

**(2002) 10 JH CK 0013**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (C) No. 1514 of 2002**

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|-----------------------------------------------|------------|
| Damodar Valley Corporation and Another        | APPELLANT  |
| Vs                                            |            |
| Jharkhand State Electricity Board and Another | RESPONDENT |

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**Date of Decision :** 10-10-2002

**Acts Referred:**

Damodar Valley Corporation Act, 1948 — Section 18

**Citation :** (2003) 4 JCR 371

**Hon'ble Judges :** Gurusharan Sharma, J

**Bench :** Single Bench

**Advocate :** P.K. Mullick and S. Choudhury, for the Appellant; V.P. Singh, Kalyan Roy and R.M. Singh for respondents 5 and 6 and P.K. Prasad, SCCG, for the Respondent

**Final Decision :** Allowed

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## Judgement

Gurusharan Sharma, J.—Damodar Valley Corporation (hereinafter to be referred to as the Corporation) is a Body corporate and a Corporation under the Damodar Valley Corporation Act, 1948 (hereinafter to be referred to as "the Act"). The present writ petition has been filed by the said Corporation and its Chief Engineer (Commercial) against Jharkhand State Electricity Board (hereinafter to be referred to as "the Electricity Board") for issuance of appropriate writ or direction and restrain the Electricity Board from wrongful and illegal supply of electrical energy to its consumers-respondents 5 and 6 at 30,000 volts or more without permission of the Corporation and beyond the scope of the provisions of the Act.

2. The Corporation generates and supplies power through its different power stations in the State of Jharkhand to different consumers governed under the Act for 30,000 volts and above. For voltage below 30,000 i.e. ranging between 230 volts upto 11,000 volts power are being transmitted and supplied by State Electricity Board.

3. Section 18 of the Act provides as under :

"Notwithstanding any thing contained in the Indian Electricity Act, 1910 (IX of 1910) or any licence granted thereunder-

(i) No person shall, without the permission of the Corporation-

(a) sell electrical energy to any consumer in the Damodar Valley where the energy is taken by the consumer at a pressure of 30,000 volts or more;

(b) transmit electrical energy in the Damodar Valley at a pressure of 30,000 volts or more;

(c) generate any electrical energy at an installation having an aggregate capacity of more than 10,000 kilowatts in any part of the Damodar Valley lying to the north of a straight line drawn east to west passing through a point at latitude twenty-two degrees, fourteen minutes and forty-seven seconds and longitude eighty-seven degrees, fifty-one minutes and forty-two seconds except such portion of the municipal area of Burdwan as may lie to the north of such straight line :

Provided that nothing in Sub-clause (c) shall apply to any person who was, at the commencement of this Act generating electrical energy at an installation having an aggregate capacity of more than 10,000 kilowatts, so long as the capacity of such installation is not increased :

Provided further that nothing in Sub-clause (c) shall apply to the power station installation of the fertilizer factory at Sindri having an aggregate capacity of 80,000 kilowatts so long as the capacity of such installation is not increased beyond 80,000 kilowatts.

(ii) The Corporation may sell electrical energy to any consumer in the Damodar Valley but no such sale shall, except with the permission of the Provincial Government concerned be made to any consumer requiring supply at a pressure of less than 30,000 volts;

(iii) The Corporation may, with the permission of the Provincial Government concerned, extend its transmission system to any area beyond the Damodar Valley and sell electrical energy in such area."

4. Section 58 of the Act provides that provisions of this Act or any rule made thereunder shall have effect notwithstanding anything contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

5. On 22.7.1993 respondent No. 5 had entered into an agreement with the Corporation for supply of energy of 33,000 volts from its Ramgarh sub-station. It availed said supply of energy for its units and the Corporation raised bills from time to time for consumption of electricity at 33,000 volts. Later on, respondent No. 5 became defaulter in payment of bills and by 30.9.2000 a sum of Rs. 2,48,46,895/- became due and payable by respondent No. 5 and ultimately on 17.10.2000 its supply of energy was disconnected.

