06,810/- on 18.08.1997 and the balance 25 per cent on 02.01.1998. Thereafter the supply of

electricity was restored to the said Sreampore Rubber Products as per order of this Hon"ble Court.

4. Such supply was again disconnected on 13.11.1998 for non-payment of monthly consumption bill leaving a claim of Rs. 63,000/- as

outstanding. The said Sreampore Rubber Products thereafter did not take any step for restoration of such supply on payment of the outstanding

dues and they also did not pay balance 50 per cent of their demand amounting to Rs. 4,13,620/- as per order of the Hon"ble Court dated

07.08.1997 passed in W.P. No. 15355(W) of 1997. Thus a total sum of Rs. 4,76,620/- is still due and payable in respect of the consumer

Sreampore Rubber Products who was running the business at the premises. It is revealed from their inspection on 15.01.2009 that before his

induction as a tenant under the agreement in question at the disputed premises the writ petitioner had previous acquaintance with the defaulting

consumer Sitansu Lahiri who happens to be owner of the said premises. They were also fully aware of the disconnection of the supply. They have

accepted the tenancy with the full knowledge of such outstanding dues. In fact it is the said landlord who has set up the petitioner to get the new

connection by evading the past liability and accordingly they have entered into the tenancy agreement in such a fashion so that CESC could not

realise the dues either from the former consumer or from the new applicants. Thus there was a nexus between the owner and the tenant in the

instant case to evade the liability of outstanding dues for consumption of electricity and they are quite competent to make the demand for payment

of such outstanding dues from a new applicant as there is some nexus between the previous consumer and the new applicant. It is their further case

that the petitioners are occupying the said premises for quite sometime and running the bottle washing plant at the same premises having due

knowledge of outstanding dues before entering the aforesaid tenancy agreement. Therefore, the date of execution of the tenancy agreement cannot

be a bar or restrict CESC from recovering the outstanding dues.

5. In their affidavit-in-reply the writ petitioners have claimed that in terms of regulation 3.4.2 of the West Bengal Electricity Regulatory Commission

(Electricity Supply Code Regulations, 2007) the burden of proof of existence of such nexus between the earlier consumer and new applicant lies

upon the respondents it and they have not discharged this burden. Therefore, the writ petitioners are not liable to pay such outstanding dues as a

condition precedent to the supply of electricity. In paragraph 5 of such reply it has been averred:

. With regard to the statements contained in paragraphs 1 to 3 of the said affidavit, I deny and dispute each and every statements and/or allegations

made therein, save and except what are matters of records. This deponent refrains from dealing with the purported statements and/or allegations

made in the said affidavit which are not related to and/or in any way connected with the adjudication of the instant writ petition. It is an undisputed

fact that the petitioners are running Bottle Washing Plant at the said premises only after the petitioner No. 1 company was incorporated on 17th

day of July, 2008 and the said Unit was set up after such incorporation and upon a Memorandum of Understanding being entered into with the

landlord and the petitioner No. 1 company on 9th day of November, 2008 and that the petitioners do not have any nexus with the erstwhile tenant

and/or consumer in respect of the said premises.

Such a demand in absence of any material particulars in details cannot be accepted as a legitimate claim of the respondents because it is not

supported by any cogent facts and documents.

6. Learned lawyer for the respondents has claimed that nexus cannot be proved by written document but it can very well be perceived from the

conduct of the parties. In the instant case from the conduct of the petitioners and the owner of the premises such nexus can be perceived. He has

relied upon the principles laid down in Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, and

Rashi Metals Pvt. Ltd. Vs. West Bengal State Electricity Board and Others, wherein it has been set at rest that the supplier can claim arrears from

subsequent occupier or purchasers. Learned lawyer for the petitioners, however, has contended that the facts and circumstances dealt with in

Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, are quite different and as such the said

principle will not be applicable in the instant case. Similarly the ratio in Rashi Metals Pvt. Ltd. Vs. West Bengal State Electricity Board and Others,

was adjudicated on 14.07.2006 but the West Bengal Electricity Regulation of 2007 came into effect from 12th September, 2007. Therefore, the

said principle will also not be applicable in the case which will be governed under the Regulation of 2007.

7. From the documents filed by the writ petitioners it appears from Annexure P-1 that the writ petitioner No. 1 Rad Trade Private Limited was

incorporated under the Companies Act, 1956 as a private limited unit on 17th July, 2008. Annexure P-2 to the writ petition is the Memorandum of

Understanding executed on the 9th day of November, 2008 between Mr. Sitansu Lahiri and the said Rad Trade Private Limited whereby and

whereunder the lessor Sitansu Lahiri allowed the lessee the use and occupation of premises No. 60J, J.N. Lahiri Road, Sreampore, Hooghly - 712

201 for the purpose of carrying out commercial/ setting a factory for a period of 10 years commencing from the date of execution of such

Memorandum of Understanding at a monthly rental of Rs. 20,000/-for occupying an area measuring 5,000 square feet (Clause 1). Though the

instrument has been styled as Memorandum of Understanding, Clause 8 of the same undertakes that the same is a Lease Deed between the owner

and the tenant which is quoted below:

8) THAT this Lease Deed does not convey any right to sublet and the lessee undertake that they will not sublet, assign or otherwise part with

possession of the said demised premises in part or in full, without the prior consent of the lessors.

