

A PASCHIMANCHAL VIDYUT VITRAN NIGAM LTD. & ORS.
v.
M/S. DVS STEELS & ALLOYS PVT. LTD. & ORS.
(Civil Appeal No. 6565 of 2008)

NOVEMBER 7, 2008

B [R.V. RAVEENDRAN AND LOKESHWAR
SINGH PANTA, JJ.]

C *Electricity:*

D *Industrial consumer – Demand of electricity dues – Non-payment – Sale of plot – Claim by purchaser for fresh electricity connection – Stipulation by Electricity distributor that electricity dues of the original owner be cleared before fresh connection is given – Legality of – Held: Such stipulation not unreasonable or arbitrary – Electricity distributor can stipulate the terms subject to which it would supply electricity.*

E *Industrial consumer – Demand of electricity dues – Non-payment – Sub-division of premises by owner into number of plots – Sale of plots – Claim for fresh electricity connection by one purchaser – Allowed on payment of pro-rata electricity dues of the original owner – Non-payment of pro-rata dues by other purchasers and as a result electricity connection not given to them – Electricity Commission passed interim order directing the Electricity Distributor to accept bank guarantee from the original owner in regard to the alleged dues and to release fresh connections to all purchasers without demanding pro-rata dues from them – Directions complied with – Claim of first respondent for refund of amount paid by it – Maintainability of – Held: Not maintainable – First respondent cannot seek refund on basis of subsequent interim order of the Commission, in absence of a specific direction for refund – First respondent having paid the said*

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amount voluntarily and in pursuance of its undertaking as a condition for obtaining fresh electricity connection, is estopped from claiming the amount back, except in accordance with the terms subject to which the payment was made – Electricity Supply Code – Clause 4.3(g) and (h).

The Electricity Distributor raised supplementary bills against the third respondent, an industrial consumer. The third respondent disputed the claim under the bills. The matter is pending adjudication in the Court.

The third respondent meanwhile closed its unit and sub-divided its industrial plot into smaller plots and sold one plot to the first respondent. The first respondent applied to the appellant-Electricity Distributor and was sanctioned a fresh electricity connection on the condition that it would pay electricity dues of the third respondent, in proportion to the area purchased by it. The first respondent accordingly deposited Rs.8.63 Lakhs being the pro-rata dues of the third respondent, subject to the condition that in the event of the pending challenge to the demand being decided in favour of third respondent, the said amount would be refunded to first respondent.

Appellant did not give electricity connection to several plot-purchasers from third respondent, who did not *pay pro-rata* dues of the third respondent. The third respondent moved an application before the Electricity Regulatory Commission complaining that the appellant had arbitrarily refused power connection to the purchasers of sub-divided plots on the ground that money was due from third respondent, though the said liability was disputed and was pending adjudication in Court.

The Commission directed the appellant to accept a bank guarantee from the third respondent in regard to the disputed claim and to release new power connections to

A purchasers of the sub-divided plots, without insisting upon payment of any amount towards the alleged dues of third respondent. The third respondent furnished a bank guarantee. The first respondent demanded refund of the pro-rata dues paid by it earlier i.e. Rs.8.63 lacs with interest. The appellant declined the request. The first respondent filed writ petition. The High Court held that the amounts allegedly due from third respondent were secured by a bank guarantee furnished by it, and therefore there was no need to retain any amount from the purchasers of the sub-divided plots. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1. The supply of electricity by a distributor to a consumer is 'sale of goods'. The distributor as the supplier, and the owner/ occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a 'charge' on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises, in the absence of any contract to the contrary. [Para 9] [775-E-H; 776-A]

1.2. But when the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it

would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, Courts will not interfere with them. [Para 10] [776-A-D]

1.3. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor. There is nothing unreasonable in a provision enabling the distributor/supplier, to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to

A the premises. It is obviously the duty of the purchasers/
occupants of premises to satisfy themselves that there
are no electricity dues before purchasing/occupying a
premises. They can also incorporate in the deed of sale
or lease, appropriate clauses making the vendor/lessor
B responsible for clearing the electricity dues up to the date
of sale/lease and for indemnity in the event they are made
liable. [Para 11] [776-E-H; 777-A-B]

2.1. In the present case, when the first respondent,
C who was the purchaser of a sub-divided plot, wanted a
new electricity connection for its premises, the appellant
informed the first respondent that such connection will
be provided only if the electricity dues are paid pro-rata.
They were justified in making the demand. Therefore, it
cannot be said that the collection of Rs.8.63 Lakhs from
D first respondent was illegal or unauthorized. It is relevant
to note that when the said amount was demanded and
paid, there was no injunction or stay restraining the
appellant from demanding or receiving the dues. [Para
12] [777-C-D]

E 2.2. The first respondent had voluntarily paid Rs.8.63
Lakhs being the *pro rata* electricity dues long before the
Electricity Regulatory Commission issued the interim
order directing the appellant not to demand or recover
F any arrears from the purchasers of sub-divided plots
applying for fresh connection. After the third respondent
furnished the bank guarantee, the Electricity Regulatory
Commission did not direct refund of amounts already
paid by applicants seeking fresh connection. In the
G present case, the first respondent had voluntarily paid the
said amount to the appellant to obtain a fresh electricity
connection. It cannot seek refund on the basis of any
subsequent order of the Commission, in the absence of
a specific direction for refund. The first respondent
H having paid the said amount in pursuance of its

undertaking as a condition for obtaining fresh connection, is estopped from claiming the amount back, except in accordance with the terms subject to which the payment was made. The amount deposited by first respondent will however have to be refunded by the appellant, with appropriate interest, if the third respondent is ultimately found to be not liable in respect of the demand under the supplementary bills, or if third respondent actually clears the dues. [Para 13] [777-G-H; 778-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6565 of 2008.

