
(2010) 08 OHC CK 0056
In the Orissa High Court
Case No : Writ Petition (C) No. 4072 of 2002

Baba Baijnath Roller and Flour Mill Pvt. Ltd.	APPELLANT
Vs	
Western Electricity Supply Company of Orissa Ltd. and Others	RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Electricity Act, 1910 — Section 26(6)
Orissa Electricity Reforms Act, 1995 — Section 33, 37(1)

Citation : (2011) 111 CLT 200 : (2010) 2 OLR 986

Hon'ble Judges : M.M. Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The Petitioner is a company carrying on its business in the name and style of M/s. Baba Baijnath Roller and Flour Mills Pvt. Ltd. having its mill in the district of Jharsuguda. In the present writ petition, the Petitioner has challenged the imposition of penalty on it by the opp.parties on the allegation of tampering with the meter and wire and has prayed for quashing Annexures-4 and 6 series. Under Annexure-4 dated 9.9.2002, the Petitioner was intimated that its premises/unit was inspected by the Executive Engineer (Electrical) WESCO, Jharsuguda Electrical Division and the following facts are noticed:

(1) H.T. Meter, T.P. Box's inner door and meter terminal cover quick seals, plastic seals and paper seals are found tampered.

(2) L.T. T.P. Box inner door quick seals, plastic seals and paper seals are found tampered.

The B-Phase P.T. wire found cut as such the meter is not getting B-Phase potential.

xx xx xx

In the said letter, it was further alleged that the above interference with the

metering arrangement was made by the Petitioner-company in order to prevent the meter from recording actual consumption which attract Regulation-64 of OERC Distribution Code. The Petitioner-company was, therefore, intimated that penal charges as per rules on account of the above mentioned act will be intimated separately and the Petitioner was given liberty to submit its representation, if any, within seven days against the facts pointed out in the inventory report. It was cautioned that on the Petitioner-company's failure to deposit the charges within seven days from the date of receipt of the final bill, the power supply to the premises will be disconnected without any further notice. Annexure-6 series is the forwarding letter with the penal bill sent to the Petitioner-company requiring it to pay the same within seven days. The penal bill is for an amount of Rs. 5,10,930/-. On 5.10.2002, the electricity supply was disconnected to the Petitioner-company's unit after which the Petitioner has approached this Court in the present writ petition for appropriate relief.

2. On 10.10.2002, this Court passed an interim order directing that on the Petitioner-company depositing a sum of Rs. 30,000/- without prejudice to its rights and contentions, power supply shall be restored.

3. It was contended by Mr. Mishra, learned Counsel for the Petitioner that though by the interim order, there was a direction to stay realization of the penal bill, the opp. parties went on charging delayed payment surcharge on the penal charges in monthly bills raised subsequently on account of delayed payment surcharge on old arrears, on current arrear and miscellaneous DR/CR. The Petitioner further contended that as it was not aware of the above fact, it went on paying the electricity charges including the above charges and when it detected, it filed Misc. Case No. 8496 of 2003. This Court by order dated 6.2.2004 directed that the said matter shall be considered at the time of final disposal of the writ petition. Accordingly, the Petitioner-company has claimed refund of the entire amount collected on the above heads, as in the meantime, the Petitioner-company's unit is already closed and there is no scope for adjustment.

4. It was further urged on behalf of the Petitioner. That the allegation of tampering with the seals cannot be sustained as there is no allegation that the outer seal of the T.P. was broken or tampered and, therefore, one cannot have access to tamper an inner seal. The B-Phase wire also is located inside the T.P. Box and hence, the same cannot be tampered or cut without breaking the outer seal. Therefore, the allegation appears to be improbable. Mr. Mishra further contended that the meter reading in comparison with the previous meter reading of 6 months itself falsifies the allegation that the B-Phase wire was cut thereby disrupting the power supply to the meter and in every month, the meter was being inspected by the officers/staff of WESCO and even on 31.8.2002 the S.D.O. had inspected the meter, who has never reported regarding any tampering or breaking of seal. Pursuant to Annexure-4, the Petitioner submitted a representation as at Annexure-5. But from Annexure-6, nothing is revealed regarding consideration of the said representation nor was the Petitioner even

called upon to be heard. Penal charges are to be calculated as per Clause-105 of the OERC Distribution (Condition of Supply) Code, 1998, which is as follows:

105. (1). On detection of unauthorized use in any manner by a consumer, the load connected in excess of the authorized load shall be treated as unauthorized load. The quantum of unauthorized consumption shall be determined in the same ratio as the unauthorized load stands to the authorized load.

(2) The period of unauthorized use shall be determined by the engineer as one year prior to the date of detection or from the date of initial supply if the initial date of supply is less than one year from the date of detection. If the consumer provides evidence to the contrary, the period may be varied according to such evidence....

