

(2015) 03 JH CK 0030
In the Jharkhand High Court
Case No : Writ Petition(C) No. 294 of 2011

Bharat Rubber Re-Generating Company Limited	APPELLANT
Vs	
Jharkhand State Electricity Board and Others	RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 39, 44

Citation : (2015) 3 AJR 218

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : M.S. Mittal, for the Appellant; Ajit Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This writ application has been for the following reliefs:-

(A) For issuance of an appropriate writ or a writ in the nature of Certiorari for quashing the order dated 01.07.2010 passed by the General Manager-cum-Chief Engineer in pursuance of the order dated 16.01.2009 passed by this Hon''ble Court in W.P.C. No. 2197 of 2003 whereby and whereunder the said authority without giving any impetus to the report of national Metallurgical Laboratory, Jamshedpur went ahead to Levy penalty upon the petitioner in purported exercise of powers conferred upon it under Section 39 and 44 of the Indian Electricity Act, 1910 without applying its mind and for the reasons of malice.

(B) For issuance of an appropriate writ or a writ in the nature of Certiorari for quashing the punitive bill raised on the petitioner dated 27.10.2010.

(C) For issuance of an appropriate writ or a writ in the nature of mandamus directing upon the Respondents to show cause as to how a proceeding under Clause 16.9A of the 1993 Tariff is attracted, when admittedly none of the criteria as laid down in the said Clause are attracted.

(D) For issuance of any other appropriate writ(s), order(s) and direction(s) as Your Lordships may deem fit and proper under the facts and circumstances of the case for imparting complete and substantial justice.

2. It appears that the petitioner is a company having its factory at Adityapur Industrial Area at Jamshedpur and is a manufacturer of reclaimed rubber. For running the factory, petitioner took electrical connection from the Jharkhand State Electricity Board on a contract demand of 500 KVA, which was later on enhanced to 800 KVA per month.

3. It appears that on 25.04.1996 and 26.4.1996 inspections carried out in the premises of the petitioner. During the inspection, current in R-Phase was found 0.049A as against 38.515A in B-Phase. It was also detected that incoming jumper of the metering unit of R-Phase snapped and melted with outgoing jumper of the metering unit of the same phase. Thereafter F.I.R. lodged against the petitioner on 26.04.1996 for theft of electrical energy. It appears that petitioner filed CWJC No. 1536 of 1996 (R), which was disposed of with direction that the petitioner should file representation before the General Manager-cum-Chief Engineer South Bihar and Chhotanagpur Area Electricity Board, Ranchi. Accordingly, a representation filed on 04.06.1996. It appears that during the pendency of the representation, Jamshedpur Area Electricity Board (headed by General Manager-cum-Chief Engineer) was created. Thus, in the aforesaid writ application vide order dated 21.5.1996, the General Manager-cum-Chief Engineer, Jamshedpur was directed to dispose of the representation. In view of the aforesaid direction, the General Manager-cum-Chief Engineer, Jamshedpur Area passed order on 22.01.2001, which was challenged by the petitioner in this Court vide CWJC No. 1620 of 2001. It appears that in pursuance of the order dated 24.4.2001, petitioner filed another representation before General Manager-cum-Chief Engineer, Jamshedpur on 4.5.2001 for correcting the bill raised under clause 16.9. It appears that this Court vide order dated 12.4.2002 disposed of CWJC No. 1620 of 2001 and quash the order of the General Manager-cum-Chief Engineer, Jamshedpur and remitted back the matter to the General Manager-cum-Chief Engineer, Jamshedpur for passing a fresh order, in accordance with law. Thereafter, General Manager-cum-Chief Engineer, Jamshedpur passed order on 08.05.2002, against which the Jharkhand State Electricity Board filed a writ application in this Court vide WPC No. 2193 of 2003. The aforesaid writ application disposed of vide order dated 17.01.2009 and the matter again remitted back to General Manager-cum-Chief Engineer, Jamshedpur for deciding the matter afresh, within two months from the date of order. Thereafter a Letter Patent Appeal vide LPA No. 89 of 2009 filed, which was dismissed as withdrawn vide order dated 25.05.2009. However, petitioner was given liberty to appear before the General Manager-cum-Chief Engineer, Jamshedpur and pursue the matter in view of the order passed by the learned Single Judge.