From the final Judgment and Order dated 14.5.2007 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 59163 of 2006.

Pradeep Misra, Manoj Kr. Sharma and Daleep Kr. Dhyan for the Appellants.

Pravir Kumar Jain, Hiren Dasan, Dharmendra Kr. Mishra and Sarla Chandra for the Respondents.

The Judgment of the Court was delivered by

R.V. RAVEENDRAN, J. 1. Leave granted. Heard learned counsel.

2. Paschimanchal Vidyut Vitran Nigam Ltd., the appellant herein holding an electricity distribution licence, is one of the successors-in-interest of Uttar Pradesh State Electricity Board ('Board' for short). The third respondent was a consumer receiving electricity supply from the Board to its industrial unit at Ghaziabad. In April, 1994, the Board raised supplementary bills for Rs.105.78 lakhs against the third respondent towards difference in tariff (on the basis of an audit objection that supply ought to have been charged under HV2 category instead of HV1 category). The third respondent filed civil suits disputing the said

A claim and obtained an order of injunction restraining the Board from recovering the said supplementary bills amount. The Board challenged the order of the civil court by filing appeals before the Allahabad High Court. In those appeals, which are stated to be pending, on 13.12.1996 the High Court stayed the order of injunction granted by the civil court thereby permitted recovery of the outstanding dues.

3. The third respondent closed its unit in the year 1998. In 2001-2002, it sub-divided its industrial plot into 129 smaller plots of different sizes with the permission of Uttar Pradesh State Industrial Development Corporation. One of those plots (A-7/60-67) was sold by the third respondent to the first respondent.

4. The first respondent applied to the appellant (who had succeeded UPSEB by then) for supply of electricity by sanctioning a load of 3200 KVA for running an induction furnace in the plot purchased by it. The appellant sanctioned the request on 4.9.2004 subject to the condition that it should pay the arrears due by the third respondent, in proportion to the area purchased by it, as a condition precedent for supply of electricity. The first respondent agreed to the demand and gave an undertaking that the pro-rata electricity dues of the third respondent would be paid by them. The appellant thereafter called upon the first respondent to pay Rs.8,63,451/- being the arrears, on pro rata basis, by letter dated 9.9.2004 subject to the following condition:

".....the consumer (who) wants to establish its unit, has given an affidavit regarding payment of outstanding dues of M/s. Electro Steel, Ghaziabad installed on that plot that it is agreeable to make payment of outstanding electricity dues on their plot. Therefore, they will deposit the proportionate dues against that unit according to the area of their plot within 15 days Otherwise, the order sanctioning the load will be deemed to be automatically cancelled."

Accordingly on 18.9.2004 the first respondent deposited a sum of Rs.863,451/- being the dues of the third respondent, pro rata, subject to the condition that in the event of the pending challenge to the demand being decided in favour of third respondent, the appellant shall refund the amount deposited by first respondent.

5. Several other plot-purchasers from third respondent, did not pay the dues of the third respondent. Appellant did not give them electricity supply. Therefore, in November, 2005, the third respondent moved an application before the Uttar Pradesh Electricity Regulatory Commission ('Commission' for short) complaining that the appellant was arbitrarily refusing power connection to the purchasers of sub-divided plots on the ground that Rs.105.78 lakhs was due by third respondent, though the said liability was disputed and was pending adjudication in court. The Commission by order dated 25.11.2005, issued the following directions to the appellant : (i) to accept a bank guarantee from the third respondent in regard to the disputed claim of Rs.105.78 lakhs; and (ii) on the third defendant furnishing guarantee, release new power connections to the purchasers of sub-divided plots from the third respondent, without insisting upon payment of any amounts towards the alleged dues of third respondent. In pursuance of the said order, the third respondent furnished a bank guarantee on 5.12.2005 for Rs.105.78 lakhs to the appellant. Thereafter the appellant did not demand payment of the pro-rata amount in regard to the arrears of third defendant, from the purchasers of the sub-divided plots seeking new power connections.

6. The first respondent by letter dated 15.9.2006 made a demand for refund of the sum of Rs.863,451/- with interest, on two grounds:

(i) The first respondent being the purchaser of a plot from the third respondent, was not liable to bear and pay the dues of third respondent, as it was not the consumer during the period for which the dues were claimed and there was

A no privity of contract between the appellant and first respondent.

