

(1992) 05 PAT CK 0023
In the Patna High Court
Case No : C.W.J.C. No. 8058 of 1991

Bihar State Electricity Board and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 22-05-1992

Acts Referred:

Constitution of India, 1950 — Article 12
Electricity (Supply) Act, 1948 — Section 12, 26, 5
Electricity Act, 1910 — Section 10, 11, 2, 21, 22

Citation : (1992) 2 BLJR 1272 : (1993) 1 PLJR 36 : (1993) 1 PLJR 344

Hon'ble Judges : S.B. Sinha, J;B.K. Roy, J

Bench : Division Bench

Judgement

S.B. Sinha, J.—This writ application is directed against an order dated 6-2-1991 passed by the Electrical Inspector, Bihar as contained in Annexure-1 to the writ application, whereby and whereunder the said authority being of the opinion that the maximum demand of the petitioners should be reduced from 183 KVA, directed that the petitioners would make necessary arrangements for raising further bills in accordance with the existing tariff.

2. The fact of the matter lies in a very narrow compass.

3. The petitioner No. 1 is a statutory body constituted u/s 5 of the Electricity (Supply) Act, 1948 and is a body corporate in terras of Section 12 thereof. The respondent No. 3 is also a statutory body having been constituted and incorporated under Bihar Fruits and Vegetables Development Corporation Act.

4. The respondent No. 3 Corporation entered into an agreement with the petitioner No. 1 for taking supply of high tension electrical energy at a contract demand of 183 KVA on or about 25th February, 1985 which is contained in Annexure-A to the counter-affidavit filed on behalf of the respondent No. 3 and 4.

5. According to the petitioners, the installed capacity at the premises of the respondent No. 3 corporation was found to be 194 KVA upon an inspection

having been made by the petitioner No. 3. The report in relation thereto is contained in Annexure-2 to the writ application.

6. The respondent No. 3 issued a letter dated 11-9-1986 to the petitioners requesting them to reduce the contract demand from 183 KVA to 150 KVA.

7. It has been contended by the petitioners that the request made by the respondent No. 3 was rejected by the petitioner No. 2. According to the petitioners, as the minimum period during which an agreement for supply of High Tension electrical energy remains operative for a period of three years, the request made by the petitioners was not and could not have been entertained.

8. In paragraph 10 of the writ petition, it has further been stated that the highest demand of the respondent No. 3 in different years were found to be as follows:

Year Highest K. V. A. recorded in a month

1958-86 149 K. V. A.

1986-87 173 K. V. A.

1987-88 116 K.V.A.

1988-89 116 K.V.A.

1989-90 77 K. V. A.

1990-91 179 K. V. A.

9. The respondent No. 3, however, referred the matter relating to reduction of connected load to the respondent No. 2. The petitioners having been noticed by the respondent No. 2, filed its written statement which is contained in Annexure-4 to the writ application.

10. By reason of the impugned order, the respondent No. 2 directed the petitioners to raise the bills in respect of consumption of electrical energy by the respondent No, 3 on the basis of 130 KVA.

11. The respondent Nos. 3 and 4, in their counter-affidavit, have disputed the correctness of the report of the petitioner No. 3 (Annexure-2).

It has also been stated that its maximum demand in any year never exceeded 75 KVA.

12. According to the respondent, it submitted representation on 20th February, 1989 along with actual consumption report charts from the January, 1987 to September, 1989 before the Superintending Engineer which are contained in Annexure D, D/1, D/2 and D/3 respectively. The respondents have further contended that upon receipt of the aforementioned representation, the Superintending Engineer by an office Memo dated 6-4-1989 directed the petitioner No. 3 to submit a specific report regarding the maximum drawal of the units in different financial years by the respondent No. 3 together with his

comments thereon.

However, the petitioner No. 3 submitted a report dated 1-5-1989 regarding transformer only installed by the petitioners but did not make any comments with regard to the issues raised by it in its representation dated 20-2-1989.

13. It has further been contended that the authorities of the respondent, corporation found some irregularities and abnormalities in the matter of calculation of power factor and thus it by a letter dated 24-4-1989 asked the petitioner No. 3 to rectify the defects in the matter. The said letter dated 24-4-1989 is contained in Annexure-C to the counter-affidavit.

