

RAJASTHAN HIGH COURT

Swan Industries Ltd.

Vs.

Ajmer VidhyutVitran Nigam Ltd.

S.B. Civil Writ Petition No. 3652 of 2003

(Sunil Kumar Garg, J.)

21.04.2004

JUDGMENT

Sunil Kumar Garg, J.

1. This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 26.7.2003 against the respondents with a prayer that by an appropriate writ order or direction the communication dated 22.12.2001 (Annex.12) issued by Assistant Engineer, Ajmer VidhyutVitran Nigam Limited (respondent No. 2) by which the petitioner was informed that the petitioner should deposit the dues of defaulting unit i.e. HMG Granites (India) Pvt. Ltd. (hereinafter referred to as the defaulting unit) amounting to Rs. 2,51,996/- and thereafter only the connection would be released to the petitioner, letter dated 8.1.2002 (Annex.14) issued by respondent No. 2 (Assistant Engineer) by which the petitioner was again informed that it should deposit the dues of the defaulting unit and thereafter only the application of the petitioner for release of connection would be considered and the communication dated 20.7.2002 (Annex.17) issued by the Executive Engineer (Comml.), Ajmer VidhyutVitran Nigam Ltd. by which the petitioner was again asked to deposit the dues of defaulting unit be quashed and set aside.

2. The facts of the case as put forward by the petitioner are as under:

i) The petitioner purchased assets of a Marble and Granite Unit at Village MojawatonKaGuda of Rajsamand District in an auction conducted by Rajasthan State Industrial Development and Investigation Corporation Limited (hereinafter referred to as "RIICO") under Section 29 of the State Financial Corporation Act, 1951 (hereinafter referred to as the Act of 1951). The petitioner thereafter started a granite cutting and polishing unit in the name and

style of Swan Marbles and Granites.

ii) Further case of the petitioner is that RIICO published an advertisement dated 9.3.2001 (Annex.3) for sale of assets of defaulting unit.

iii) Further case of the petitioner is that offer of the petitioner amounting to Rs. 30,00,000/- for purchase of assets of defaulting unit was accepted by the RIICO vide letter dated 24.8.2001 (Annex.5).

iv) Further case of the petitioner is that thereafter a conveyance deed (Annex.8) was issued by the RIICO in favor of the petitioner transferring the defaulting unit to the petitioner.

v) Further case of the petitioner is that the possession of defaulting unit was also handed over to the petitioner on 24.9.2001, a copy of handing over proceedings is marked as Annex.9. Copy of list of assets handed over to the petitioner by the RIICO is marked as Annex.10.

vi) Further case of the petitioner is that after getting possession of the assets of the petitioner, the petitioner moved an application (Annex.11) on 20.12.2001 to the respondent No. 1 (Ajmer VidhyutVitran Nigam Ltd.) for release of electric connection for contract demand of 250 KVA for the petitioner-unit.

vii) Further case of the petitioner is that vide communication dated 22.12.2001 (Annex.12), the respondent No. 2 (Assistant Engineer, Ajmer VidhyutVitran Nigam Ltd.) informed the petitioner that the petitioner should deposit the dues of the defaulting unit and thereafter only the electric connection would be released to the petitioner.

viii) Further case of the petitioner is that the petitioner wrote a letter dated 1.1.2002 (Annex.13) to the respondent No. 2 (Assistant Engineer) informing him that it had purchased the assets of the defaulting unit from the RIICO without any liability and, therefore, it was not required to pay the dues of the defaulting unit.

ix) Further case of the petitioner is that respondent No. 2 (Assistant Engineer) vide his communication dated 8.1.2002 (Annex.14) again informed the petitioner that it should first deposit the dues of the Nigam and thereafter only the application for release of electric connection would be considered.

x) Further case of the petitioner is that is submitted a representation (Annex.15)

to the Chairman of Ajmer VidhyutVitran Nigam Ltd. (respondent No. 1) on 10.1.2002. The petitioner submitted another representation dated 11.7.2002 (Annex.16) to the respondent No. 1 (Chairman, Ajmer VidhyutVitran Nigam Ltd.).

xi) Further case of the petitioner is vide communication dated 20.7.2002 (Annex.17), the Executive Engineer, Ajmer VidhyutVitran Nigam Ltd. again insisted on the petitioner to deposit the dues of the defaulting unit.

xii) Being aggrieved by the communications dated 22.12.2001, 8.1.2002 and 20.7.2002 (Annex.12, Annex.14 and Annex.17), the present writ petition has been preferred by the petitioner.

