

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 14TH DAY OF OCTOBER 2022 / 22ND ASWINA, 1944

WP(C) NO. 17619 OF 2011

PETITIONER:

G.NAGENDRAN
BHARAT WHEAT PRODUCT (P) LTD ,IDA ,EDAYAR ,BINANIPURAM .P.O .
BY ADVS .
SRI.C.K.KARUNAKARAN
SMT.T.P.LEKSHMI VARMA
SRI.V.VINAY

RESPONDENTS:

- 1 KERALA STATE ELECTRICIY BOARD
VYDHUTHI BHAVANAM,PATTOM,THIRUVANANTHAPURAM-695004.
- 2 THE ASSISTANT ENGINEER, ELECTRICAL
SECTION,KERALA STATE ELECTRICITY BOARD,,
EDAYAR(MUPPATHADOM) ,ERNAKULAM DISTRICT.

BY ADV.SRI.JOSWIN THAMPI KUNNATH, STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14.10.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CR**J U D G M E N T****Dated this the 14th day of October, 2022**

Petitioner is the Managing Director of a private limited company registered under the Indian Companies Act, 1956 having its office at Edayar, Ernakulam District. The petitioner had responded to a notification issued by the official liquidator, High Court of Kerala, regarding the sale of some of the assets of a company in liquidation viz., M/s.A.M.A Food Products (P) Limited in Company Petition No.11/2003. The petitioner was a successful bidder as regards Lot No.5 and the sale was confirmed in favour of the petitioner, evident from Exhibit P1 communication dated 14.6.2010 issued by the official liquidator for an amount of Rs.1,62,88,000/- (Rupees One Crore Sixty Two Lakhs and Eighty Eight thousand only) and directed the petitioner to pay the entire balance amount due. Petitioner had made the payment and consequently, the immovable and movable assets of the company in liquidation were handed over to the petitioner by the official liquidator as per Exhibit P2 proceedings dated 2.12.2010. The assets purchased and handed over consisted of land, factory building and machinery of the company in liquidation, which were used to operate a flour mill. The challenge in

the writ petition is against Exhibit P3 demand raised by the 2nd respondent- Assistant Engineer K.S.E.B Ltd, towards electricity dues from the previous owner.

2. According to the petitioner, the petitioner along with another shareholder, had incorporated a private company in the name and style, "Bharat Wheat Products (P) Ltd.," for the purpose of operating a flour mill at the purchased premises. While so, petitioner realised that there is no electricity connection in the premises in question and therefore, he made an application for power connection to the Assistant Engineer, Electrical Section, Kerala State Electricity Board – the 2nd respondent, however, no action was initiated and on enquiry, petitioner was informed by the 2nd respondent that there were arrears of electricity charges amounting to Rs.36,70,200/- (Thirty six lakhs seventy thousand and two hundred) from the company in liquidation and that, power connection could not be given to the premises unless such arrears were cleared.

3. It seems when the petitioner requested for a written communication, Exhibit P3 dated 27.6.2011 was issued to the petitioner stating that an amount of Rs.36,70,200/- is remaining due from the previous consumer and therefore the application for power connection submitted by the petitioner is kept pending for instruction from the higher authorities. It is thus challenging the legality and correctness of the said intimation, the writ petition is filed.

4. When the matter came up for hearing on 23.09.2022, petitioner was directed to produce the entire records relating to the winding up proceedings in order to ascertain as to whether the Kerala State Electricity Board was a party to the said proceedings and accordingly, the petitioner has produced orders, judgement, copy of sale deed and report of the official liquidator along with I.A.No.1 of 2022.

5.I have heard, learned counsel for the petitioner Sri.C.K.Karunakaran, learned Standing Counsel for the Board Sri.Josvin Thambi Kunnath and perused the pleadings and material on record.

