(2004) 01 JH CK 0060

In the Jharkhand High Court

Case No : LPA No. 712 of 2003

Bokaro Steel Employees Co-operative House Construction Society Members Association and Another	APPELLANT
Vs	
Steel Authority of India Ltd. and Others	RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Citation : (2004) 1 JCR 556

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Mihir Kumar Jha and Ajit Kumar, for the Appellant; P.K. Sinha and Rajiv Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—Heard the parties.

2. Petitioner claims to be an Association of some members of Bokaro Employees Co-operative House Construction Society. For the sake of convenience the petitioner will be referred to as ''the Association'' and the said Co-operative Society as ''the Cooperative Society.'' This LPA arises out of the judgment dated 20th August, 2003, passed in W.P. (C) No. 5980 of 2002. The said writ petition was heard and disposed of along with W.P. (C) No. 1868 of 2002. filed by one of the members of the Cooperative Society and W.P. (C) No. 986 of 2003, filed by the Co-operative Society involving similar questions.

3. In the said writ petition, the petitioner-Association challenged the demand of arrears on account of electricity dues with effect from May, 1997; and the enhancement of electricity charges with effect from May, 1997 and April, 2002. The Association further prayed for a direction not to give effect to the orders dated 13.5.1998, 5.1.1999 and 29.1.1999; and prayed for a direction for charging the electricity rates at par with the employees of the Bokaro Steel Limited in terms of office order dated 14.12.1990; and for restoration of

concession to the extent of 15.000 units on account of street lights. By way of an amendment, the petitioner-Association sought a direction upon the Jharkhand State Electricity Board to provide domestic electrical connection to its members directly. An Intervention Petition was also filed by 146 members of the petitioner-Association/Members, supporting the petitioner.

4. Some senior most officers of Bokaro Steel Limited, (BSL for short) now Steel Authority of India Limited, formed the Co-operative Society (respondent No. 4) in the year 1968 and got about 90 acres of land leased out to the society for developing a housing colony for it''s members who were employees/ex-employees of the BSL. The Co-operative Society got approval of the Board of Directors for allotment of the said lands on certain terms which is contained in the office order dated 16th September, 1968 (Annexure-2). Clause (e) of the said grant provided that "the Society would be charged the actual cost of the external water, power, sewerage disposal facility etc. if these are asked for and extended to the Society by the Company". The Co-operative Society requested the Company for providing water, power, sewerage and other facility which was approved by the Board of Directors, as contained in sanction Letter dated 28.2.1969, which is part of Annexure-3. This sanction letter also contained certain terms. Clause (d) provided for "recovery of charges for the bulk supply of power at the rate which should cover the cost of power and distribution charges up to the bulk supply point." Clause (f) further provided for recovery of the cost for providing supply of power by working out the rates in such a manner as to ensure that the cost incurred by the Company is recovered within a reasonable period for time together with interest thereon". Bye-laws of the Society in turn provided for payment of actual charges as per the bills raised by the Company at prevailing rate. The prevailing rate is defined in the bye-laws as the rate for electrical energy charged by BSL from time to time.

5. From the aforesaid facts, it is clear that the actual cost of power incurred by the Company was to be recovered from the Society and then by the Society from its members within a reasonable period of time together with interest thereon. Surprisingly, in spite of the aforesaid terms and conditions approved by the Board of Directors and accepted by the Society, as per office order dated 16.2.1990 (Annexure-8) the Managing Director is said to have approved exclusion of the element of ''Maximum Demand, Charge'' from calculation of the actual cost of electricity, and that too with retrospective effect i.e. from 1.4.1987," on acceptance that the Maximum Demand Charges arise due to fluctuating load of Rolling Mills in the plant." Under the said letter certain other concessions/facilities to the Society including 15000 units per month for street lights were given. The petitioner-Association has heavily relied on this document (Annexure-8) in support of its contention that the Company cannot demand the Maximum Demand Charges from the petitioner-Association or the Society or its Members as the same was excluded under the said office order dated 16.2.1990, for about a decade the petitioner-Association/the Society/its Members enjoyed the electricity on the rates which was much less than the cost incurred by the

Company in purchasing electricity from Damodar Valley Corporation (DVC). It is not understood as to under what circumstances, the Managing Director gave such concession of excluding Maximum Demand Charges and how the Society obtained such concessions and exclusion of Maximum Demand Charges which was absolutely against the terms and conditions of the grant of lease and the facility of power supply, that the cost of purchase of power incurred by the Company will be recovered.

