(2008) 12 JH CK 0021

In the Jharkhand High Court

Binod Kumar Barthwal APPELLANT

Vs

Jharkhand State Electricity Board and Others RESPONDENT

Date of Decision : 06-12-2008

Acts Referred:
Electricity Act, 2003 — Section 126(5), 135

Citation : (2009) 2 JCR 411

Hon'ble Judges : Gyan Sudha Mishra, C.J;Dilip kumar sinha, J

Bench : Division Bench

Judgement

1. This appeal has been preferred against the order dated 3.9.2008 passed in WP (C) No. 4182/2008, whereby the writ petition filed by the appellant was dismissed, as it was held that the petitioner, appellant herein, had an alternative remedy available to assail the letter No. 1007 dated 12.7.2008 raising a demand for an amount of Rs. 6,61,422/- (Rs. Six lacs, sixty-one thousand four hundred and twenty-two only) by way of electricity dues along with penalty.

2. It was alleged that while the appellant was running a mill with a load of 45 HP motor, which was used for running a "chura" (popped rice) mill, he had indulged in theft of electricity by using a foreign element in order to indicate lesser load on the consumption of electricity. A case had been instituted against the appellant for prosecution u/s 135 of the Electricity Act. 2003, which is still pending. In view of the pendency of the matter, the respondent-Board, through the Assessing Authority, by virtue of Section 126(5) and (6) of the Electricity Act, 2003, raised a demand of Rs. 6,61,422/- by way of average consumption along with penalty.

3. The appellant had assailed the demand notice before the learned single Judge by filing the writ petition, wherein the learned single Judge did not find any substance and it was rejected on the ground of availability of alternative remedy. Hence, this appeal.

4. Counsel for the appellant submitted that even if the appellant has the remedy of filing an appeal, he will be saddled with the liability to pay 50% of the amount

which has been demanded by the respondent, which will be creating a great financial hardship and he would be forced to close down the mill, as a result of which filing of the appeal also would not offer the desired relief.

5. Counsel for the respondent-Board, on the other hand, vehemently opposed the contention and submitted that the petitioner-appellant had indulged in theft of electricity and therefore, average consumption in the neighbouring area for the use of 45 HP being not less than Rs. 3,33,000/- per annum, the respondents are justified in raising the demand to the double of the amount of average consumption for the period of one year and hence, the demand of more than Rs. 6 lacs (Rs. Six lacs) is clearly justified.

6. Having heard the counsel for the parties, we have noticed that the prosecution case with regard to theft of electricity is still pending and the allegation levelled against the appellant is yet to be proved, in which case the appellant has also been granted bail. The respondents, therefore, at this stage cannot be permitted to claim the amount of penalty, which makes the average consumption double, i.e. from Rs. 3 lacs to Rs. 6 lacs. It is submitted that if the petitioner-appellant is compelled to pay a sum of more than Rs. 6 lacs, that would virtually force him to close down his unit and it is bound to affect his livelihood.

7. Taking into consideration that the charge of theft is yet to be proved as also an overall view of the entire matter, we deem it just and appropriate to direct that the appellant shall pay the average amount of consumption which is normally charged for one year and that would be a little more than Rs. 3 lacs. Since the respondents have not been able to Justify the payment of penalty by doubling the amount in absence of proof of charge of theft, we deem it just and appropriate to direct by way of an interim measure that the appellant shall pay a sum of Rs. 1.5 lacs (Rs. one lac and fifty thousand only) in one lump sum, which would be practically 50% of the average consumption and the balance 50% of the actual consumption shall be paid by the appellant by way of 12 equal monthly instalments, which would be Rs. 15,000/- (Rs. Fifteen thousand only) per month. Thus, the appellant shall be paying 50% of the raised demand to the respondents as. he would be paying Rs. 1.5 lacs in one lumssum and thereafter balance 50% of the raised demand in 12 equal monthly installments. Thus, the statutory requirement of payment of 50% at the stage of appeal shall stand satisfied. The amount paid by the petitioner-appellant, however shall be subjected to the result of the appeal which he is at liberty to prefer. The electric connection of the appellant shall be restored after payment of Rs. 1.5. lacs plus Rs. 15,000/- by way of first monthly instalment as referred to hereinabove.

In view of the aforesaid order, the appeal shall be treated as disposed of.