6. The paramount contention advanced by the learned counsel for petitioner is that Exhibit P3 intimation issued by the Electricity Board is illegal, without jurisdiction, arbitrary and contrary to the statutory provisions and therefore, unconstitutional since it infringes the fundamental rights of the petitioner. It is also submitted that the respondents are duty bound to act in consonance with the statutory and constitutional provisions and in compliance with the principles of natural justice. That apart, it is submitted that the demand raised is illegal and not liable to be paid by the petitioner. It is also contended that Regulation 12 of the Supply Code 2005 and Regulation 7 of the Terms and Conditions of Supply stipulate that, if purchase of a premises requires to have a new connection as the earlier connection has already been dismantled after

disconnection, the arrears if any, shall be realised from the previous owner/occupier of the premises and not from the purchaser.

7. Therefore, according to the petitioner, so long as the above position exists in the statute, the respondents cannot demand the dues of the previous owner from the petitioner. It is further contended that petitioner has purchased the property through a court action free from all encumbrances or dues and therefore, no new encumbrance can be brought against the property purchased in an auction. It is also contended that the 1st respondent – Kerala State Electricity Board, Thiruvananthapuram, is a party to the winding up proceedings and that, it has not opted to stay out of the winding up proceedings with the leave of the court and therefore, the respondents cannot have any claim than the one preferred, if any, before the winding up court. That apart, it is contended that the refusal to grant timely electricity connection is an infringement of Article 19(1)(g) of the Constitution of India as the petitioner is unable to undertake his legitimate business.

8. On the other hand, learned Standing Counsel for the Kerala State Electricity Board submitted that by virtue of the provisions of the Electricity Act, 2003 and Kerala State Electricity Board Terms and Conditions of Supply, 2005 and the Kerala State Electricity Supply Code, 2005, a charge is created on the dues from the consumer on the property in question and therefore, the Board is

entitled to realise the amount due from the previous owner charged on the property.

9. I have evaluated the rival submissions made across the Bar. Section 56 of the Electricity Act, 2003 deals with disconnection of supply in default of payment and sub-section (1) thereto specifies that where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer. Sub-section (2) thereto makes it clear that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously

as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

10. In fact Regulation 12 of the Kerala Electricity Supply Code, 2005 deals with dues of previous owner, which specifies that if a purchaser of a premise requires to have a new connection, as the earlier connection has already dismantled after disconnection, the arrear, if any, shall be realised from the previous owner/occupier of the premises and not from the purchaser. It is relying upon the said provision, learned counsel for petitioner has advanced arguments that by virtue of the said provision, the subsequent purchaser of a property is not liable to pay the dues of a previous consumer.

11. That apart Regulation 7 of the Kerala State Electricity Board Terms and Conditions of Supply 2005 dealing with dues of previous consumers, specifies that if the purchaser of a premises requires to have a new connection as the earlier connection has already been dismantled after disconnection, the arrear, if any, shall be realised from the previous owner or occupier of the premises and not from the purchaser.

12. Therefore, it can be seen that by virtue of the said provisions, the amounts due from the previous owner may not be able to be personally recovered from the subsequent purchaser of a property. However regulation 19(4) of the Terms and Conditions of Supply 2005 dealing with agreement for

service connection makes it clear that all dues to the Board from a consumer shall be the first charge on the consumer's assets. Regulation 19(1), (2), (3) & (4) are relevant to the context, and it read thus:

"9. Agreement for Service Connection.- (1) *Along with remittance of security deposit applicable as mentioned in Clauses 15 and 16. the consumer shall execute the service connection agreement. The premises shall not be connected unless and until the agreement is executed. Thereafter, the service shall be effected strictly in the order of priority. The consumer will be intimated the date and time at which the Board is intending to effect the service, when the consumer and the wiring contractor or his authorised agent may be present at the premises.*

(2) *The service connection agreement executed by an authorised allottee within the premises owned by a Central/State Government/Public Sector Undertaking/Cooperative Societies/Local Bodies shall be co-guaranteed by the authority effecting such allotment. failing which the procedure applicable to the service connection applied for by the occupier. tenant shall be followed.*

(3) *When there is transfer of ownership or right of occupancy of the premises, the registered consumer shall intimate the transfer of right of occupancy of the premises within 7 days to the Assistant Engineer/Assistant Executive Engineer concerned. On such intimation having been received, the service shall be disconnected, after giving notice to the occupants. If the transferee desires to enjoy service connection, he shall pay the dues to the Board and apply for transfer of ownership of service connection within 15 days and execute fresh*

agreement and furnish additional security.

