

Telangana State Southern Power ... vs M/S Srigdhaa Beverages on 1 June, 2020

Equivalent citations: AIR 2020 SUPREME COURT 2676, AIRONLINE 2020 SC 567

Author: Sanjay Kishan Kaul

Bench: Sanjay Kishan Kaul, K.M. Joseph, Krishna Murari

REP

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1815 OF 2020
(Arising out of Special Leave Petition (C) No.19292/2019)

TELANGANA STATE SOUTHERN POWER
DISTRIBUTION COMPANY LIMITED & ANR.

... App

Versus

M/S. SRIGDHAA BEVERAGES

...R

JUDGMENT

SANJAY KISHAN KAUL, J.

1. The respondent is an auction-purchaser of a unit owned by M/s. SB Beverages Private Limited, which failed to pay its dues, resulting in the auction by Syndicate Bank (Secured Creditor) under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the 'SARFAESI Act'). The moot point of law, which arises for consideration, is whether the liability towards previous electricity dues of the last owner could be mulled on to the respondent.

2. The unit in question is a mineral water bottling plant situated in land measuring 1 acre 13 guntas in Sy. No.283 at Rampally Village, Keesara Mandal, Medchal District. As mentioned aforesaid, on

account of failure to repay a loan, the creditor, Syndicate Bank, brought the property to auction for which an E-auction sale notice dated 25.5.2017 was issued in this behalf, in which the respondent was the successful auction-purchaser. In order to appreciate the controversy before us, it is necessary to reproduce some of the relevant clauses of the auction notice:

“The property described below is being sold on “AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS” under the rule no.8 & 9 of the Security Interest (Enforcement) Rules (hereinafter referred to as the rules) for the recovery of the dues detailed as under:

...
The	total	Rs.13,97,26,258.77	(Rs. Thirteen crores ninety seven		
amount due			lakhs twenty six thousand two hundred fifty eight and		
as on 30-04-		paisa seventy seven)	with future interest & costs till		
2017		date of payment accounts no 1)	3730SLB140940002 &		
		2)	30151010006439		
Details	of For	property no.01	Nil		

encumbrances For property no.02: The subsequent to our MOD, over the the following transactions observed in EC property, as known to the 1. As per the doc no 2611/2016 dated 15/06/2016, the bank mortgager has sold the property to the extent of 540 sq yds., to private party, for worth of Rs.972000/-

2. As per the doc no.657/2015 dated 05/02/2015, the mortgager has sold the property to the extent of 620.83 sq.yds. to The Executive officer Ramapally Gramapanchayat for worth of Rs.1242000/-.

3. As per the doc no 2721/2014 dated 05/08/2014, the mortgager has sold the property to the extent of 204.75 sq yds to The Gramapanchayat Executive officer Ramapally for worth of Rs.248000/-.

Details of Rs.83,17,152/- (Eighty Three Lakhs Seventeen outstanding Thousand One Hundred Fifty Two Only) dues of Local Government (Property tax, Water sewerage, electricity bills, etc.) Reserve Price For property no.01 Rs.77,63,000/- of Property For property no.02 Reserve Price: Rs.5,83,37,000/- (Rupees five crores eighty three Lakhs thirty seven Thousand Only) Total 28 no of Machineries items reserve price:

Rs.3,25,28,000/- (three crores twenty five lakhs twenty eight thousand only)

TERMS AND CONDITIONS

... ..

21. The successful bidder shall bear the stamp duties, charges including those of sale certificate, registration charges, all statutory dues payable to central/state government, taxes and rates and outgoing, both existing and future relating to the properties.

.....

24. The property is sold in “AS IS WHERE IS, WHAT IS THERE IS AND WITHOUT ANY RECOURSE BASIS” in all respects and subject to statutory dues if any. The intending bidders should make discrete enquiry as regards any claim, charges/encumbrances on the properties, of any authority, besides the bank’s charges and should satisfy themselves about the title, extent, quality and quantity of the property before submitting their bid. For any discrepancy in the property the participating bidder is solely responsible for all future recourses from the date of submission of bid.

25. No claim of whatsoever nature regarding the property put for sale, charges/encumbrances over the property or on any other matter etc., will be entertained after submission of the bid/confirmation of sale.

26. The Authorised Officer will not be responsible for any charge, lien, encumbrance, property tax dues, electricity dues, etc., or any other dues to the Government, local authority or anybody, in respect of the property under sale.”