3. In this writ petition, the main submission of the learned counsel for the petitioner is that the impugned action of the respondents in not releasing the electric connection to the petitioner on account of non-payment of dues of defaulting unit is without any sanction of law as there was no agreement between the petitioner and the respondents that the electric connection would not be released unless and until the dues of the defaulting unit are paid and hence the electric connection be released in favor of the petitioner without insisting upon the payment of dues of defaulting unit and this writ petition should be allowed.

4. Reply to the writ petition was filed by the respondents and their case is that there is specific provision under the General Conditions of supply that unless all arrears and dues in respect of old connection are paid, no new connection would be given in the premises and hence no case is made out and this writ petition should be dismissed.

5. Heard and perused the record.

6. There is no dispute on the point that the petitioner purchased the assets of defaulting unit from RIICO through auction.

7. There is also no dispute on the point that the petitioner-firm applied for new electric connection, but the same was refused on the ground that unless and until the dues of defaulting unit are paid, the new connection would not be released to the petitioner.

8. In the facts and circumstances just mentioned above, the question that arises for consideration is whether unless and until the dues of defaulting unit are paid by the present petitioner, the new electric connection would be released to the petitioner or not.

9. The learned counsel for the petitioner has drawn attention of this Court to the order dated 12.11.2002 (Annex.20) issued by Jodhpur VidhyutVitran Nigam Ltd. in which it has been clearly mentioned that new consumer is not to be insisted for paying the outstanding dues of the previous consumer and thus in view of the order dated 12.11.2002 (Annex.20), the case of the respondents that unless and until the dues of defaulting units are paid by the petitioner, new connection would not be released cannot be accepted.

10. Apart from this, the learned counsel for the petitioner has placed reliance on the case of *Isha Marbles v. Bihar State Electricity Board and Anr.*,¹In the case of Isha Marbles (supra), the Hon'ble Supreme Court has observed as under :

"Electricity Act, 1910, Sections 24 and 22, 3(2)(f), 2(c) and Schedule clause VI - On sale, under Section 29(1) of State Financial Corporations Act, of the premises for which supply of electricity had been disconnected for non-clearance of consumption charges by the previous consumer-owner, held, auction-purchaser of the premises would not be liable to meet the liability of the previous consumer in order to secure reconnection - Electricity (Supply) Act, 1948, Sections 26, 79(j) and 49 - State Financial Corporations Act, 1951, Section 29(1)."

11. The law laid down in the above ruling in the case of Isha Marble (supra), makes out a case in favor of the petitioner that the respondent cannot insist that before releasing new electric connection, the petitioner firm should pay the dues of defaulting unit.

12. Thus, in view of the law laid down in the case of Isha Marble (supra), and in view of order dated 12.11.2002 (Annex.20), the provision under the General Conditions of Supply on which reliance has been placed by the learned counsel for the respondents would not come in the way of the petitioner in releasing new electric connection to the petitioner and a legal right has accrued in favor of the petitioner.

13. For the reasons stated above, the communications dated 22.12.2001, 8.1.2002 (Annex. 12 and 14) issued by the respondent No. 2 (Assistant Engineer) and communication dated 20.7.2002 (Annex.17) issued by the Executive Engineer, Ajmer VidhyutVitran Nigam Ltd. are liable to be quashed and set aside and this writ petition deserves to be allowed.

Accordingly, this writ petition filed by the petitioner is allowed and the

communications dated 22.12.2001, 8.1.2002 (Annex. 12 and 14) issued by the respondent No. 2 (Assistant Engineer) and communication dated 20.7.2002 (Annex.17) issued by the Executive Engineer, Ajmer VidhyutVitrans Nigam Ltd. are quashed and set aside and the respondents are directed to release electric connection to the petitioner in terms of application dated 20.12.2001 (Annex.11) without insisting on the payment of dues of defaulting unit, namely, M/s HMG Granites (India) Pvt. Ltd.

No order as to costs.

Petition allowed.

Cases Referred.

1. ((1995)2 SCC 648)