
Before S.S. Nijjar and Kiran Anand Lall, JJ.

RAYAT EDUCATIONAL AND RESEARCH TRUST,—*Petitioner*

versus

P.S.E.B. THROUGH ITS CHAIRMAN
AND ANOTHER,—*Respondents*

C. W. P. No. 14800 of 2003

4th March, 2004

Constitution of India, 1950—Art. 226—Petitioner—Trust purchasing land from a firm—A sister concern of the firm from which petitioner purchased the land was in arrears of electricity charges—Whether petitioner is laible to pay electricity dues of that firm—Held, no—No connction whatsoever between petitioner and the defaulting firm—No material to show that the petitioner has in any manner taken over the liabilities of that firm—Action of the Board in compelling payment clearly arbitrary and without jurisdiction—Petition allowed.

Held, that even the Board accepts that the land has been purchased by the petitioner—Trust from M/s NAM Agro Inputs Private Limited and M/s Futuristic Enterprises Limited. No connection whatsoever has been established between M/s Shivalik Fertilizers Limited and the petitioner—Trust. The liability is sought to be fastened on the petitioner only on the ground that the land on which petitioner's Educational Institute is established, was previously owned by the sister concern of M/s Shivalik Fertilizers Limited. All the four concerns are private limited companies. They are independent juristic entities. Liability of one company can be fastened on another company only if there is a clear stipulation that the successor company has taken over the assets as well as liabilities of the earlier company. There is no material on record to show that the petitioner has in any manner taken over the liabilities of M/s Shivalik Fertilizers Limited. The petitioner was not a consumer of electricity in the premises which belonged to M/s Shivalik Fertilizers Limited. The liability of M/s Shivalik Fertilizers Limited was purely contractual in nature and could not be imposed on the petitioner who had purchased the land after due verification that the same was free from any charge. We are, therefore,

of the considered opinion that the action taken by the respondents by orders whereby certain amounts have been sought to be recovered from the petitioner is clearly arbitrary and without jurisdiction.

(Para 7)

Puneet Jindal, Advocate, for the petitioner.

K. S. Sidhu, Advocate, for the respondents.

JUDGMENT

S. S. NIJJAR, J.

(1) With the consent of the learned counsel for the parties, the matter is taken up for final disposal at the motion stage.

(2) The petitioner—Rayat Educational and Research Trust (hereinafter to as “the petitioner-Trust”) had purchased land from M/s NAM Agro Inputs Private Limited and M/s Futuristic Enterprises Limited (formerly known as M/s Gelatin Products of India Limited),—*vide* two sale deeds. The petitioner challenges the impugned orders/ letters issued by the respondents (Annexures P-4, P-5, P-9 and P-10), whereby certain amounts have been sought to be recovered from the petitioner on the ground that the aforesaid amounts were due to the Punjab State Electricity Board by the sister concern of the Firm from which the petitioner had purchased the land. The bills of electricity pertained to M/s Shivalik Fertilizers Limited.

(3) The petitioner—Trust was set up in March, 2000 with the object of imparting education to students in the rural area. It has established Rayat Institute of Engineering and Information Technology. The Institute has been set up in an area of approximately 100 acres of land on the State Highway Ropar-Balachaur at Village Rail Majra, District Nawanshahar. On deposit of requisite charges with the respondents-Punjab State Electricity Board (hereinafter referred to as “respondents-Board”), the petitioner was released electric connection bearing account No. NRS/GF-48/59 with a sanctioned load of 150.290 K.W. During construction of the various buildings of the Institute, it was found that there is one 11 KV power line passing through the middle of the Institute land and was causing hindrance in the building of the 4 blocks complex of three storeys each. The petitioner-Trust, therefore, made an application to respondent No. 2

for shifting the power line from the middle of the complex towards the boundary side. By Memo No. 1026, dated 2nd July, 2002 (Annexure P-4), the petitioner was directed to clear the arrears of the electricity charges in a sum of Rs. 16,41,638 which was due against M/s Shivalik Fertilizers Limited. It was stated that the electricity connection of M/s Shivalik Fertilizers Limited had been disconnected. According to the instructions of the Board, anyone who purchases the land/property of this factory shall be held entitled to pay the remaining amount due towards them. It was also directed that if the petitioner fails to clear the dues within 15 days, the electricity connection installed in the premises of the petitioner shall be disconnected. The same demand was repeated by letter dated 8th July, 2002 (Annexure P-5). The petitioner submitted reply (Annexure-P-6) through his Advocate on 17th July, 2002 and stated that the land belonging to M/s Shivalik Fertilizers Limited has not been purchased by the petitioner-Trust. It was also made clear that the land belonging to M/s Shivalik Fertilizers Limited is adjoining the land of the petitioner-Trust and does not belong to the petitioner-Trust. On 9th September, 2002, the respondents-Board disconnected the electricity supply of the petitioner-Trust and imposed a penalty of Rs. 7,82,363. But this penalty had no connection with the earlier demand made due to the default allegedly committed by M/s Shivalik Fertilizers Limited. Therefore, the dispute with regard to the penalty of Rs. 7,82,363 is separately pending before the departmental authorities and is not the subject-matter of adjudication in the present writ petition.