4. It appears that petitioner appeared before the General Manager-cum-Chief Engineer, Jamshedpur Area on 08.01.2010. However on that date the matter was

adjourned. Thereafter from 11.01.2010, the representatives of both the parties were heard several times by the General Manager-cum-Chief Engineer, Jamshedpur Area and he vide his order dated 01.07.2010 disposed of the representation and held that the consumer was indulged in malpractice and theft of energy. Thus, the Board is entitled to raise bill against him as per Clause 16.9A of the Tariff. Accordingly, the Electrical Executive Engineer (C and R) issued a penal bill of Rs. 22,64,345/- and directed the petitioner to pay the same by 15th of November, 2010. The aforesaid order and bill raised on that basis have been challenged in this writ application.

5. It is submitted by Sri M.S. Mittal, Senior Advocate appearing for the petitioner that as directed by this Court in WPC No. 2193 of 2003, the General Manager-cum-Chief Engineer, Jamshedpur Area was bound to consider all the evidences on record and pass a reasoned order. He submits that the petitioner has brought on record the report of National Meteorological Laboratory, Jamshedpur to show that the snapping of the jumper of R-Phase and its melting with the outgoing jumper was an act of god. It is submitted that the said report has not been considered. Sri Mittal, further submits that petitioner brought on the record photographs to show that the conductor was not cut, rather it broke and melted with outgoing conductor. The said photographs was not considered by the General Manager-cum-Chief Engineer, Jamshedpur. He further submits that the representative of the petitioner produced a chart showing the petitioner's consumption pattern of electricity for pre and post incident period, but the same was rejected superficially. Accordingly, Sri Mittal submits that General Manager has not decided the case as per the order of this Court. Accordingly, the impugned order is liable to be quashed.

6. On the other hand, Sri Ajit Kumar appearing for the Respondents submits that there is no dispute that the General Manager-cum-Chief Engineer, Jamshedpur had given notice to the petitioner and in response thereto petitioner's representative appeared before him. He then submits that the petitioner's representative was heard at length and after considering and discussing all the materials brought on the record the General Manager-cum-Chief Engineer come to the conclusion that the petitioner indulged in malpractice and committing theft of the electrical energy, therefore Board is entitled to raise a penal bill as per Clause 16.9A of the Tariff. Sri Ajit Kumar submits that the order of General Manager-cum-Chief Engineer, is not unreasonable and/or perverse in any manner. Therefore, the said order is beyond the scope of judicial review under Article 226 of the Constitution of India. He submits that while exercising the jurisdiction under Article 226 of the Constitution of India, it is not open for this Court to substitute its own judgment in place of judgment of Administrative Authority, if the Administrative Authority after following the principles established by law and the rules of natural justice, has passed such order. Accordingly, Sri Ajit Kumar submits that the present writ application is liable to be dismissed.

7. Having heard the submissions, I have gone through the record of the case.

From perusal of the impugned order I find that the General Manager-cum-Chief Engineer, Jamshedpur, after receiving the order of this Court in WPC No. 2193 of 2003, gave notice to the petitioner fixing the date of hearing on 08.01.2010. It appears that on that date the case was not heard and next date fixed on 11.01.2008. On that date, the representative of petitioner, namely, Sri Manish Dhandhanania appeared and filed a written statement. It further appears that the representative of the petitioner was heard at length on different dates. It also reveals from the impugned order that the General Manager-cum Chief Engineer considered all the materials available on the record and had given reason for accepting and/or rejecting the same. To be more specific, it appears that General Manager-cum-Chief Engineer, Jamshedpur had considered the photograph, report of National Meteorological Laboratory, Jamshedpur and consumption pattern of pre and post incident period and gave finding at paragraph Nos. 5(iii), 5(iv), 6 and 7 and then come to the conclusion that petitioner was indulged in malpractice and theft of energy. Thus, from the aforesaid facts and circumstances, I find that the General Manager-cum-Chief Engineer, Jamshedpur Area, Electric Supply gave ample opportunity of hearing to the petitioner and while passing the order, had discussed all the evidences available on the record and had given reason for accepting and/or rejecting the same. Thus, from no stretch of imagination, it can be said that the order passed by the General Manager-cum-Chief Engineer, Jamshedpur is unreasonable or perverse.

