

(2015) 09 JH CK 0087
In the Jharkhand High Court
Case No : W.P. (C) No. 454 of 2010

Akshaya Roll Mills Pvt. Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 02-09-2015

Acts Referred:

Electricity Act, 2003 — Section 126

Citation : (2015) 4 JLJR 214

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : D.K. Pathak, Advocate, for the Appellant; P.K. Deomani, SC and Ravi Kr. Singh, ASC, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This application has been filed for quashing the assessment order dated 09.11.2009, whereby, the assessing authority concluded that the petitioner is liable to pay Rs. 29,22,272/- under Section 126 of the Electricity Act, 2003.

2. It appears that the petitioner is a H.T. consumer, having a contract load of 480 KVA. Thus, he will govern by Clause 16.5 of the Tariff Order, 1993, so far it relates to surcharge for exceeding the contract demand. It is further submitted that as per the aforesaid provision, if a consumer exceeds 110% of the contract demand, then the highest demand so recorded shall be treated as contract demand for the financial year and accordingly, the minimum base charge, both maximum demand as well as the energy charge, shall be payable on that basis. It is then submitted that since the aforesaid tariff had made provision for payment of electrical charges in case of consumption of electricity beyond the contractual demand, therefore, the consumption made by the petitioner in excess to contract demand cannot be treated as unauthorized use of electricity. Accordingly, it is submitted that Section 126 of the Electricity Act has no application in the facts and circumstance of the present case. Thus, the

impugned assessment order cannot be sustained.

3. On the other hand, learned counsel for the respondent-Board submits that the aforesaid order passed according to the provisions of the Circular No. 531, dated 29.1.2009, issued by the Jharkhand State Electricity Board (Annexure-5). According to the aforesaid Circular, since the petitioner has used electricity beyond the contract demand, therefore, the same comes within the definition of unauthorized use of electricity. Accordingly, petitioner is liable to pay the assessed amount under Section 126 of the Electricity Act.

4. Having heard the submission, I have gone through the record of the case. Unauthorized use of electricity has been defined in the Explanation (b) attached to Section 126 of the Electricity Act, 2003, which runs as follow:

126. Assessment.-

Explanation.-For the purposes of this section,-

(a)

(b) "unauthorised use of electricity" means the usage of electricity-

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee;
or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised;
or

(v) for the premises or areas other than those for which the supply of electricity was authorised.]

5. From perusal of the Clause (b)(ii) of the aforesaid explanation, it is clear that if any person is authorized by any authority to use electricity in a particular manner and if that person used the same in that manner, he will not be treated as unauthorized user of the electricity. Clause 16.5 of the Tariff Order, 1993 become relevant for the purpose of this case, which runs as under:

16.5 Surcharge for exceeding the contract demand:-

If during any month in a financial year (April to March next year) the actual maximum demand of a consumer exceeds 110 per cent of the contract demand then the highest demand so recorded shall be treated as the contract demand for that financial year and the minimum base charges, both in respect of maximum demand and energy charge shall be payable on that basis.

6. From perusal of the aforesaid Clause of Tariff Order, 1993, it is clear that if a H.T. consumer exceed 110% of the contract demand, then the highest demand so recorded shall be treated as the contract demand for that financial year and in

that case, he is liable to pay minimum base charge, both maximum demand as well as the energy charge, on that basis. Under the said circumstance, by the aforesaid Clause, if any consumer consumed electricity beyond the contract demand, then in that case by implication of Clause 16.5 of the Tariff Order, 1993, his contract demand will automatically increase in that financial year. Thus, if a H.T. consumer consumed electricity beyond the contract demand, then as per Clause 16.5 of the Tariff Order, 1993, he cannot be treated as unauthorized user of the electricity.

7. The contention of the learned counsel for the respondents that the respondent has power to pass assessment order in view of Annexure-5, cannot be accepted. The respondent-Jharkhand State Electricity Board has no power to amend the provisions of the Electricity Act, 2003 by inserting anything in it. Thus, the definition of the unauthorized use of electricity given in the aforesaid Circular is without jurisdiction. Moreover, it is submitted at the bar that the above Circular has already been withdrawn by the respondent-Jharkhand State Electricity Board.

8. The judgment of the Hon''ble Supreme Court relied by the learned counsel for the respondent in The Executive Engineer and Another Vs. Sri Seetaram Rice Mill, , has no application in the facts of this case, because in that case at paragraph No. 71, the Hon''ble Supreme Court has held that "....Explanation (b) (iv), thus, would also cover the cases where electricity is being consumed in excess of sanctioned load, particularly when it amounts to change of category and tariff"

9. In the instant case, as noticed above, by consuming the electricity beyond the contract load, the petitioner has not changed the tariff. Rather, the tariff prescribed that if any H.T. consumer consume electricity beyond the contract load, then he is liable to pay extra charges as stated in the Clause 16.5 of the tariff order, 1993. In that view of the matter, the ratio of the aforesaid judgment of the Hon''ble Supreme Court has no application in the facts of this case. Moreover, it is an admitted position that the respondent-Jharkhand State Electricity Board raised bills for the disputed period on the basis of excess contract demand as per Clause 16.5 of the Tariff Order, 1993, which the petitioner has already paid.

10. In view of the discussions made above, I allow this application and quash the assessment order dated 09.11.2009 (Annexure-7), whereby the petitioner was directed to pay Rs. 29,22,272/- under Section 126 of the Electricity Act, 2003.