6. When the charges were increased by office order dated 13.5.1998, from 105p per Unit to 270p Per Unit, the same was got reduced substantially by office order dated 5.1.1999 read with office order dated 29.1.1999, from 270p per Unit to 239p per Unit, and that too with effect from a retrospective date i.e.1.5.1997, with the purported concurrence of finance and approval of the Managing Director. The greed did not stop here. Through one Shri Mahesh Prasad and other two members of the Society, a Title Suit No. 32/1999 was filed in the Court of the Munsif, Bokaro at Chas challenging the said revision of the electricity charges from 105p to 239p. The said office orders dated 13.5.1998 and 5.1.1999 were Challenged in the said suit. It may be noted here that the subject matter of the said suit and the writ petition in question are substantially the same. The Munsif by order dated 26.8.1999, granted injunction restraining the Society and the Company from raising and recovering the electricity charges at the enhanced rate from all the members of the Society, till the disposal of the suit. The Company filed an appeal being Civil Misc. Appeal No. 40 of 1999 which was allowed by order dated 2.9.2002, whereby the order of injunction was set aside with a direction to the Company to dispose of the representation made by the Society on 20.3.1999. It was also ordered that any arrangement arrived at between the Society and the Company, shall be binding upon all the parties for the purpose of realization of the dues of the Company and the payments so made shall be subject to final decision in the suit. By letter dated 3.9.2002 (Annexure-17), the Society was communicated about rejection of the representation and accordingly by letter dated 5.9.2002, a demand, as on 1.9.2002, to the tune of Rs. 3,05,65,796.16p, with a monthwise statement enclosed therewith, was communicated for payment within seven days failing which the line was to be disconnected and interest of 9% per annum was to be charged. .

7. Under letter dated 12.9.2002, issued by the Society to the Company, the Society agreed to pay the arrears of electricity in six monthly installments starting from October, 2002 along with monthly bills failing which the Company may levy interest, Though the suit was filed by three members of the Society but the Society including all its members enjoyed the said order of injunction. Without availing any other remedy under the law against the aforesaid order by which the order of injunction was set aside, the petitioner-Society filed the writ petition in question being W.P. (C) No. 5980 of 2002 on 29.10.2002. Under a memo dated 16.11.2002 issued from the office of Deputy Commissioner, Bokaro during the pendency of the said writ petition, it was agreed by the Society that it

will pay the total dues of electricity and water in 20 installments per month starting from the Month of November, 2002 and also the current monthly bills failing which 9% per annum will be charged and the line will be disconnected. All concerned were parties to the said document. By letter dated 4.3.2003 (Annexure-20) the Company added the interest and Delayed Payment Surcharge (DPS) which was demanded by DVC for the period of about 3 years when the injunction was operative.

During the pendency of the writ petition, on the request of the petitioner the case was adjourned for sorting out the dispute outside the Court. Accordingly, a meeting of the Company and the Society was held on 15.6.2003 in which the Company agreed to offer the following concessions :--

"Concession to the Society by BSL

The aforesaid discussion clearly expresses the fact the Respondent Management has offered the following concession as follows :--

a. Interest @ 9% per annum on the outstanding amount has been waived.

b. Demand for revised electricity rate was raised in August, 1998. Management decided to charge Delayed Payment Surcharge (payable to DVC) only from August, 1998 onwards.

c. It is again reiterated that Management is not charging Delayed Payment Surcharge prior to August, 1998 i.e. from May, 1997 to July, 1998.

d. The calculation of DPS was shown and explained to the Society, copy of the calculation has also been handed over to the Society for records.

The negotiation concluded with above observations".

8. The learned Single Judge found that the Society gave false undertakings just to delay the matter keeping the Company in dark and instead of keeping their word, their members and the Society moved this Court against the demand in question.

9. The Society again agreed before the Writ Court to pay the arrears in instalments and submitted that the DPS @ 2% per month is in the higher side. Thus, the Society accepted the concessions given by the Company but the petitioner-Association was still not satisfied.