14. The respondents have contended that the petitioners however, without removing the defects in the matter submitted bills dated 6-6-1989 and 1-7-1989 charging 75 per cent of 177 KVA and 45 per cent of load factor (Annexure 1 and 1/1 to the counter-affidavit) which are wholly illegal allegedly in view of Section 36(6) of the Act.

15. Another representation was filed by the respondent No. 3 on 20th July, 1989 before the Chairman of Electricity Board (Annexure-J to the counter-affidavit) wherein request was made to raise to bills on the basis of average consumption of electrical energy of previous two years.

16. By a letter dated 20th July, 1989 (Annexure-L to the counter-affidavit) the petitioner No. 4 however, directed to respondent No. 3 to pay a sum of Rs. 1,42,927.83 paise and threatened that if it fails to deposit the said amount on or before 29-7-1989, the electrical connection shall be disconnected.

17. The respondent No. 4 raised a dispute with regard to the correctness of the bills by reason of two letters dated 31-7-1989 before the petitioner No. 4 and the petitioner No. 2 respectively (Annexure-M and M-1 to the counter-affidavit).

18. The respondent Nos. 3 and 4 have contended that in this background the disputes between the parties were referred to the respondent No. 2 and the said dispute not only related to reduction of a contract demand but the raising of bills ; correctness of meter and illegal action on the part of the petitioners.

19. The only question which has been raised at the bar is whether the petitioner No. 2 had the jurisdiction to direct the reduction of the contract demand.

20. Mrs. Nilima Thakur, the learned Counsel appearing on behalf of the petitioners submitted that the jurisdiction of the electrical inspector is confined to the provisions of Section 2(4) and Section 26(6) of the Indian Electricity Act and as the question of reduction of contract load as requested by the respondent No. 3 to the petitioner is a matter of agreement by and between the Board and its consumer, the respondent No. 2 had no jurisdiction to pass the impugned order.

The learned Counsel, in this connection, has relied upon an order of this Court dated 18-9-1991 passed CWJC No. 4910 of 199 1 (Bihar State Electricity Board and Ors. v. State of Bihar and Ors.).

21. Mr. L. K. Bazla, the learned Counsel appearing on behalf of the respondent No. 2 and Mr. Sidheshwar Prasad Singh, the learned Counsel appearing on behalf of the respondent Nos. 3 and 4, on the other hand, submitted that the jurisdiction of the electrical inspector is not only confined to the aforementioned provisions but he can exercise his jurisdiction also under Sections 24(2), 26(4), 33(2), 37(2)(ii)(g), 37(2)(ii)(k), 50 and 55 and Clauses VI, XIII, XV, XVI and XVII of the Schedule appended to the Indian Electricity Act, 1910 as also Rules 4 to 10 of the Indian Electricity Rules.

22. It was further submitted that in any event as both the parties agreed to abide by the decision of the respondent No. 2, the petitioners are estoppel and precluded from challenging his jurisdiction.

23. Mr. Singh further submitted that in the event, if it be held that the respondent No. 2 had no jurisdiction to pass the impugned order as contained in Annexure-1 to the writ application, the respondents should be given liberty to raise such questions which were otherwise referable to the Electrical Inspector and or before appropriate forums.

24. From the conspectus of events as noticed hereinbefore it is evident that there is no dispute with regard to the basic fact involved in this application.

25. It is not disputed by the petitioners that the respondent No. 2 has jurisdiction to determine any matter falling within Sub-section (4) of Section 21 of the Act and Sub-section (6) of Section 26 thereto.

26. It is true, as has been submitted by Mr. Bazla that apart from the said provisions, there are many other provisions contained in Indian Electricity Act, 1910 and the rules framed thereunder which provides for the jurisdiction of the respondent No. 2 to determine the disputes and differences arising between the parties referred to therein.

