

(1989) 01 PAT CK 0016
In the Patna High Court
Case No : C.W.J.C. No. 408 of 1983 (R)

Chandrapaul Saw Mills	Vs	APPELLANT
Bihar State Electricity Board and Others		RESPONDENT

Date of Decision : 06-01-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 28

Citation : AIR 1990 Patna 142 : (1991) 39 BLJR 854 : (1989) PLJR 1064

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Advocate : V. Shivrath, for the Appellant; T.R. Bajaj, A. Sahay and Indrani Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—The petitioner in the instant writ application is the Chandrapaul Saw Mills through its proprietor Smt. Shyama Devi. The petitioner has prayed for issuance of an appropriate order/orders etc. commanding the respondents to show cause as to why they shall not supply electrical energy to the petitioner forthwith. The respondents in the writ petition, as originally filed, were the Bihar State Electricity Board, the Electrical Superintending Engineer of the aforesaid Board and its Assistant Electrical Engineer.

2. The grievance of the petitioner is that the petitioner's Unit situated at Ramdeo Bagan in Golmuri area of the town of Jamshedpur is a Saw Mill which the proprietor of the petitioner has set up with the aid of the District Industries Centre, Singhbhum; Chaibasa, It is claimed that the petitioner was granted a licence and is registered with the Factory Inspection Department. The petitioner applied for a new service connection for a connected load of 20 H.P. It deposited the requisite amounts by way of expenses and security charges. This was done on 24-6-1982. Despite the fact that the petitioner did all that it was required to do the electric connection was not granted to it, and, therefore, its unit cannot

be worked without supply of electrical energy. The grievance of the petitioner, therefore, is that the Respondent-Board cannot arbitrarily deny to supply electric energy to the petitioner. It has been alleged that some other persons have been granted electric connection by the Board, particulars whereof are disclosed in the supplementary affidavits filed on behalf of the petitioner. The writ application was admitted for hearing on 12-4-1983. An interim direction was made on that date to the effect that respondent No. 1 shall grant electric connection to the factory premises of the petitioner by 20th April, 1983. It was further directed that if the writ application was ultimately dismissed, the electric connection of the petitioner shall also be disconnected. It appears from the order sheet of the writ application that the electric connection was not granted to the petitioner, and consequently an application was filed by it in that connection. This Court by order dated 8-7-1983 directed that the said application be treated as Miscellaneous Judicial case being an application under the Contempt of Courts Act. Notice was issued to respondents Nos. 2 and 3 herein to show cause why they should not be punished for contempt of court for not complying with the order of this Court dated 12-4-1983. It further appears that in connection with the aforesaid application, it came to light that Tata Iron and Steel Company Limited (hereinafter referred to as TISCO) was also a necessary party. Accordingly, by order dated 13-9-1983 the said TISCO was added as respondent No. 4 in the writ application and notice was issued to it.

3-4. TISCO appeared in response to the notice issued by this Court and filed its counter affidavit on 19-11-1984. In the counter affidavit it was averred by TISCO that the petitioner was not entitled to any relief from this Court since it had not come to the Court with clean hands and had suppressed the material facts. It was stated that the petitioner had set up a Saw Mill on a plot of land which belonged to TISCO. The petitioner was merely a trespasser and had no legal right to start a Saw Mill over the land of TISCO which it had forcibly occupied. It was then stated that TISCO is a Sanction Holder under the Indian Electricity Act, 1910 with the exclusive right to supply electrical energy in the area specified in the Sanction, commonly known as the Command Area, The location of the proposed Saw Mill was within the Command Area of TISCO. Respondents Nos. 1 to 3 had therefore no power or authority to accept any amount from the petitioner to grant a new electric connection. It was contended on behalf of TISCO that the petitioner in order to get itself recognised and its illegal occupation regularised, was trying to get electric connection from the Bihar State Electricity Board. It is not necessary to refer to the other averments in the counter affidavit. In a nutshell, TISCO claimed to be a Sanction Holder u/s 28 of the Indian Electricity Act 1910, and consequently, only TISCO could have supplied electrical energy to the petitioner within its Command Area. Respondents Nos. 1 to 3 namely, the Board and its officers had no authority to grant electric connection to the petitioner.

5. A counter affidavit has also been filed on behalf of respondents Nos. 1 to 3, namely, the Board and its Officers. In their counter affidavit, it has been stated

that the aforesaid respondents could not grant electric connection to the petitioner since TISCO had not granted to them "a No-Objection" for the grant of such connection. Annexures A and B to the counter affidavit of the Board also make it clear that the connection had not been granted to the petitioner since TISCO had not given a No Objection Certificate. It further appears that there is a direction from the General Manager-cum-Chief Engineer, Area Electricity Board that no electric connection should be given to any person who had trespassed upon the land of M/S. TISCO or upon Government land. In such cases, electric connection can be granted only after getting a No Objection Certificate from M/s. TISCO or from the concerned local authority.