3. The aforesaid auction notice shows that the unit was being sold on “as is where is, what is there is and without any recourse basis”, as per Rules 8 & 9 of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as the ‘said Rules’). The aforesaid clauses of the E-auction sale notice show that the total outstanding dues were much larger, but the reserve price fixed was lower, and the actual sale consideration of the successful auctioneer was Rs.9,18,65,000, which is approximately Rs.10 lakh more than the minimum reserve price. Clause 24 reproduced aforesaid makes it clear that when the reference is to a sale on “as is where is, what is there is and without any recourse basis”, the same is “in all respects and subject to statutory dues”. This clause was further subject to another Clause 26, where the Authorised Officer carrying out the auction absolved himself of the liability for any charge, lien, encumbrance, property tax dues, electricity dues, etc. The purpose is to emphasise that a holistic reading of all these clauses left little in doubt that the auction notice provided for a reserve price, with a bid being made about Rs.10 lakh over and above that, and certain nature of charges, lien, encumbrances, including electricity dues were clearly beyond the sale consideration paid.

4. We may next turn to the sale deed dated 29.9.2017 executed in pursuance of the auction, which provided for the sale “made free from all encumbrances known to the Secured Creditor.” An indemnity was provided by the vendor to the respondent against “any loss arising out of any defect in the title, including recovery of statutory liabilities taxes, as also litigation expenses arising out of such defects in title.” This indemnity was, thus, confined to aspects mentioned in this clause, but

relatable to defects in title, and not to other liabilities like electricity dues.

5. The problem for the respondent arose when he applied to appellant No.1 seeking sanction of a 500 KVA connection required for running the bottling plant. This request was denied on the ground that there were previous electricity dues to the tune of Rs.50,47,715, as on 26.10.2017. Appellant No.1 asserted its right to recover this amount even from the new purchaser (i.e. respondent), based on a reading of Clauses 5.9.6 and 8.4 of the General Terms and Conditions of Supply of Distribution & Retail Supply Licensees in AP (for short 'General Terms & Conditions of Supply'), which clauses are reproduced hereinunder:

“5.9.6 Dismantlement of Service Line after Termination of Agreement: On the termination of the LT or HT Agreement, the company is entitled to dismantle the service line and remove the materials, Meter, cut out etc. After termination of the Agreement, the consumer shall be treated as a fresh applicant for the purpose of giving supply to the same premises when applied for by him provided there are no dues against the previous service connection.”

“8.4 Transfer of Service Connection The seller of the property should clear all the dues to the Company before selling such property. If the seller did not clear the dues as mentioned above, the Company may refuse to supply electricity to the premises through the already existing connection or refuse to give a new connection to the premises till all dues to the Company are cleared.”

6. We may also take note of the fact that the aforesaid dues partake the character of statutory dues under the Electricity Act, 2003 read with the General Terms & Conditions of Supply.

7. A writ petition was filed by the respondent before the High Court of Telangana and Andhra Pradesh seeking quashing of these demands predicated on a reasoning that as a subsequent purchaser, the respondent was not responsible for the dues of the earlier owner, and in that behalf relied upon the judgments of this Court in *Isha Marbles v. Bihar State Electricity Board & Anr.*¹ and *Southern Power Distribution Company of Telangana Limited (through its CMD) & Ors. v. Gopal Agarwal & Ors.*² Reliance on these judgments persuaded the learned single Judge to issue directions quashing the demand of appellant No.1. The appeal filed 1 (1995) 2 SCC 648 2 (2018) 12 SCC 644 before the Division Bench against this order was also dismissed on 30.4.2018.

8. We have examined the submissions in the contours of the aforesaid controversy, and take note of the fact that in the case of *Isha Marbles*,³ the sale was in pursuance of Section 29(1) of the State Financial Corporations Act, 1951, but the important aspect was that there was no clause specifically dealing with the issue of electricity dues or such other dues, as in the present auction notice. This Court elucidated the position in the context of Section 24 of the Electricity Act, 1910, to emphasise that

under Section 2(c) of the Electricity Act, a consumer means any person who is supplied with energy, and since liability to pay electricity dues is fastened only on the consumer, at the relevant time, the purchaser was not the consumer. It has also been stated that in the absence of consumption of electricity, the subsequent purchaser was merely seeking reconnection without there being any statutory dues towards consumption charges. We had specifically posed a question to the learned counsel for the respondent in the order dated 15.11.2019, that whether, in the context of the judicial pronouncements sought to be relied upon, there was a 3 (supra) specific clause in the nature of Clause 26 as in the present E-auction sale notice, which absolved the Authorized Officer of various dues including “electricity dues”. On the conspectus of the judgments referred to by the respondent, there were no such clauses in the cases in question.