27. However, in this case it was submitted by the learned Counsels that the respondent No. 2 had jurisdiction to determine the issue in question in terms of Sub-clause (3) of Clause VI of the Schedule appended to the Indian Electricity Act which reads as follows:

Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service line or as to the sufficiency of the security offered by any owner or occupier (or as to the position of the meter board) or as to the improper use of energy, or as to any alleged defect in any wires, fittings, works or apparatus or as to the amount of the expenses incurred under the third proviso to Sub-clause (1), the matter shall be referred to an Electrical Inspector and decided by him.

28. From a bare perusal of the impugned order as contained in Annexure-1 to the writ application, it is evident that the only question with which the respondent No. 2 was concerned was arose out of a prayer made by the respondent No. 3 for reduction of contract demand from 183 KVA to 150 KVA.

29. It was, therefore, clearly a case which did not fall within the purview of the provisions of Sub-clause (3) of Clause VI of the Schedule appended to Indian Electricity Act as referred to hereinbefore.

30. The Schedule appended to the Act is referable to the provisions of Section 3(2)(f) of the Indian Electricity Act which reads as follows:

(2) In respect of every license and the grant thereof the following provisions shall have effect, namely....

(f) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of every license granted under this part, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to any such additions, variations or exceptions which the (State Government) is hereby empowered to make, apply to the undertaking authorised by the license:

Provided that, where a license is granted in accordance with the provisions of Clause IX of the Schedule for the supply of energy to other licensees for distribution by them, then, in so far as such license relates to such supply, the provisions of Clauses IV, V, VI, VII, VIII and XII of the Schedule shall not be deemed to be incorporated with the license.

31. From a bare perusal of the aforementioned provision, it is evident that the jurisdiction of the Electrical Inspector can be invoked only when a dispute with regard to the aforementioned matter arises by and between the State and the licensee.

32. Section 26 of the Electricity (Supply) Act provides as follows:

26. Board to have powers and obligations of licensee under Act 9 of 1910.- Subject to the provisions of this Act, the Board, shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 (9 of 1910), and this Act shall be deemed to be the License of the Board for the purposes of that Act:

Provided that nothing in Sections 3 to 11, Sub-sections (2) and (3) of Section 21 and (Section 22, Sub-section (2) of Section 22A and Sections 23 and 27) of that Act or in (clauses I to V, Clause VII to Clauses IX and XII) of the Schedule to that Act relating to the duties and obligations of a licensee shall apply to the Board:

Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced.

33. From a bare perusal of the first proviso, it is thus, evident that Clause VI of the Schedule of the Indian Electricity Act applies to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced. Such is not the case here.

Apparently, therefore various sub-clauses contained in Clause VI of the Schedule appended to the said Act have no application in the facts and circumstances of the case.

34. Further, as noticed hereinbefore, Section 3(2)(f) of the Act postulates a dispute by and between the State and the licensee and thus, the said provision has no application whatsoever in relation to a dispute of the nature as has been raised by the respondent No. 3 as a consumer with the petitioners.

35. The supply of electrical energy is a matter of contract by and between the Board and consumer. The conditions of supply of electrical energy, thus, are governed by the terms and conditions of the agreement ; subject course to the provisions of the said Act and the Electricity (Supply) Act, 1948 and the rules framed under the said Act.

36. It is not the case of either of the parties that in relation to a demand of consumer to the Board for reduction in the contract demand falls with in one or the other provisions contained in the said Act or the Electricity (Supply) Act.

37. Clause 9-A of the agreement dated 25th February, 1985 reads thus:

9-A. The consumer shall not be at liberty to determine this agreement before the expiration of three years from the date of commencement of the supply of energy. The consumer may determine this agreement with effect from any date after the said period on giving to the Board not less than twelve calendar months previous notice in writing in that behalf and upon the expiration of the period of such notice this agreement shall cease and determine without prejudice to any right which may then have occurred to the Board hereunder provided always that the consumer may at any time with the previous consent of the Board transfer and assign this agreement to any other person and upon subscription of such transfer, this agreement shall be binding on the transferee and Board and take effect in all respect as if the transferee had originally been a party hereto in place of the consumer who shall henceforth be discharged from all liabilities under or in respect thereof.