6. When the matter was taken up for hearing on 18-11-1987, learned counsel for the petitioner prayed that the application may be taken up for hearing on 27th November, 1987 for his personal reasons. He also stated that the petitioner shall be deleting TISCO from the array of parties. Mr. K. D. Chatterji, Senior Advocate appearing on behalf of the TISCO submitted that he may have nothing to say if TISCO was deleted from the array of parties, but in that event, no order should be passed which in any manner may adversely affect the interest of TISCO. Later on, the petitioner filed an application for deleting respondent No. 4 (TISCO) from the array of the respondents and the said application was allowed. It was ordered that respondent No. 4 shall be deleted from the array of respondents at the risk of the petitioner.

7. Written submissions have been filed on behalf of the petitioner in which many questions have been raised, which in my view do not arise for consideration in the instant writ application. It has not been disputed that M/s. TISCO is a Sanction Holder u/s 8 of the Indian Electricity Act, 1910. It being a Sanction Holder it has a right to supply electrical energy within its Command Area. Prima facie, the Electricity Board cannot supply electrical energy directly to any consumer within this area as that would be clearly in breach of the right of TISCO conferred upon it u/s 8 of the Indian Electricity Act, 1910. This is supported by the observations of the Supreme Court in the case of the Western U.P. Electric Power and Supply Co. Ltd. Vs. State of U.P. and Others, . It was then submitted that even a bulk consumer such as TISCO could not refuse to supply electrical energy to other consumers, subject of course to any special terms as per agreement in regard to the minimum annual sum to be paid to the bulk consumer. Similar other arguments have been raised as regards the rights and obligations of such bulk consumers who hold a licence for supply of electrical energy within a specified area. These are submissions which cannot be entertained in a writ application in which TISCO is not a party, TISCO was earlier arrayed as respondent, but the petitioner chose to delete TISCO at its own risk. I find that it is not possible to consider the submissions urged on behalf of the petitioner without TISCO being a party in the writ application, since no direction can be issued against TISCO which is not a party in the instant writ petition. The conscious effort of the petitioner to get an adjudication done in the absence of TISCO, gives rise to the suspicion that the petitioner has not approached this

Court with clean hands. In the writ application it did not make TISCO a party but upon direction of this Court, TISCO was arrayed as a party respondent of the writ application. When the matter was to be heard and learned counsel for M/s. TISCO was ready to go on with the hearing of the matter, an adjournment was sought and it was stated that the petitioner was deleting TISCO from the array of respondents. An application was later filed to delete TISCO from the array of respondents at the risk of the petitioner. Since TISCO has been deleted from the array of respondents at the risk of the petitioner, and I do not find it possible to adjudicate upon the issues now sought to be raised before me, since any decision may adversely affect the interest of TISCO, and also for the reason that no direction can be issued to TISCO which is not a party before me, I have no option but to dismiss this writ application on this ground alone.

8. A justification was sought to be given by the petitioner for deleting the name of TISCO from the array of respondents. It was submitted that originally TISCO had intermediary interest in the land in question. That was abolished by the Bihar Land Reforms (Amendment) Act, 1972, and thereafter, TISCO ceased to have any intermediary interest in the land in question. It was for this reason that the petitioner sought to delete TISCO from the array of respondents. The reason is not at all convincing. The same position existed in September 1983 when TISCO was added as a party. The objection of the Electricity Board to the grant of electric connection to the petitioner was on the ground that TISCO had not granted a No Objection Certificate to the petitioner to enable the Board to grant it connection for electrical energy. As is apparent from the facts of the case disclosed by the respondents, TISCO is a Sanction Holder u/s 8 of the Indian Electricity Act, 1910, and therefore is authorised to supply electrical energy within its Command Area. Objection was, therefore, not on the ground that TISCO was the intermediary in respect of the land in question, but that within its Command Area, only TISCO by reason of its being a Sanction Holder u/s 8 of the Indian Electricity Act, 1910 was authorised to grant such connection, and not the Electricity Board. The petitioner knew all these facts which had been brought on record and despite these facts, perhaps to avoid opposition from TISCO, it deleted TISCO from the array of respondents at its own risk. The petitioner must, therefore, suffer the consequences. 9. In this view of the matter, this writ application is dismissed. If any connection has been granted pursuant to any order of this Court, the same shall be disconnected in terms of the order dated 12-4-1983, since the writ application has been dismissed.