(4) All dues to the Board from a consumer shall be the first charge on the assets of consumer. All dues including interest shall be realised as public revenue due on land

13. On a reading of sub-Regulation (3) thereto, it is clear that when there is transfer of ownership or right of occupancy of the premises, the registered consumer shall intimate the transfer of right of occupancy of the premises within 7 days to the concerned officials of the Board and on such intimation being received, the service shall be disconnected, after giving notice to the occupants and if the transferee desires to enjoy service connection, he shall pay the dues to the Board and apply for transfer of ownership of service connection within 15 days and execute a fresh agreement and furnish additional security. It is true that in the case on hand the service connection was disconnected due to non payment of the dues by the previous consumer, and therefore the application of Sub- Regulation (3) to the context may not be of great importance. However Sub-Regulation (4) thereto makes it clear that the dues to the Board from a consumer shall be the first charge on the assets of consumer and all dues including interest shall be realised as public revenue due on the land.

14. Therefore, on a conjoint reading of section 56 of the Electricity Act, 2003 and Regulation 19 (4) of the Kerala State Electricity Board Terms & Conditions

of Supply, 2005, it is quite clear and evident that the first charge is created on the assets of a consumer by the statutory provision, if there are dues to the Board from the consumer. Admittedly, an amount of more than Rs.36 lakhs was due from the previous consumer and a charge was already created on the property sold under liquidation proceedings to the petitioner. Therefore, consequent to the charge created, article 62 of the Indian Limitation Act, 1963 would come into play and thereby, the Board would get a period of 12 years to recover the dues charged on the assets of the previous consumer, and not two years as provided under Section 56 of the Act, 2003. There is no case for the petitioner that the demand raised by the Board is barred by limitation. However, it is placed on record that an interim order was passed by this Court on 5th July, 2011, whereby, the Board was directed to process the petitioner's application for grant of electricity connection and grant connection, on the petitioner satisfying the other requirements in that regard except payment of the amount due from the previous consumer/occupier of the premises. It is also placed on record that the supply code 2005 is now repealed by the Kerala Electricity Supply Code, 2014, which encompasses measures to collect the charges due from the previous consumer to provide a new connection, as per regulation 40 of the said code.

15.A reference to some of the provisions of the other relevant statutes would be relevant to sort out the issue. As a matter of fact, before the introduction of the Electricity Act, 2003, Kerala Electricity Supply Code, 2005 and the Terms & Conditions of Supply, 2005; in the State of Kerala, Kerala Electricity Duty Act, 1963 and Kerala Electricity Duty Rules, 1963 were in force prescribing the manner in which the charges were to be realized from the consumers. As per section 5 of Act, 1963 and rule 4 of the Rules, 1963, the dues from a consumer created a first charge on the amounts recoverable for the energy consumed, and the District Collector was empowered to take steps to recover the amounts from the licensees respectively, as an arrear of land revenue.

16.It is important to note that the Kerala State Electricity Board Terms & Conditions of Supply, 2005 and the Kerala State Electricity Supply Code, 2005 are introduced by the Kerala State Electricity Regulatory Commission by virtue of the powers conferred under section 45(5) of the Electricity Act, 2003.