6. In April, 2000, respondent No. 6 applied to the Corporation for supply of 33 KV of power to its factory situated at Koderma and on 31.10.2000 deposited money for affecting feasibility survey with regard thereto. Survey was done and a report was prepared on 8.2.2000 and cost estimate for laying line for supply of electricity to the said factory at Koderma was prepared, but respondent No. 6 did not deposit the estimated cost.

7. However, on enquiry the Corporation came to know that Jharkhand State Electricity Board was supplying electricity at 33 KV to respondent No. 5 and for its factory at Ramgarh from Bhurkunda 33 KV feeder by tapping from nearby 33 KV pole of the Corporation. The Electricity Board is also making power supply to respondent No. 6 by tapping from Nawadah 33 KV feeder of Tilaiya sub-station from its 33 KV pole installed on Koderma bye-pass road.

8. The Corporation sent letters dated 14.9.2001 and 1.10.2001 (Annexures 5 and 5/A) to the Chief Engineer (Commercial) and Member Technical of the Electricity Board protesting the aforesaid illegal supply of 33 KV power within Damodar Valley area, which includes basin of the Damodar river and its tributaries.

9. The Electricity Board neither replied the aforesaid two letters nor stopped wrongful supply of 33 KV power to respondents 5 and 6. It continued making flagrant violation of the Act by transmitting or selling such electrical energy at 33 KV to those consumers.

10. In spite of repeated requests to stop aforesaid supply, Electricity Board failed to adhere to the same and on the contrary is wrongfully continuing with the same. Prayer has, therefore, been made to direct the Electricity Board and/or its officers to discontinue supply of electricity at 33 KV to respondents 5 and 6 or any other person or concern.

11. Separate counter-affidavits have been filed on behalf of respondents 1 to 4, respondent No. 5 and respondent No. 6. Petitioners filed separate reply to the aforesaid three sets of counter-affidavits.

12. On 29.7.2002, petitioners filed second short supplementary affidavit enclosing several letters (Annexures 12 series) of Ministry of Power, Government of India, addressed to State of Jharkhand and its Energy Department. A supplementary counter-affidavit was also filed by respondents 1 to 4.

13. Union of India through Secretary, Ministry of Power, New Delhi, was added as respondent No. 7. Thereafter many times writ petition was adjourned awaiting settlement of issue on intervention of Union of India, Ministry of Power, at the ministerial level between Government of Jharkhand and Damodar Valley Corporation. Lastly, on 30.7.2002, Mr. P.K. Prasad, Standing Counsel, Central Government was directed to inform the decision, if any, taken in this regard in the proposed meeting fixed at New Delhi on 7.8.2002. Mr. Prasad filed affidavit on 20th August, 2002, stating therein that meeting fixed for 7.8.2002 was

postponed and position in regard to dispute between Damodar Valley Corporation and Jharkhand State Electricity Board was clarified to the Chief Secretary, Government of Jharkhand, vide Secretary, Ministry of Power's DO Letter No. 11/10/2002 DVC dated 14th August, 2002, addressed to Energy Secretary, Government of Jharkhand. Copies of relevant communications dated 10th May, 2002, 13th June, 2002 and 14th August, 2002 were also annexed thereto.

14. On behalf of Electricity Board it was submitted that Vij Committee in its report reviewed the present arrangement regarding distribution of power within Damodar Valley Area and recommended that in order to avoid duplication of lines and expenses for giving supply to the valley area, State Electricity Board be allowed to meet individual consumer loads up to 5 MVA within the valley area irrespective of the voltage of supply. The said report according to Electricity Board was accepted by the Central Government and as such the Board was authorized to supply power to any consumer whose contract demand was below 5 MVA even to 30 KV or 33 KV. Electricity Board was not supplying power to any consumer in DVC Valley area above 5 MVA and was not violating any of the directions/recommendations of Vij Committee or of Central Government.

15. However, it was admitted that power at 2850 KVA load of 33 KV was being supplied to respondent No. 5 by tapping from 33 KV Bhurkunda feeder and power of 2505 KVA load of 33 KV was being supplied to respondent No. 6 by tapping from 33 KV Nawadah feeder.

16. On behalf of the Electricity Board, it was also submitted that petitioners have not enclosed copy of any Central Government Notification to show that establishments of respondents 5 and 6 were within the area of operation of the Corporation as provided u/s 11 of the Act.