9. We may also notice that there have been subsequent judicial pronouncements dealing with this aspect of electricity dues. A three Judge Bench of this Court has held that the dues under the terms and conditions of supply partake the character of statutory dues (Hyderabad Vanaspathi Ltd. v. A.P. State Electricity Board & Ors. 4). The mere fact that agreements were entered into with every consumer only served the purpose of bringing to the notice of the consumer the terms and conditions of supply, but did not make the dues purely contractual in character.

10. We can draw strength from the observations of this Court in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd.,⁵ where there was a similarity as in the present case, of a specific clause dealing with electricity dues. It was observed that in such a scenario if a transferee desires to enjoy the service connection, he shall 4 (1998) 4 SCC 470 5 (2006) 13 SCC 101 (2 Judges Bench) pay the outstanding dues, if any, to the supplier of electricity and a reconnection or a new connection shall not be given to any premises where there are arrears on account of dues to the supplier unless they are so declared in advance.

11. We may also notice that as an auction purchaser bidding in an “as is where is, whatever there is and without recourse basis”, the respondent would have inspected the premises and made inquiries about the dues in all respects. The facts of the present case, as in the judgment aforesaid, are more explicit in character as there is a specific mention of the quantification of dues of various accounts including electricity dues. The respondent was, thus, clearly put to notice in this behalf.

12. The same view in case of a similar clause has been taken in Paschimanchal Vidyut Vitran Nigam Limited & Ors. v. DVS Steels and Alloys Private Limited & Ors.⁶ It has been further observed that 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 so long as such rules and regulations or the terms and conditions are not arbitrary and 6 (2009) 1 SCC 210 (2 Judge Bench) unreasonable. A condition for clearance of dues cannot per se be termed as unreasonable or arbitrary.

13. We may notice a slightly contra view in Haryana State Electricity Board v. Hanuman Rice Mills, Dhanauri & Ors.,⁷ in a given scenario where the pendency of electricity dues was not mentioned in

the terms & conditions of sale, and it was held in those facts that the dues could not be mulled on to the subsequent transferee.

14. We may notice that in *Special Officer, Commerce, North Eastern Electricity Supply Company of Orissa (NESCO) v. Raghunath Paper Mills Private Limited & Anr.*,⁸ a distinction was made between a connection sought to be obtained for the first time and a reconnection. In that case, no application had been made for transfer of a service connection from the previous owner to the auction-purchaser, but in fact, a fresh connection was requested. In light of the regulations therein, previous dues had to be cleared only in the case of a reconnection. Hence, the respondents were held to be free from electricity liability. This Court in *Southern Power Distribution Company of Telangana Limited (through its CMD) & Ors.* ⁹ found that the facts were similar to ⁷ (2010) 9 SCC 145 (2 Judge Bench) ⁸ (2012) 13 SCC 479 (2 Judge Bench) ⁹ (supra) the NESCO¹⁰ case, and thus followed the same line.

15. We have gone into the aforesaid judgments as it was urged before us that there is some ambiguity on the aspect of liability of dues of the past owners who had obtained the connection. There have been some differences in facts but, in our view, there is a clear judicial thinking which emerges, which needs to be emphasized:

A. That electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature.

B. Where, as in cases of the E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as a liability of the purchaser and the sale is on “AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS”, there can be no doubt ¹⁰ (supra) that the liability to pay electricity dues exists on the respondent (purchaser).

C. The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply.

16. In view of the aforesaid legal position, which has emerged, we are of the view that the impugned orders cannot be sustained and are accordingly set aside while opining that appellant No.1 would be well within its right to demand the arrears due of the last owner, from the respondent-purchaser.

17. The appeal is accordingly allowed, leaving the parties to bear their own costs.

.....J. [Sanjay Kishan Kaul]J. [K.M. Joseph] New Delhi.

June 01, 2020.