17.Therefore, the provisions discussed above would make it clear that even though the subsequent purchaser of a property is not liable to pay the dues of a previous owner, the dues from the previous consumer would create a first charge on the property in question; thereby meaning that the board is entitled to recover the dues proceeding against the property over which a

charge is created consequent to non payment of the electricity dues by the previous consumer. As stated above, the petitioner has produced orders passed by a learned Single Judge and a Division Bench of this Court in regard to the sale of the property in auction; and the order show that the sale was affirmed in favour of the petitioner as per Report No.45 in C.P.No.11 of 2003 along with C.A No.337 of 2010 dated 4th June, 2010 by the learned Single Judge, which the Division Bench affirmed as per Exhibit P5 order dated 24th June, 2010 in Company Appeal No.37 of 2010.

18. But facts remain, from the orders passed and the report of the official liquidator, it is clear that the Kerala State Electricity Board was not a party to the proceedings. That apart, Exhibit P6 sale deed would show that the property was sold as per a tender notice dated 6.5.2010 inviting sealed tender from the interested public for purchase of assets of the company – M/s.A.M.A Food Products (P) Ltd., as per the terms and conditions of sale approved by the High Court of Kerala, in which it is proved that sale is on "as is where is and whatever there is" condition.

19.This makes it clear that whatever the property's condition as of the date of sale and the execution of the document would continue with the property. Therefore, it means when a charge was created by virtue of the

provisions of the statute, the charge runs with the property in question. This aspect was considered by the Apex Court in **AI Champdany Industries Ltd. v. Official Liquidator** [(2009) 4 SCC 486] and held that an encumbrance to be a charge must be such a burden on land which, by reason of a statutory provision diminishes value of the land and such a burden, therefore, is capable of being found out on inspection of related records and further held, runs with the property.

20.The said judgement was rendered in similar circumstances of liquidation and the question considered therein was whether the property tax due to the Municipality creates a charge over the property? True, it was held therein that since the property tax is merely a statutory dues without creating any encumbrance on the property which had cast a duty upon all the auction-purchasers to make an investigation, it would mean that they must try to find out all the liabilities of the company in liquidation in their entirety. It was further held that the Companies Act or any other law does not impose any additional obligation upon the purchaser to make an enquiry with regard to the liabilities of the companies other than those which would impede their value. Anyhow, the proposition of law laid down by the Apex Court therein was that there cannot be any doubt or dispute that a provision of law must expressly provide for an enforcement of a charge against the property in the hands of the transferee for

value without notice to the charge and not merely create a charge.

21.This question was considered by a Full Bench of this Court in **Suraj K.R. v. The Secretary, K.S.E.B and Ors.** [AIR 2006 Ker194 = ILR 2005(3) Kerala 618] taking into account the regulations constituted as per the Electricity Supply Act, 1948 and has held as follows:

"7. Petitioner, it is averred, has purchased the premises in a public auction free from all encumbrances. S.60 of the Revenue Recovery Act states that all immovable property brought to sale on account of public revenue due on land shall be sold free of all encumbrances and therefore petitioner submits he is not entitled to clear electricity dues to the Board. We are in this case not called upon to decide the legality or otherwise of the revenue sale or whether the Board has got first charge on the premises or not. The Board is not proceeding against the premises or against the petitioner. But the question is if there are arrears from the previous consumer with regard to the electricity supplied to the premises, whether electricity supply could be given to the same premises without clearing the arrears either by the previous consumer or by the prospective consumer. Board is not concerned with the provisions of the Revenue Recovery Act or as to how the prospective consumer has come into possession or ownership of the property. Regulations make no distinction between an auction purchaser and others in the matter of supply of electricity. Regulations 15(d) and (e) have been incorporated with a purpose, or else by successive transfer of the premises the Board's right to recover the amount from the previous consumers as well as from the assets could be effectively defeated at the same time the Board is called upon to

provide electricity to the same premises. Regulation 15(e) has a reasonable nexus with the object sought to be achieved, that is to save public property so as to subserve the general interest of the community. Once electricity is disconnected and the equipment dismantled, it is unjust to compel the Board to give electricity connection to the very same premises at the instance of a third party which will not be in public interest especially when electricity is considered as a public property. Further petitioner has also not challenged the validity of Regulation 15(d) and 15(e) in this writ petition.