(ii) Third respondent had furnished a bank guarantee for the entire disputed claim and the Commission had directed the appellant not to recover from the purchasers of sub-divided plots, any amount allegedly due by the third respondent. The appellant refused the request of the first respondent. According to the appellant, it was entitled to recover the dues of the previous occupier of a premises, from any subsequent occupier thereof who seeks electricity supply. It also pointed out the order of the Commission operated prospectively and did not apply to payments received by the Appellant, prior to the order and there was no direction to refund the pro-rata payments already received.

D 7. Feeling aggrieved, the first respondent filed W.P. No.59163/2006 seeking a direction to the appellant not to recover from it, any dues of the third respondent. It also sought a consequential direction to appellant to refund the sum of Rs.8,63,451/- with interest at 12% per annum. The High Court by order dated 14.5.2007 allowed the said writ petition and directed the appellant to refund the sum of Rs.8,63,451/- with interest at the rate of 6% per annum from the date of payment. The High Court was of the view that the amounts said to be due by third respondent were secured by a bank guarantee furnished by the third respondent, and therefore there was no need to retain any amount from the purchasers of the sub-divided plots. The said order is challenged in this appeal by special leave.

G **Whether the supplier can recover the electricity dues from the purchaser of a sub-divided plot ?**

H 8. The appellant submitted that if a consumer disposed of its premises, or any portion thereof, without clearing the dues in regard to the electricity supplied to its premises, any

transferee seeking fresh electricity connection or supply of electricity to the premises, will have to clear the electricity dues of the previous occupant. The appellant referred to sub-clauses (g) and (h) of clause 4.3 of the Electricity Supply Code, which is extracted below :

"(g) Where the property has been legally sub-divided, the outstanding dues for the consumption of energy on such premises, if any, shall be divided on pro-rata basis.

(h) A new connection to such sub-divided premises shall be given only after the share of outstanding dues attributed to such sub-divided premises, is duly paid by the applicant. Licensee shall not refuse connection to an applicant only on the ground that, dues on the other portion(s) of such premises have not been paid, nor shall the licensee demand record of last paid bills of other portion(s) from such applicants."

The appellant submitted that similar provisions existed in the relevant regulations of the Board even before the said Code came into force.

9. The supply of electricity by a distributor to a consumer is 'sale of goods'. The distributor as the supplier, and the owner/occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a 'charge' on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises, in the absence of any

A contract to the contrary.

10. But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.

11. A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distributor to recover the dues. Having regard to the very large number of consumers of electricity and the frequent moving or translocating of industrial, commercial and residential establishments, provisions similar to clause 4.3(g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor. We do not find anything unreasonable in a provision enabling the distributor/supplier, to disconnect electricity supply if dues

are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears before a fresh electricity connection is given to the premises. It is obviously the duty of the purchasers/occupants of premises to satisfy themselves that there are no electricity dues before purchasing/occupying a premises. They can also incorporate in the deed of sale or lease, appropriate clauses making the vendor/lessor responsible for clearing the electricity dues up to the date of sale/lease and for indemnity in the event they are made liable. Be that as it may.

12. In this case, when the first respondent, who was the purchaser of a sub-divided plot, wanted a new electricity connection for its premises, the appellant informed the first respondent that such connection will be provided only if the electricity dues are paid pro-rata. They were justified in making the demand. Therefore, it cannot be said that the collection of Rs.8,63,451/- from first respondent was illegal or unauthorized. It is relevant to note that when the said amount was demanded and paid, there was no injunction or stay restraining the appellant from demanding or receiving the dues.

Whether appellant is liable to refund the pro rata payment made by first respondent ?

13. On 25.11.2005, the Commission passed an order that the appellant should not demand payment of pro rata arrears, from the purchasers of plots who seek new connections to their respective portions, if the third respondent furnished a bank guarantee for its outstanding dues. The Commission directed the third respondent to furnish a Bank Guarantee for the dues, because the claim under the supplementary bills was disputed by the third respondent and the tenability of the claim was pending consideration in court. But the first respondent had voluntarily paid Rs.8,63,451/- being the pro rata dues on 18.9.2004 long before the Commission issued the interim order on 25.11.2005. Though the Commission directed that the appellant should not demand or recover any arrears from the

- A purchasers of sub-divided plots applying for fresh connection, after the third respondent furnished the bank guarantee, it did not direct refund of amounts already paid by applicants seeking fresh connection. In this case, the first respondent had voluntarily paid the said amount to the appellant to obtain a
- B fresh electricity connection. It cannot seek refund on the basis of any subsequent order of the Commission, in the absence of a specific direction for refund. The first respondent having paid the said amount in pursuance of its undertaking as a condition for obtaining fresh connection, is estopped from claiming the
- C amount back, except in accordance with the terms subject to which the payment was made. The amount deposited by first respondent will however have to be refunded by the appellant, with appropriate interest, if the third respondent is ultimately found to be not liable in respect of the demand under the
- D supplementary bills, or if third respondent actually clears the dues.

14. In view of the above, we allow this appeal, set aside the order of the High Court and dismiss the writ petition of the first respondent.

E

B.B.B.

Appeal allowed.