17. Respondent No. 5 in its counter-affidavit admitted to have entered into a power supply agreement with the petitioner - Corporation in 1993 and alleged that the petitioners disconnected illegally and arbitrarily the said power connection. Thereafter, it started getting power supply from Jharkhand State Electricity Board at a load of less than 5 MVA, which did not come within the purview of Section 18(i) of the Act.

18. Respondent No. 6 in its counter-affidavit admitted to have applied to the petitioner-Corporation for electrical connection in its unit, but since petitioners failed to provide connection for several months, it had no option, but to apply for connection from the Jharkhand State Electricity Board and in view of the recommendation of Vij Committee, Electricity Board has rightly provided electrical energy to its establishment.

19. In view of the fact that respondent No. 5 had already taken electrical connection from petitioner-Corporation in the year 1993 and respondent No. 6 had also applied for such connection and both of them accepted that subsequently after petitioner- Corporation disconnected said electric line, respondent No. 5 obtained such connection from the Electricity Board and when

for a long time on its application for providing electrical connection, petitioner-Corporation did not provide connection, respondent No. 6 had no option but to obtain electrical connection from the Electricity Board, I find no substance in the submission of the Electricity Board that it was necessary for the petitioner-Corporation to produce Notification relating to its area of operation in the facts and circumstances of the present case.

20. u/s 18(i) of the Act, no person without permission of the Corporation can sell electrical energy to any consumer in the Damodar Valley at a pressure of 30,000 volts or more.

21. In the present case, it is not in dispute that respondents 5 and 6 have been provided with electrical connection at a pressure of 30,000 volts by the Electricity Board without obtaining permission from the petitioner-Corporation. Hence, sale of electrical energy by the Electricity Board to respondents 5 and 6 is being made in clear violation of Section 18(i)(a) of the Act.

22. The stand of the Electricity Board that it has reason to believe that Vij Committee's report has already been accepted by the Central Government and thereby the Electricity Board is authorized to sell electrical energy below 5 MVA, i.e. even at 30,000 volts or 33 KVA does not appear to be correct. In this regard, reference may be made to the Office Memorandum (Annexure 12/A) of the meeting of Ministry of Energy, Government Of Jharkhand with Union Minister of Power, regarding the issues concerning Jharkhand and Damodar Valley Corporation follow up action Meeting by Additional Secretary (Power) on 10.5.2002 at 12 Noon, wherein it was mentioned "it was also clarified to the representative of Jharkhand that Vij Committee's recommendation was not accepted and no order has been issued and the Act had not been amended".

23. The Director (Thermal and Coordination), Ministry of Power, Government of India, by his letter dated 3.6.2002 (Annexure 12/C) to the Secretary, Energy Department, Government of Jharkhand, also informed that in the aforesaid meeting dated 10.5.2002, it was clarified that Vij Committee's Report was not accepted. Hence, in my opinion, there is no merit in the stand of the Electricity Board that as per the said Vij Committee's Report, it was authorized to supply electrical power below 5 MVA without permission of the Corporation.

24. I, therefore, hold that Jharkhand State Electricity Board in complete violation of the provisions of Section 18(i)(a) of the Act has provided power supply to Ramgarh factory of M/s. Akshay Technologies Pvt. Ltd., respondent No. 5, and to Koderma factory of M/s. Sai Electro Castings Pvt. Ltd., respondent No. 6, which are situated within the area of operation of the Corporation, without obtaining its permission. Respondent No. 5 is an erstwhile defaulting consumer of the Corporation and its power supply was disconnected by the Corporation, but nevertheless the Jharkhand State Electricity Board effected supply of energy at 33 KVA illegally to the said consumer. Likewise, respondent No. 6 had also applied for electrical connection to the Corporation but did not deposit estimated

cost and subsequently obtained power supply from the Electricity Board. The Electricity Board being consumer of the Corporation is not entitled to sell energy to any consumer in the area of operation of the Corporation at a pressure of more than 30,000 volts, which is not permitted by law.

25. I, therefore, have no option, but to allow the writ petition and direct the Jharkhand State Electricity Board to stop supply of electricity at 30,000 volts or more to respondents 5 and 6.