8. We may in this connection refer to the decision of the apex court in M/s Hyderabad Vanaspathi Ltd. v. A. P. State Electricity Board (AIR 1998 SC 1715) wherein the court took the view that even in the absence of an individual contract, the terms and conditions of supply notified by the Board will be applicable to the consumer and he will be bound by them. After examining S.79(j) of the Electricity (Supply) Act, the court held as follows:

"The Section in the Act does not require the Board to enter into a contract with individual consumer. Even in the absence of an individual contract, the terms and conditions of supply notified by the Board will be applicable to the consumer and he will be bound by them. Probably in order to avoid any possible plea by the consumer that he had no knowledge of the terms and conditions of supply, agreement in writing are entered with each consumer. That will not make the terms purely contractual. The Board in performance of a statutory duty supplied energy on certain specific terms and conditions framed in exercise of a statutory power. Undoubtedly the terms and conditions are statutory in character and they cannot be said to be purely contractual."

The apex court therefore reversed the decision of the Full Bench of the Andhra Pradesh High Court which held that the terms and conditions of supply are contractual. The apex court also declared that the terms and conditions framed by the Board in exercise of the power under S.49 and 79(j) of the Electricity (Supply) Act are statutory in character. The apex court in M/s Hyderabad Vanaspathi Ltd. v. A.P.S.E.B. (AIR 1998 SC 1715) held that electricity is a public property, and law in its majesty, benignly protects public property and behoves everyone to respect public property and the courts must be zealous in this regard and that the terms and conditions framed by the Board in exercise of the power under S.49 and 79(j) of the Act are statutory.

9. A Bench of this court in Ramachandran v. K.S.E.Board (2000 (2) KLT 694) examined the scope of Regulation 15(e) of the Conditions of Supply and took note of the fact that the apex court in Isha Marbles v. Bihar State Electricity Board (1995 (2) SCC 648) was dealing with a case where there was no similar provision like condition 15(e) of the Regulations relating to Conditions of Electrical Energy framed by the Kerala State Electricity Board. The court held that any applicant who is desirous of getting electricity connection to the premises should abide by the regulations relating to conditions of supply of electrical energy. Only when the applicant agrees that he would comply with the statutory regulations he would get the status of a consumer under S.2(c) of the Indian Electricity Act. S.L.P. No 18603 of 2000 filed against the judgment in Ramachandran's case was later dismissed by the apex court on 27-11-2000. The principle laid down in Ramachandran's case, was later followed by another Division Bench in K. J. Dennis v. Official Liquidator (2001 (3) KLT 75) and also by another

Division Bench in Seena B. Kumar v. Asst. Executive Engineer (2003 (3) KLT 987).

10. Counsel appearing for the writ petitioner brought to our notice an earlier Bench decision of this court in Souriyar Luka v. K.S.E. Board (1959 KLT 14) wherein the applicant was treated as a fresh applicant and not a successor in interest and directed to give electricity supply. When the Bench decided Souriyar Luka's case, Regulations relating to Conditions of Supply of Electrical Energy was not in existence just like the decision of the apex court in Isha Marble's case. Therefore the decisions in Souriyar Luka's case and Isha Marble's case are not applicable to the present case since we have to decide the present case in the light of the Regulations relating to Conditions of Supply of Electrical Energy framed by the Board.

11. We may in this connection refer to a recent decision of the apex court in Ahmedabad Electricity Co. Ltd. v. Gujarat Inns Pvt. Ltd. (2004 (3) SCC 587). The apex court was dealing with the claims of auction purchasers of urban properties in the sales held in one case under S.29 of the State Financial Corporations Act and in the other case by the Official Liquidator in winding up proceedings under the Companies Act, 1956. Previous owners of the properties in both the cases were defaulters to Electricity Board in connection with the power supplied to the premises which was the subject matter of the sales effected. Subsequently the new purchaser submitted application for power connection. Board insisted for clearing off the previous arrears. Portion of the arrears was paid by them and electricity supply was restored. Later dispute arose as to whether they should be held liable to pay arrears which were outstanding against the previous owners. Reference

was made to Isha Marble's case (supra). While dismissing the appeal preferred by the Electricity Board, the apex court held as follows:

"We are clearly of the opinion that in case of fresh connection though the premises are the same, the auction purchasers cannot be held liable to clear the arrears incurred by the previous owners in respect of power supply to the premises in the absence of there being a specific statutory provision in that regard. Though we find some merit in the submission of the learned counsel for the appellant calling for reconsideration of the wide propositions of law laid down in Isha Marbles case, we think the present one is not a case for such exercise. We leave the plea open for consideration in an appropriate case."

The apex court held that auction purchaser cannot be held liable in the absence of any specific statutory provision. So far as this case is concerned, there is a statutory provision like Regulation 15(e). Above being the legal position, we find no reason to reconsider the earlier three Bench decisions of this court. We therefore hold that the Board is entitled to insist payment of arrears of electricity charges as precondition for supply of electricity to the same premises to a prospective consumer. Reference is answered accordingly. Appeal therefore lacks merits and it is accordingly dismissed."

22. Again, a Division Bench had occasion to consider the issue with respect to the dues of a previous owner in **Purushothaman v. KSEB [2007(2)KLT 827]**, also taking into account Regulation 12 of the Kerala Electricity Supply Code, 2005 and held as follows:

"4. We are of the view that the arguments raised by the petitioner cannot be sustained not only on the basis of the principle laid down by

the Full Bench in Suraj's case and also due to the fact that Regulation 12 of the Kerala State Electricity Supply Code 2005 has already stayed by the Kerala State Electricity Regulatory Commission vide its proceedings dated 27th February 2006. Order reads as follows:

"The Kerala State Electricity Board vide letter under reference has informed that clause 12 of the Kerala Electricity Supply Code, 2005 i.e. "Dues of previous consumer - If a purchaser of a premise requires to have a new connection as the earlier connection has already been dismantled after disconnection, the arrear if any shall be realized from the previous owner/occupier of the premises and not from the purchaser" provides sufficient opportunity for defaulting consumers to avoid remitting previous arrears and hence requested to modify the clause to protect the interest of the licensee as given below.

"However the purchaser (new consumer) shall deposit an amount equivalent to the previous arrears to the licensee, which will be reimbursed if realized from the previous owner/occupier by revenue recovery action"

The Commission in the meeting held on 27-2-06 discussed the issue. After detailed deliberation it is decided to stay the above clause pending finalization of the proposal submitted by the KSEB vide letter under reference cited above."

Following the above decision of the Kerala State Electricity Regulatory Commission, Kerala State Electricity Board issued circular dated 16-3-2006 which reads as follows:

CIRCULAR

Sub: Clause 12 of the Kerala Electricity Supply Code-stay-reg.

Ref : Letter No.KSERC/T& C of Supply amendment/2006/183 dated

27-2-2006.

In response to the Board's request for suitably amending clause 12 of the Supply Code, the Kerala State Electricity Regulatory Commission has informed that in view of the fact that certain consumers are misusing Clause 12 (via - Dues of previous consumer) of the Kerala Electricity Supply Code 2005, published by the Commission, implementation of the said clause is stayed.

It is directed that consequent to the stay implemented by the Commission in respect of clause 12 of the Kerala Electricity Supply Code viz- Dues of previous consumer, the provisions of Regulation 15(e) of the erstwhile Conditions of Supply of Electrical Energy shall be followed in respect of the dues of previous consumer. Regulation 15(e) of the Conditions of Supply states that "Reconnection or new connection shall not be given into any premises where there are arrears on any account due to the Board pending payment, unless the arrears, including penalty, if any are cleared in advance. (If the new owner/occupier/allottee remits the amount due from the previous consumer, the Board shall provide reconnection or new connection depending on whether the service remains disconnected/dismantled as the case may be. The amount so remitted will be adjusted against the dues from the previous consumer. If the Board gets full dues from the previous consumer through Revenue Recovery action or other legal proceedings, the amount remitted by the new owner/occupier to whom connection has been effected shall be refunded. But the amount already remitted by him/her shall not bear any interest)

The above direction shall be strictly followed by all concerned."