10. The Learned Single Judge held that the decision of the Company dated 29th January, 1999 to revise electricity charges @ 239p/KWH with effect from 1.5.1997 cannot be upheld, but the same can be revised with effect from 13.5.1998. However, as because, the Company agreed to raise revised bill @ 239p/KWH with effect from 13.5.1998, the demand was upheld.

11. Regarding DPS, it was held that the Company being not a licensee cannot charge the same, but as the DVC charged DPS. Company can recover such amount. It was further held that if the bill has been raised to recover the amount

of DPS from the date of first demand i.e. August, 1998, which the Society agreed to pay earlier, and also in the meeting held on 15th June, 2003, this demand of DPS also was legal and valid. It was noticed that the DVC raised the bill towards DPS for the period from November, 1998 to August, 2002 and the Company has been asked to pay the same amounting to Rs. 88,66,50,750.00p.

12. It was also held that the Members of the Society cannot claim supply of electricity at a subsidized rate as a matter of right. The rate, therefore, was not interfered with by learned Single Judge on the ground that the Company is supplying electricity on cost and not profit basis.

13. Regarding the Maximum Demand Charge, it was observed that the petitioner-Society cannot derive any benefit out of the decision dated 16.2.1990 by which the Maximum Demand was excluded as the Company being not a licensee cannot charge the same. However, learned Single Judge did not thought it necessary to decide the issue regarding the element of Maximum Demand Charge as the same has not been added in the revised rate of 239p/KWH.

14. Regarding charge of 82p/KWH for maintenance of supply it was held that the Company is not charging it and the same being a dispute between the Members of Society and the Society, the aggrieved person may approach the appropriate forum, against the decision of the Society.

15. In view of the concessions having already been granted by the Company to the Members of the Society in its meeting dated 15th June, 2003, it was held that no further relief can be granted, and if the Society and its Members intend to avail the concession, should pay the energy charges as per the concession of the Company within one month and the interest amount loosely called as DPS within one month thereof i.e. the total arrears with interest within a period of two months from the date of the judgment. This order has been challenged by the petitioner-Association in the present LPA.

16. It is not necessary in this case to go into the question whether the Company is a licensee or not. Moreover, the parties have not produced relevant materials in this case for determining this question. However, the Company has stated that it is a sanction holder u/s 28 of the Indian Electricity Act, 1910 which has been objected by the petitioner on the ground that the same has not been produced. Actually the parties were governed by the terms and conditions of the aforesaid grants under which the lands were leased out and power supply was extended to the Society by the Company i.e. office orders dated 16.9.1968 and 28.2.1969.

17. The Company was justified in raising the demand of interest as the Society and its members agreed to pay the dues but gave false undertaking repeatedly just to delay the demand. The Company did not demand DPS as a licensee but the same was passed on to the Society and its members on the basis of the demand raised by DVC. The learned Single Judge also found that the demand of DPS was not illegal or arbitrary.

18. So far as the demand with retrospective effect is concerned, it is a case of passing on the cost of electricity as per the terms of the grant, and not a case of applying a tariff retrospectively by a licensee. Therefore, we wish to clarify that the observations of learned Single Judge that the Company being not a licensee could not apply the tariff retrospectively; could not charge DPS; and Maximum Demand Charges; were not called for and were not necessary.

19. The petitioner is an Association of certain members of the Society. Three members of the Society filed the suit challenging the demand of electricity charges in question. Injunction was granted in favour of all the members of the Society restraining the Society and the Company from raising and realizing the electricity charges. This injunction operated for about three years. After it was set aside the Company raised the demand. On 24.10.2002 the Association agreed to pay the same in six installments along with current dues but on 29.10.2002 the writ petition in question was filed by the petitioner claiming to be an Association of certain members of the Society. During the pendency of the writ petition, again the Society agreed to pay the dues in 20 installments along with current dues before the Deputy Commissioner and the Company. Even then, under the orders of this Court, the Company offered certain concessions in the demand. The Society agreed to pay the same before learned Single Judge but the petitioner-Association was not satisfied even by the said concessions given by the said Company. During the pendency of this appeal the dues were not paid as per the order of the learned Single Judge. When the line was disconnected, the Company was pressurized to give electrical connection without paying the dues under the orders of the Deputy Commissioner. The appellants were directed to pay a sum of Rs. 1 crore as a condition for continuing the supply until further orders. The same has also not been paid. The petitioner-Association is taking contrary stand than the Society. Thus, it is clear that the members of the Society are bent upon avoiding payment of the said dues of the Company and are abusing the process of the Court in one way or the other. The financial position if the Company became very bad. It decided, to curtail the concessions even to the serving employees. The Company is charging the electricity charges on the basis of the cost incurred by it in purchase of electricity from DVC without making any profit. 461 plots were allotted for residential purposes by the Society but the members have constructed many commercial shops in violation of the lease agreement between the Company and the Society. The members of the Society have constructed more than 4,000 units which have been adversely affecting the electrical arrangements of the Company by increasing the load abnormally. The members of the Society have given the premises on rent and have been charging higher rate of electricity from their tenants and they are using electricity for commercial purposes on large scale. The Company is charging uniform rate as per the cost to purchase from all other persons including the Government Departments. We see no reason as to why the Company should treat the Society and it''s members differently or even at par with the serving employees, while charting electricity charges. The purported office order dated 14.12.1990, issued