(4) By letter dated 11th August, 2003 (Annexure P-9), the petitioner was informed that they are required to pay an amount of Rs. 20,88,088 before the dispute can be sent to the Disputes Settlement Authority. The petitioner was also informed that the connection can only be restored if the 1/3rd of the amount due from M/s Shivalik Fertilizers Limited is first deposited. The same was reiterated by the respondent-Board by letter dated 3rd September, 2003 (Annexure P-10).

(5) In the written statement filed by respondents Nos. 1 and 2, it is stated that the land on which the building of the Education Institute run by the petitioner-Trust has been constructed, earlier belonged to Punjab Sulphur Products Limited, Chandigarh. M/s Shivalik Fertilizers Limited is a sister concern of the aforesaid Firm. Some land had been transferred by the Punjab Sulphur Products Limited to M/s Shivalik Fertilizers Limited. The Punjab Sulphur Products

Limited sold 61 kanals and 7 marlas of land to NAM Agro Inputs Private Limited who in turn sold the same land to the petitioner-Trust. Mutation No. 6141 has been duly entered in the name of the petitioner. It is further stated in the written statement as follows :—

“10..... As regarding outstanding of M/s Shivalik Fertilizers Limited is concerned the land belonging to the Punjab Sulphur Products Limited which has given land to M/s Shivalik Fertilizers Limited being its sister concern which has been purchased by M/s NAM Inputs Private Limited who has sold the land to the petitioner, the petitioner are duty bound to pay the dues of electricity of M/s Shivalik Fertilizers Limited as per the Rules and Regulations of the Replying Respondents which are binding on the petitioner.”

(6) Learned counsel for the petitioner-Trust submits that the firm from which the petitioner had purchased the land had no concern with M/s Shivalik Fertilizers Limited. He further submits that even if it is so for the sake of arguments, although the same is not admitted, it would make no difference as the petitioner-Trust cannot be made liable for the electricity dues, which were payable by the previous owner of the disputed premises. In support of the aforesaid submission, the learned counsel for the petitioner-Trust relies upon a judgment of the Supreme Court rendered in the case of **M/s Isha Marbles versus Bihar State Electricity Board and another, (1)**, Considering a similar question in the aforesaid judgment, the Supreme Court has clearly held that it is impossible to impose on the purchasers a liability, which was not incurred by them. In the aforesaid case, liability was sought to be fastened on the auction purchasers of the premises of the firm, which were liable to pay certain electricity charges to the Bihar State Electricity Board. The rationale of the aforesaid ratio of law is given in paragraph 62 of the judgment, which is as follows :—

“62. We are clearly of the opinion that there is great reason and justice in holding as above. Electricity is public property. Law, in its majesty, behighly protects public property and behaves everyone to respect public property. But the law as it stands, is inadequate to enforce the liability of the previous contracting party against the auction purchser who is a third party and is in no way connected with the previous owner/occupier. It may not

(1) J.T. 1995 (2) S.C. 626

be correct to state, if we hold as we have done above, it would permit dishonest consumers transferring their units from one hand to another, from time to time, infinitum without the payment of the dues to the extent of lacs and lacs of rupees and each one of them can easily say that he is not liable for the liability of the predecessor in interest. No doubt, dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness.....”

(7) Learned counsel for the respondents-Board has not been able to distinguish the aforesaid decision of the Supreme Court. Apart from this, it becomes apparent from the pleadings that even the Board accepts that the land has been purchased by the petitioner-Trust from M/s NAM Agro Inputs Private Limited and M/s Futuristic Enterprises Limited. No connection whatsoever has been established between M/s Shivalik Fertilizers Limited and the petitioner-Trust. The liability is sought to be fastened on the petitioner only on the ground that the land on which the petitioner's Educational Institute is established, was previously owned by the sister concern of M/s Shivalik Fertilizers Limited. All the four concerns mentioned above are private limited companies. They are independent juristic entities. Liability of one Company can be fastened on another Company only if there is a clear stipulation that the successor company has taken over the assets as well as liabilities of the earlier company. There is no material on record to show that the petitioner has in any manner taken over the liabilities of M/s Shivalik Fertilizers Limited. The petitioner was not a consumer of electricity in the premises which belonged to M/s Shivalik Fertilizers Limited. The liability of M/s Shivalik Fertilizers Limited was purely contractual in nature and could not be imposed on the petitioner who had purchased the land after due verification that the same was free from any charge. We are, therefore, of the considered opinion that the action taken by the respondents by orders/letters (Annexures P-4, P-5, P-9 and P-10) is clearly arbitrary and without jurisdiction.

(8) In view of the above, we allow the writ petition and the orders dated 2nd July, 2002 (Annexure P-4), dated 8th July, 2002 (Annexure P-5), letter dated 11th August, 2002 and order dated 3rd September, 2003 (Annexure P-10) are quashed. No costs.

R.N.R.