8. The scope of judicial review of this Court under Article 226 of the Constitution of India has been considered by the Hon''ble Supreme Court in J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, . At paragraph Nos. 14, 15 and 16 of the aforesaid judgment the Hon''ble Apex Court has held as under:-

"14. It is to be noted that in pursuance of the order passed on 27.9.1999 by the High Court in CWJC No. 8939 of 1999, the Chief Engineer decided the matter holding that the petitioner had exceeded the contracted load and had also committed theft of electricity and consequently, assessment of compensatory amount had to be done in accordance with clause 16.9 of the tariff. In terms of the order of the Chief Engineer the bill dated 29.10.1999 was prepared which was challenged by the petitioner by filing the writ petition before the High Court under Article 226 of the Constitution. The High Court was not hearing an appeal against the decision of the Chief Engineer. The scope of inquiry in such a matter is a limited one. We would like to quote here what was said by Venkatachaliah, J. in State of U.P. V. Maharaja Dharmander Prasad Singh, which reads as under: (AIR para 28 : SCC pp. 524-25, paras 60-62)

60. However, judicial review under Article 226 cannot be converted into an appeal. Judicial review is directed, not against the decision, but is confined to the examination of the decision making process. Chief Constable of the North Wales Police V. Evans refers to the merits-legality distinction in judicial review. Lord Hailsham said:

"The purpose of judicial review is to ensure that the individual receives fair

treatment, and not to ensure that the authority, after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court."

61. Lord Brightman observed:

"...Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made...."And held that it would be an error to think:

".....that the court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

62. When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account of relevant factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision making process includes examination, as a matter of law, or the relevance of the factors."

15. In Apparel Export Promotion Council V. A.K. Chopra Chief Justice Anand held as under: (SCC p. 771, para 17)

"17. Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

16. There is no dispute that the Chief Engineer issued notice to the petitioner mentioning all the relevant facts to which the petitioner gave a reply. The petitioner was also afforded an opportunity of hearing and it appeared through a counsel, who made submissions on two days and thereafter the Chief Engineer passed the order. As discussed earlier, the Chief Engineer has taken into consideration relevant factors and the findings recorded by him are clearly borne out from the material available before him. It cannot be said that the order passed by him is unreasonable or perverse in any manner. The High Court therefore rightly took the view that the order passed by the Chief Engineer that the compensatory bill is to be prepared in accordance with clause 16.9 of the tariff could not be interfered with in a writ petition under Article 226 of the Constitution.

9. In State of N.C.T. of Delhi and Another Vs. Sanjeev @ Bittoo, , the Hon'ble Supreme Court has made following observations at paragraph Nos. 17, 18, 19, 20 and 21:-

17. The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

18. The famous case commonly known as "the Wednesbury case" is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

19. Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in *Associated Provincial Picture Houses Ltd. V. Wednesbury Corpn.* (KB at p. 229 : All ER pp. 682H-683A). It reads as follows:

"....It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority.... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

Lord Greene also observed (Kbp. 230 : All ER p. 683F-G)

".....it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body can come to. It is not what the court considers unreasonable....The effect of the legislation is not to set up the court as an arbiter of the correctness of the view over another."

(emphasis supplied)

Therefore, to arrive at a decision on "reasonableness" the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.

20. The principles of judicial review of administrative action were further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community. Lord Diplock observed in that case as follows: (All ER p. 950h-j)

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call "illegality", the second "irrationality" and the third "procedural impropriety". That is not to say that further development on a case by case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of "proportionality" which is recognized in the administrative law of several of our fellow members of the European Economic Community:"

Lord Diplock explained "irrationality" as follows: (All ER p. 951a-b)

"By irrationality" I mean what can by now be succinctly referred to as "Wednesbury unreasonableness". It applied to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

21. In other words, to characterise a decision of the administrator as "irrational" the court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

10. Applying the aforesaid law laid down by their Lordships of Supreme Court in the above decisions, it is clear that if the administrative order is fair and reasonable, passed on materials available on the record and the aggrieved party has been given fair treatment of hearing then it is not open for this Court to substitute its judgment for that of administrative authority. As noticed above, in the instant case, from perusal of impugned order I find that the petitioner was given ample opportunity of hearing and the General Manager-cum-Chief Engineer, Jamshedpur had considered all the relevant materials produced by the parties and then come to the conclusion that the petitioner indulged in malpractice and theft of electricity, therefore liable to pay penal bill as per the provisions contained under Clause 16.9A of the Tariff of 1993. Thus, I find no reason to interfere with the impugned order

11. In view of the discussions made above, I find no merit in this writ application, accordingly, the same is dismissed.