on the basis of the approval of the Managing Director, which is relied on by the petitioner for contending that the members of the Society should be charged similar to the serving employees, cannot be approved by the Court.

20. The Maximum Demand Charges are the part of the electricity charges payable to DVC. As per the DVC tariff, apart from the actual consumption recorded in the meter, the Maximum Demand Charges are also payable every month calculated on the basis to the contract demand. Irrespective of the actual consumption charges, the Maximum Demand Charges are to be paid on the basis of the contract demand. Only when the drawal of power exceeds the contract demand, a nominal increase is made in the Maximum Demand Charges. For example the rate of Maximum Demand Charges as it appears from the present DVC tariff annexed with the counter affidavit, is Rs. 290/- per KVA per month, whereas in case of exceeding the Maximum Demand it is Rs. 300/- per KVA per month. It is not understood as to how this clear position was ignored while issuing the letter dated 16.2.1990 under which the Maximum Demand Charges were excluded from calculation of the actual cost of electricity purchased for supply to the Society on the purported ground that the Maximum Demand Charges arise due to fluctuating loads of Rolling Mills in the Plant. It is further disturbing that by the said office order dated 16.2.1990, the said charges were excluded retrospectively with effect from 1.4.1987. The members of the Society, who are/were, officers/employees of the Company have been enjoying the reduced rate, excluding Maximum Demand Charges on the basis of the said letter dated 16.2.1990 (Annexure-8). We have no doubts in our mind that the Maximum Demand Charges constitute the cost of purchase of electricity by the Company and is to be borne by the members of the Society and all other persons. Similarly, the Delayed Payment Surcharge (DPS) demanded by the DVC from the Company is also to be borne by the members of the Society. The members of the Society having failed to fulfill the promises repeatedly to pay the dues in installments, they are also liable to pay interest. The Company is also entitled to pass on and realize the enhanced rate, from the date it is enhanced. We further hold that the Company should charge on the basis of the cost incurred by it in purchasing electricity, from the members of the Society in terms of the said grants dated 16.9.1968 and 28.2.1969 made by the Board of Directors and any concessions given against the terms and conditions of the said grant to the Society, or it''s members, who were/are also officers of the Company, shall stand cancelled. The petitioner and respondent No.4 are directed to pay and the respondent Nos. 1, 3, 6, 7, and 8 are directed to recover the electricity charges in terms of this order without any delay.

21. However, keeping in view the concessions offered by the Company in its meeting held on 15th June, 2003, we are of the view that though the Company is entitled to the amounts, as per the terms and conditions of the grant, another opportunity is granted, to the members of the Society. If they intend to avail the said offer, they should pay the arrears/dues within one month as calculated and demanded by the Company on the basis of the said concessions, failing which

the said concessions shall stand cancelled and the Company will be entitled to realize the electricity dues on the basis of the cost incurred by it for purchase of the same. This direction will cover the arrears and the dues up to the date of the said concessions i.e 15.6.2003. After this period, in any case , the Company shall charge the Society and it''s members, strictly in terms of the said letters of grant If the members of the Society intend to avail power from any other source, they must clear the dues of the earlier supplier i.e. the Company.

22. We are constrained to say that this case is an example, how public money is misused by the Public Company and it''s employees. They acted against the public interest.

23. With these observations and directions this appeal is dismissed. No costs.