38. It has not been disputed before us that under the agreement the prayer of a consumer for reduction of connected load can be made only after expiry of three years from the date of entering into the agreement subject of course to agreement to the contract entered into by and between the parties with regard thereto. The matter relating to reduction of the connected demand thus is essentially a matter of contract and in that view of the matter, there cannot be any doubt that the respondent No, 2 has no jurisdiction in such matter.

The Electrical Inspector is appointed in terms of Section 36 of the Indian Electricity Act, and in terms of Sub-section (3) of the aforementioned provision an appeal lies from an order passed by him.

39. It is now well known that a statutory authority must confine his jurisdiction within the four corner of the statute.

40. It is also well known that when the Legislature directs a thing to be done in a particular manner, the same must be done in that manner and not at all.

It is equally well established that if a certain power granted to a public officer is to be exercised in a particular manner or form and same is not exercised in that manner or form, the same would be invalid or without jurisdiction.

41. The position of an Electrical Inspector is that of a statutory arbitrator. Its decision subject to result of appeal, is final and binding upon the parties.

42. The respondent No. 2, therefore, was obliged to exercise his jurisdiction with regard to determination of a dispute in relation to a matter which falls within one or the other provisions contained in the Indian Electricity Act or the rules framed thereunder and not otherwise.

In view of the fact that the matter relating to a demand by a consumer for reduction of its contract demand does not fall within the purview of any provisions of the Act or the rules framed thereunder, it must be held that the impugned order passed by the respondent No. 2 is a nullity being wholly illegal and without jurisdiction.

43 In the facts and circumstances of this case, I have no other option but to hold that there was inherent lack of jurisdiction on the part of the respondent No. 2 to determine the aforementioned questions.

44. It has been stated by Mr. Singh, the learned Counsel appearing on behalf of the respondent Nos. 3 and 4 that the dispute of the nature referred to by the respondent No. 3 before the respondent No. 2 used to be entertained by him. Such a reference was, therefore, made to the respondent No. 2 in view of the prevalent practice.

45. It is now well known that a practice cannot be exalted into a rule of law.

46. It is, therefore, also clear that the possibility of the petitioners taking part of the proceeding before the respondent No. 2 on such misconception of law, therefore, cannot be ruled out.

47. Further, it is well known that by consent the parties cannot confer a jurisdiction upon a statutory authority when he has none.

48. Further, from a perusal of Annexure-1 to the writ application, it appears that the respondent No. 2 has recorded as follows:

The learned Counsel appearing on behalf of both the parties have agreed that the maximum demand of the petitioner may be decided on the basis of the data submitted by both the parties.

No consent, therefore, was given on behalf of the petitioners, so as to enable the respondent No. 2 to assume jurisdiction,

49. It is not a case where the parties had referred the matter to the respondent

No. 2 for adjudication of the disputes and differences between them by reason of an agreement. The respondent No. 2, therefore, did not act as an arbitrator on the basis of any agreement between the parties to that effect.

50. From the facts as stated in the counter-affidavit, it is evident that the reference of the purported dispute aforementioned was made by the respondent No. 3 to the respondent No. 2 unilaterally.

51. For the reasons aforementioned, the impugned order as contained in Annexure-1 to the writ application cannot be sustained and thus is liable to be quashed.

52. However, before parting with the case, it must be mentioned that as the Electrical Inspector has not determined the other disputes and differences between the petitioners and the respondent Nos. 3 and 4, he would be entitled to do so in permissible in law. It would also be open to the respondent Nos. 3 and 4 to pursue their other internal remedies so far as other grievances are concerned.

However, we feel that both the adverseries being statutory bodies, they would material endeavours to resolve their dispute amicably,

35. I have no doubt in my mind that the petitioners shall bestow serious consideration for the purpose of redressal of grievances of the respondent No. 3 inasmuch as while supplying electrical energy, the petitioner No. 1 not only discharges a statutory fact but the services rendered by it is a public utility service. The petitioner No. 1 being a State within the meaning of Article 12 of the Constitution is expected to act fairly and reasonably in its dealings with the consumers.

54. For the reasons aforementioned, this application is allowed and the impugned order dated 6-2-1991 as contained in Annexure-1 to the writ application is quashed.

However, in the facts and circumstances of the case, there will be no order as to costs.

B.K. Roy, J.

55. I agree.