(2013) 08 JH CK 0037

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5756 of 2012

BMC Ferrocast (P) Limited APPELLANT

Vs

Jharkhand State Electricity Board and Others RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:
Constitution of India, 1950 — Article 12, 226

Citation : (2013) 08 JH CK 0037

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

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

Final Decision : Disposed Off

Judgement

1. The petitioner by way of the present petition under Article 226 of the Constitution of India has prayed for issuance of an appropriate writ/order directing the respondents to refund Rs. 25,20,000/-, deposited towards 1st installment of security money towards the requested sanctioned load of 2000 KVA by way of a fresh connection, as a subsequent consequence of the respondent Board''s inability to timely supply the aforesaid requested sanctioned load and consequent thereupon the petitioner has already taken a new connection from an alternate licensee. Heard the learned senior counsel Mr. M.S. Mittal for the petitioner as well as learned counsel Mr. Ajit Kumar appearing for the Jharkhand State Electricity Board.

2. Perused the materials placed on record.

3. The petitioner-company upon setting up its industry applied to the Jharkhand State Electricity Board for the sanction of 2000 KVA load under HTSS Tariff for the purpose of casting Ingots, through the prescribed requisition form for supply of energy vide application dated 10th January, 2012. The petitioner-company was accorded sanction of 2000 KVA by dedicated feeder either from Adityapur P/S/S no.-02 or SS 4 Adityapur contingent to certain terms and conditions vide

letter No. 871 dated 14th March, 2012 by the Respondent No. 2 upon examination of the requisite documents and feasibility reports submitted by the Respondent No. 3, i.e. the Electrical Superintending Engineer, Jamshedpur. For the purpose of taking electrical connection, the petitioner was required to make a requisite security deposit. The Electrical Superintending Engineer vide letter no. 908/E.S.C. dated 20th March, 2012 informed the petitioner-company that they were required to deposit an amount of Rs. 63,00,000/- as security money at the rate of Rs. 3,150/- per KVA in the office of the Assistant Electrical Engineer, Electrical Supply Sub Division Adityapur-II in favour of Jharkhand State Electricity Board through a Bank Draft/Banker''s cheque. Thereafter, the petitioner-company through a representation vide letter dated 27th March, 2012 requested the respondents to grant four installments of the same. Thereafter, the matter was discussed with the General Manager-cum-Chief Engineer and the Respondent No. 4 directed that 40 per cent of the total calculated security deposit amount should be deposited as the first installment and the rest of the amount was to be deposited in three subsequent installments. The petitioner was communicated accordingly, vide Letter dated 28th March, 2012. The petitioner executed an Agreement with the J.S.E.B. on 31st March, 2012 towards payment of total security deposit i.e. Rs. 63 lacs in four installments as specified by the Board. The Board had directed that 40 per cent of the total calculated security deposit amount i.e. Rs. 63,00,000/- should be deposited as the first installment, which was calculated to be Rs. 25,20,000/-. The rest of the amount was to be deposited in three subsequent installments each of Rs. 12,60,000/-. Accordingly, the petitioner made a payment of Rs. 25,20,000/- vide cheque No. 800414 dated 29th March, 2012 in favour of J.S.E.B. towards the first installment of security deposit as calculated by the Board for which the petitioner has received a receipt from the J.S.E.B. dated 31st March, 2012. It is the case of the petitioner that the petitioner was accorded sanction of 2000/- KVA on 33 KV supply under HTSS tariff on certain terms and conditions and point 12 of these terms and conditions provides as under: -

2000 KVA load is being sanctioned subjected to the capacity enhancement of G/S/S Gamharia to cater to load as per request made.

4. On perusal of the aforesaid terms and conditions as specified by the Board, it appears that the supply of the requested sanctioned load is subject to the capacity of G/S/S (Gamharia sub-station) to cater to load as per request made. It further appears that after a lapse of a considerable time, the petitioner received a intimation from the Board vide letter dated 22nd May, 2012 with respect to the second deposition of security deposit against sanctioned load. It further appears that after a lapse of so many months since the request for energization of electrical line not made and in absence of visible progress for supply of power, the petitioner being disappointed and dissatisfied with the state of affairs regarding the supply of power by the J.S.E.B., did not make any further payment towards as second installment and made application to the alternative licensee JUSCO requesting a sanctioned load of 2000 KVA, which was granted to

the petitioner vide letter dated 07.05.2012 on certain terms and conditions as per the sanction letter. Accordingly, the petitioner made payments to the JUSCO towards the installation charges, security deposits and meter rental and got the required power supply for industry. Since the petitioner was not happy and satisfied with the prevailing state of affairs regarding supply of power by the J.S.E.B. and keeping in view the unstable and irregular supply of power by the J.S.E.B., the petitioner proposed to withdraw the Agreement executed, installment of security deposits and accordingly requested the Board to refund the first installment of security deposits vide representation dated 23rd June, 2012. After submitting representation, the petitioner time and again persuaded the matter for refund but since no step has been taken by the J.S.E.B., the petitioner constrained to approach this Court by way of filing the present petition seeking direction upon the Respondent-Board to refund Rs. 25,20,000/-, deposited towards 1st installment of security money towards the requested sanctioned load of 2000 KVA by way of a fresh connection. The learned counsel appearing for the Respondent-Board tried to justify the retention of amount by the J.S.E.B. on the ground of non-compliance of terms and conditions of the agreement regarding payment of second installment by the petitioner but the aforesaid arguments advanced by the learned counsel for the Respondent-Board cannot be accepted as there was unreasonable delay in supply of power after deposit of first installment and there was no positive visible results for supply of power by the J.S.E.B. and consequently, the petitioner approached another licensee ''JUSCO'' for getting required power supply so as to make the industry functional.

5. It appears that the petitioner has already deposited the requisite amount with JUSCO and obtained power supply and thereafter made representation to the J.S.E.B. for refund of the deposit to the tune of Rs. 25,20,000/- deposited by the petitioner towards the first installment of the security money as required connection was not given timely by the respondent-Electricity Board. The respondent-J.S.E.B. having failed to give electrical connection to the petitioner within the stipulated time is duty bound to refund the security amount to the petitioner and it would not be just and proper on the part of the J.S.E.B. to retain without such amount deposited by the petitioner towards the security money in respect of providing new electrical connection, which ultimately could not be provided by them to the petitioner. Therefore, the J.S.E.B. being a instrumentality of State within the meaning of Article- 12 of the Constitution of India, without raising any objection, in all fairness is required to release the said amount in favour of the petitioner.

6. Accordingly, the respondent-J.S.E.B. is directed to refund Rs. 25,20,000/-, deposited towards 1st installment of security money towards the requested sanctioned load of 2000 KVA by way of a fresh connection within one month from the date of receipt/production of a copy of the order. With the aforesaid observations and directions, this writ petition stands disposed of.