5. A counter affidavit has been filed by WESCO, inter alia, stating that alternative remedy is available to the Petitioner under Clause-110 of the OERC Distribution (Condition of Supply) Code 1998 as well as under Sections 33 and 37(1) of the Orissa Electricity Reforms Act. Clause-110(1) prescribes that a consumer aggrieved by any action or lack of action by the engineer under this Code may file a representation within one year of such action or lack of action to the designated authority of the licensee above the rank of Engineer, who shall pass final orders on such a representation within thirty days of receipt of the representation. A consumer aggrieved by the decision or lack of decision of the designated authority of the licensee may file a representation within forty five days to the Chief Executive Officer of the licensee who shall pass final order on such representation within forty five days of receipt of the same. In respect of orders or lack of orders of the Chief Executive Officer of the licensee on matters provided u/s 33 of the Act, the consumer may make a reference to the Commission u/s 37(1) of the Act. It has been further contended in the counter affidavit that besides the above, the opp. parties have framed grievance handling procedure with approval of the Orissa Electricity Regulatory Commission giving right to the consumer to make representation before the grievance cell and have set up Bijuli Adalat in every circle for redressal of the grievance of the consumers and the Petitioner having not availed such statutory remedy, the writ petition is liable to be dismissed on account of availability of efficacious alternative remedy. The other allegations made in the writ petition have been denied by the opp. parties in the counter affidavit.

6. With regard to the availability of alternative remedy, it is well known principle of law that in case of violation of principle of natural justice, even if alternative remedy is available, a Writ Court under Article 226 of the Constitution can interfere for redressal of the grievance of the Petitioner. Learned Counsel for the Petitioner further brought to the notice of the Court Section 26(6) of the Indian Electricity Act, 1910, which stipulated that even if dispute arises as to whether any meter referred to in Sub-section (1) thereof, is or is not correct, the matter shall be decided upon application of either party, by an Electrical Inspector and where the meter has, in the opinion of such Inspector ceased to be correct, such

Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not in the opinion of such Inspector have been correct.

Mr. Mishra, learned Counsel for the Petitioner placed reliance on the decision of this Court in the case of Sri Harishankar Giri and Another Vs. Central Electricity Supply Company of Orissa Ltd. and Others, , wherein it was held that if there is any anomaly between the Central Act and the State legislation, the provisions of the Central Act will prevail and since the Principal Act says that the Electrical Inspector has to calculate and that he cannot impose penalty for a period beyond six months, the provision of Section 26 will prevail, but not Clause 105 of the Code. It has also been held in the said decision that if the principle of natural justice has not been followed, the imposition of penalty has to be struck down. In the instant case, the matter has not been referred to the Electrical Inspector, but the penal bill has been prepared by the Executive Engineer calculating the penal charges for twelve months which is not in consonance with Section 26(6) of the Indian Electricity Act, 1910.

7. In the case of Sri Harisankar Giri and Anr. (supra), the Division Bench of this Court referring to the ratio laid down by the Supreme Court in the case of Belwal Spinning Mills Ltd. etc. Vs. U.P. State Electricity Board and another, held that on a harmonious construction of Clause 105 of the Code and the provisions of Section 26(6) of the Indian Electricity Act, it was found that the licensee is not empowered to impose penalty beyond six months, in as much as Legislature did not permit them to realise any amount for unauthorised obstruction beyond six months unless proof of fraud is established preceding statutory period of six months and in no uncertain term also laid down that Clause 105(2) of the Code, which prescribes that the Engineer shall levy penal charges in addition to the normal charges for a period of one year preceding to unauthorized use, is contrary to the provisions of Section 26(6) of the Indian Electricity Act and, therefore, such clause is unenforceable. On a hypothetical case, this Court also considered that even assuming that such clause is attracted, if from evidence, it is established that unauthorized use was only for a limited period, i.e., for three years, the opp. parties could not have levied penal charges from the consumer for one year. In the instant case, it is seen that the representation filed by the Petitioner was never considered before imposition of penalty, far less, giving an opportunity of hearing to the Petitioner. This action of the opp. parties is, therefore, in clear violation, of the principles of natural justice.

8. In view of the above, the bill under Annexure-6 imposing penalty charges on the Petitioner can neither be sustained nor can it be said that the defects found during inspection in the meter in the Petitioner-company's unit recorded gospel truth. Further, the inspection was never done in presence of either the authorized person of the Petitioner-company or any of its agents, which ex-facie appears to be an unilateral conclusion. The said inspection report is, therefore, also quashed.

9. With regard to refund of the excess amount, representation said to have been filed by the Petitioner on delayed payment surcharge on old arrear and on current arrear along with miscellaneous DR/CR, as it is found that the penalty is unsustainable, the opp. parties were not entitled to levy such delayed payment surcharge on the penal charges treating them to be old arrear/current arrear. Such delayed payment surcharge which has already been levied from the Petitioner, as stated by the Petitioner, is liable to be refunded to the Petitioner. Ordered accordingly. Such refund should be made within a period of three months from the date of communication of this order.

10. The writ petition is accordingly allowed, but in the circumstances, there shall be no order as to cost.