The Kerala State Electricity Supply Code has been framed by the Kerala State Electricity Regulatory Commission. Regulatory Commission

itself has stayed the operation of Regulation 12 which says that if a purchaser of a premise requires to have a new connection, as the earlier connection has already been dismantled after disconnection, the arrear, if any, shall be realized from the previous owner/occupier of the premises and not from the purchaser. Consequently, Regulation 7 of the Kerala State Electricity Board Terms and Conditions of Supply, 2005 also cannot be given effect to. Further by virtue of S.185 of the Electricity Act, 2003, Regulation 15(e) of the Conditions of Supply of Electrical Energy would continue to apply.

5. Under such circumstance, we are of the view, even after coming into force of the Electricity Act, 2003 if a prospective consumer applies for electric connection to a premises of which there is previous dues, unless and until the same is cleared, Board is not duty bound to give electric connection to that premises. If the new consumer remits the arrears and complies with other formalities the electric connection has to be given by the Board and Board can proceed against the previous consumer and recover the arrears and the amount realized, be adjusted towards the amount received from the prospective consumer. Under such circumstance we find no error in the judgment of the learned single Judge holding that the principle laid down by the Full Bench would apply to the facts and circumstances of this case. Appeal lacks merit and the same is dismissed."

23. Even though, learned counsel for petitioner has relied upon the judgement of the Apex Court in **Special Officer, Commerce, North Eastern Electricity Company of Orissa (NESCO) and Ors. v. Raghunath Paper**

Mills Private Limited and Ors. [(2012) 13 SCC 479], going through the judgement, it is quite clear and evident that the said judgement was rendered taking into account the liability of a previous consumer with specific reference to the provisions of Electricity Supply Code, 2004 applicable to the State of Orissa

24. In view of the discussions and deliberations made above, it is clear that the principles of law laid down by the Apex Court in **North eastern Electricity Company** (*supra*) may not apply to the facts and circumstances of this case. The judgements referred to therein by the Hon'ble Apex Court in **Ahmedabad Electricity Company Ltd. v. Gujraj Inns Pvt. Ltd. And Ors.** [(2004) 3 SCC 587] and **Haryana State Electricity Board v. Hanuman Rice Mills, Dhanauri and Ors.** [(2010) 9 SCC 145] were all dealing with the provisions of the law applicable to the States specific, which may not have much bearing to the issue at hand due to the clear provisions of law discussed above specifically applicable to the State of Kerala. Be that as it may, I have come across a judgement of the Apex Court in **Telangana State Southern Power Distribution Company Limited and Another v. SRIGDHAA Beverages** [(2020) 6 SCC 404] wherein typical facts and circumstances were considered and laid down the following proposition of law:

"7. 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.

8. *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 and Another (1995 KHC 1280 : 1995 (2) SCC 648) and Southern Power Distribution Company of Telangana Limited (through its CMD) and Others v. Gopal Agarwal and Others (2017 KHC 6494 : 2018 (12) SCC 644 : AIR 2017 SC 3862). Reliance on these judgments persuaded the learned Single Judge to issue directions quashing the demand of appellant No.1. The appeal filed before the Division Bench against this order was also dismissed on 30/04/2018.*

9. *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 (supra) the sale was in pursuance of S.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 S.24 of the Electricity Act, 1910, to emphasise that under S.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 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.

10. 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 and Others (1998 KHC 936 : 1998 (4) SCC 470 : AIR 1998 SC 1715)). 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.

11. We can draw strength from the observations of this Court in Dakshin Haryana Bijli Vitran Nigam Ltd. v. Paramount Polymers (P) Ltd. (2006 KHC 1541 : 2006 (13) SCC 101 : JT 2006 (9) SC 349 : AIR 2007 SC 2), (2 Judges Bench) 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 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.