Such an instrument without registration cannot be treated as a valid document to be relied upon for adjudicating the rights and obligations of the

lessor and the lessee involved therein. Yet it reflects the conduct of the parties, the prevailing circumstances and the antecedents because man may

tell lie but document cannot. For this purpose I may place on record Clause 15 of the same as under:

15) As there is some dispute in there in this premises with Calcutta Electric Supply Corporation and as soon as the Lesser resolved the dispute a

formal agreement will be entered within both parties with all other terms and condition will remain unchanged.

Though such construction is grammatically defective yet the intention of the parties reflected in such clause is no doubt an admission of the

knowledge of existing dispute between the owner and CESC on the date of execution of such agreement, i.e., 09.11.2008. It is clearly agreed by

and between the parties that such dispute shall be resolved by the lessor Sitansu Lahiri and thereafter a formal agreement will be entered into by

and between the parties while all other terms and conditions, i.e., condition 1 to 14 will remain unchanged. Such type of agreement is an

undertaking by and between the parties that on the part of the lessor the dispute shall be resolved with CESC obviously regarding their outstanding

dues and thereafter the terms of the agreement will be implemented, i.e., carrying out the business at the aforesaid premises of the tenant will be

implemented by entering into another agreement which is the condition precedent to the resolution of the dispute with the CESC at the instance of

the lessor. Therefore, I hold that Clause 15 of the aforesaid agreement is a clear proof of the fact that the tenancy was induced in the instant case

by the landlord with the full knowledge of the existing dispute between the CESC and the lessor and such provision also proves existence of nexus

between the landlord and tenant to evade liability of paying outstanding dues of CESC.

8. In the aforesaid circumstances it shall be the legitimate conduct of a normal human being to resolve the dispute with the CESC and it shall be the

normal conduct of the writ petitioners to enquire about the nature and extent of the liability of the lessor from the CESC concerned but both the

lessor and the lessee in the instant case remain silent regarding this Clause 15 and insisted for supply of electricity without deciding the question of

payment of outstanding dues either by the owner or by the new tenant induced by the owner. This is a clear proof of nexus between the owner

and the tenant which does not require any further proof to decide the claim of the writ petitioner.

9. The second aspect of such conduct will be further revealed from the conduct of the writ petitioners themselves. It is admitted that the respondent

CESC invited them by their letter dated 15.12.2008 to ascertain the extent of outstanding dues from their outstanding section of the commercial

department. Thereafter the petitioner sent his representative to the commercial department and ascertained that two bills for November and

December, 1998 amounting to Rs. 1,416/- and 60,679/- remained unpaid by the previous consumer Sitansu Lahiri. Surprisingly on receipt of such

information from the CESC the writ petitioners did not make any correspondence with the owner of the premises, i.e., Sitansu Lahiri asking him to

pay the aforesaid amount in terms of Clause 15 of their agreement as discussed above. Failure to make such correspondence is an overt act or a

conscious conduct of the writ petitioner to foster nexus with the owner to avoid payment of outstanding dues of the respondent CESC.

10. The third aspect will be further revealed from the conduct of the writ petitioners. They know that the dues are payable by the owner of the

premises, Sitansu Lahiri but he has not been included as a party to this writ petition and thereby tried to save the owner from the jurisdiction of this

Court to issue any direction to him for making any payment or to explain the circumstances under which he has not discharged his contractual

obligation committed in Clause 15 of the agreement in question. On the contrary in the writ petition the writ petitioner has elaborately discussed

and asserted his legal right to get supply of electricity as a new applicant and tried to save the said Sitansu Lahiri from his obligation to pay the dues

to the CESC in total disregard of Clause 15 of their agreement. This type of conduct on the part of the writ petitioner is another clear proof of

nexus between the owner and the writ petitioner.

11. Without discussing other unnecessary points raised in this case, I say with the full courage of my conviction that the writ petitioners have come

up before this Court not in clean hands. Their conduct is suspicious and inconsistent with written agreement in terms of Clause 15 of the agreement.

The writ petition is also bad in law for non-joinder of necessary parties for resolving the disputes between the CESC and the defaulting consumer

Mr. Sitansu Lahiri. They have taken the Court of law as a platform to deprive the legitimate claim of the CESC as against the previous consumer in

a very cunning way which can easily be termed as an abuse of the process of law. Since they are not coming with clean hands, they are not entitled

to get any relief as prayed for.

12. Accordingly I hold that there is no merit in this writ application which is accordingly dismissed with cost of Rs. 5,100/- to the respondents.

13. Urgent Photostat certified copy of this order, if applied for, be given to all the parties upon compliance of all necessary formalities.