12. 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.

13. The same view in case of a similar clause has been taken in Paschimanchal Vidyut Vitran Nigam Limited and Others v. DVS Steels and Alloys Private Limited and Others. 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 unreasonable. A condition for clearance of dues cannot per se be termed as unreasonable or arbitrary.

14. We may notice a slightly contra view in Haryana State Electricity Board v. Hanuman Rice Mills, 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.

15. We may notice that in NESCO v. Raghunath Paper Mills Private Limited, 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 found that the facts

were similar to NESCO case (supra), and thus followed the same line.

16. 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:

16.1. 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 S.56 of the Electricity Act, 2003 (in pari materia with S.24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature.

16.2. 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 that the liability to pay electricity dues exists on the respondent (purchaser).

16.3. 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.

17. 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.

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

24. Therefore, it can be seen that the dues of a previous consumer so far as the Terms & Conditions of Supply, 2005 is concerned, it is not merely a contractual dues but a statutory dues creating the first charge over the property; and no doubt, the amount so made consequent to the failure on the part of the previous consumer to pay the electricity dues runs with the property. It is also equally important and significant to note that the Kerala State Electricity Board was not a party in the winding up proceedings. Further, the sale deed executed in favour of the petitioner would show that the property was sold as stated above "as is whereas and whatever there is" condition. Above all it is the specific contention of the petitioner that the power supply to the property in question was disconnected and it was accordingly that the petitioner has submitted an application for a fresh connection. It is also relevant to note that the liquidator notified the auction sale of the property in "as is where is" condition, and therefore it can only be legally presumed that the petitioner had made due enquiries as to the condition of the property and should have been aware of the electricity charges due from the previous consumer.

25. Therefore, I do not think the petitioner is entitled to get Exhibit P3 proceedings quashed, especially because it is only an intimation about the amounts due from the previous consumer; or to secure any other consequential

reliefs sought for. But fact remains, the electricity connection was provided to the petitioner on the basis of a direction issued by this Court in the writ petition as per an order dated 5th July, 2011. Therefore the petitioner is left with the liberty to pay the dues within two months from the date of receipt of a copy of this judgment to avert any coercive and recovery action against the property in question; failing which the Board will be at liberty to proceed by the law to recover the amounts due, by the charge created on the property.

Writ petition is dismissed; however, with the observation as above.

Sd/-

SHAJI P.CHALY

JUDGE

smv

APPENDIX OF WP(C) 17619/2011

PETITIONER'S EXHIBITS

- Exhibit P1** TRUE COPY OF THE ORDER DATED 14/6/2010 ISSUED BY THE OFFICIAL LIQUIDATOR
- Exhibit P2** TRUE COPY OF THE DOCUMENT DATED 2.12.2010 HANDING OVER THE PROPERTIES TO THE PETITIONER
- Exhibit P3** TRUE COPY OF THE 2ND RESPONDENT'S LETTER DATED 27.6.2011
- Exhibit P4** TRUE COPY OF THE ORDER DATED 4/6/2010 PADDED IN REPORT NO.45 IN C.P.NO.11 OF 2003 AND C.A.NO.337 OF 2010 IN C.P.NO.11 OF 2003
- Exhibit P5** TRUE COPY OF THE JUDGMENT DATED 24/6/2010 IN COMPANY APPEAL NO.37/2010
- Exhibit P6** TRUE COPY OF THE SALE DEED DATED 24/9/2012 NO.2623/1/13 OF SRO ERNAKULAM EXECUTED BY THE OFFICIAL LIQUIDATOR CONVEYING THE SUBJECT PROPERTY
- Exhibit P7** TRUE COPY OF REPORT NO.45 (WITHOUT ANNEXURES) DATED 31/5/2010 FILED BY THE OFFICIAL LIQUIDATOR IN C.P NO.116 OF 2003