
(2014) 11 JH CK 0068
In the Jharkhand High Court
Case No : W.P.(C) No. 1819 of 2010

Dew Concrete Ties Private Limited

APPELLANT

Vs

Jharkhand Urja Vikash Nigam Ltd. and Others

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Electricity Act, 2003 — Section 126, 135, 154 (5)

Citation : (2015) 2 AJR 95 : (2015) 1 JLJR 383

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : M.S. Mittal, Sr. Advocate and Vineet Prakash, Advocates for the Appellant; Rahul Kumar and Prabhat Singh, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Mr. M.S. Mittal, the learned Senior counsel appearing on behalf of the petitioner submits that in view of the subsequent development, the description of respondent No. 1 is required to be changed and therefore, he seeks permission to carry out necessary correction in the cause title.

2. Permission is accorded.

3. Necessary amendment should be carried out during course of day.

4. Seeking direction upon the respondents to release the excess amount along with interest to the petitioner, the present writ petition has been filed.

5. The brief facts of the case are that, the petitioner M/s. Dew Concrete Ties Pvt. Limited is engaged in business of manufacturing concrete sleeper for the Indian Railways. The H/T Industrial connection to the petitioner-firm was inspected by the respondent regularly and the last inspection was conducted by the respondent No. 4 on 30.01.2006 when after examining L.V-cum-C.T. Box, the respondent No. 4 gave satisfaction certificate. Eight days thereafter, a surprise inspection was conducted on 07.02.2006 in which both the seal L.V-cum-C.T. Box were found broken. A First Information Report was lodged on 07.02.2006 and the loss to the Board was arbitrarily assessed at Rs. 34 lakhs. The petitioner

moved this Court in W.P.(C) No. 926 of 2006 challenging the provisional order of assessment. The High Court directed the petitioner to deposit a sum of Rs. 30 lakhs and to move before Vidyut Upbhokta Sikayat Niwarayn Forum of Jharkhand State Electricity Board. When the Forum declined to hear the matter on the ground of lack of territorial jurisdiction, the petitioner approached this Court against in W.P.(C) No. 2885 of 2007 which was disposed of vide order dated 07.02.2008 directing the petitioner to file representation to the Superintending Engineer who would assess the actual loss caused to the Board. A further direction was also issued to the Superintending Engineer to pass appropriate order of adjustment/refund, if the amount paid by the petitioner was in excess of the actual loss assessed by the Superintending Engineer. Consequently, the Superintending Engineer passed the assessment order dated 28.07.2008, assessing the total loss to the Electricity Board at Rs. 11,12,600/-. The petitioner made representation for refund of excess amount as directed by the Hon'ble High Court however, no order was passed on the representation of the petitioner and therefore, the petitioner was constrained to approach this Court once again.

6. A counter-affidavit on behalf of the Jharkhand State Electricity Board was filed stating that in terms of order passed by the High Court, the petitioner deposited Rs. 30 lakhs vide receipt No. 192135 dated 21.04.2006 and accordingly, the electric connection of the petitioner was restored on 24.04.2006. The petitioner submitted representation before VUSNF vide case No. 31 of 2006 which declined to hear and decide the issue. In compliance of order dated 07.02.2008 in W.P.(C) No. 2885 of 2007, the petitioner approached the Electrical Superintending Engineer, Electrical Supply Circle, Jamshedpur to decide the issue under Section 126 of the Electricity Act, 2003. Vide order dated 28.07.2008 the Electrical Superintending Engineer assessed the amount of Rs. 11,12,600/- and a direction was issued to the Electrical Executive Engineer, (C.&R.) Jamshedpur to refund/adjust the balance amount of Rs. 18,87,400/-. The respondent-Board, aggrieved by aforesaid order dated 28.07.2008 filed writ petition being W.P.(C) No. 3986 of 2009 which is pending before this Court. Since the Board has challenged the assessment order dated 28.07.2008 in W.P.(C) No. 2896 of 2009, and since this Hon'ble Court is in seisin of the matter, the amount for refund/adjustment would depend on the decision in both the cases.

7. Mr. M.S. Mittal, the learned Senior counsel appearing on behalf of the petitions submits that the petitioner has approached this Court in W.P.(C) No. 2885 of 2007 which was disposed of vide order dated 07.02.2008 directing the petitioner to deposit a sum of Rs. 30 lakhs for immediate restoration of the electric connection and in compliance of the said order the petitioner deposited the sum of Rs. 30 lakhs. This Court vide order dated 07.02.2008 gave liberty to the petitioner to file a representation within a period of two weeks and upon submitting the representation by the petitioner, the Electrical Superintending Engineer was directed to assess the actual loss caused to the Board. In compliance of order dated 07.02.2008, the Electrical Superintending Engineer, Electric Circle, Jamshedpur vide order dated 28.07.2008 assessed the amount of

excess payment made by the petitioner-company still, the excess amount so assessed by the Electrical Superintending Engineer vide order dated 28.07.2008 has not been paid by the respondents and therefore, the petitioner-company was constrained to approach this Court again. Referring to the counter-affidavit filed on behalf of the respondents, the learned Senior counsel appearing for the petitioner has submitted that only plea taken by the respondents in the present proceeding is that the petitioner-company has preferred another writ petition being W.P(C) No. 2896 of 2009 which cannot be ground to refuse refund of excess amount.

8. Per contra, Mr. Rahul Kumar, the learned counsel appearing for the respondent-Jharkhand Urja Vikash Nigam Limited submits that since the assessment order dated 28.07.2008 is under challenge in W.P.(C) No. 2896 of 2009, a direction for adjustment/refund seeking vide order dated 28.07.2008 cannot be implemented. A criminal case has been lodged against the petitioner which is pending trial and in terms of Section 135 of the Indian Electricity Act, 2003 unless, the said issue is decided the order of refund cannot be implemented.

9. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

10. There is no dispute that the order dated 07.02.2008 in W.P.(C) No. 2885 of 2007 was not challenged by the respondent-Electricity Board and thus, it has become final. It is also apparent that order dated 07.02.2008 has been complied with by the petitioner as well as the Electrical Superintending Engineer in so far as, the assessment is concerned. The respondent-Electricity Board has not complied with the direction contained in order dated 07.02.2008 directing the Electricity Board to adjust/refund the excess amount paid by the petitioner on the ground of pendency of W.P.(C) No. 3986 of 2009. I am of the opinion that order dated 07.02.2008 in W.P.(C) No. 2885 of 2007 is binding on the respondent-Electricity Board and the Electricity Board is bound by the said order. Merely on the ground of pendency of W.P.(C) No. 3986 of 2009 in which the assessment order dated 28.07.2008 has been challenged by the Electricity Board, the excess amount of Rs. 18,87,400/- cannot be withheld by the Electricity Board. The petitioner cannot be deprived of the benefit of order dated 07.02.2008 on the ground of pendency of W.P.(C) No. 3986 of 2009. Right to property is a constitutional right and the petitioner cannot be deprived of and denied payment of excess amount without following the procedure established in law. As held by a Division Bench of this Court in "M/s. Shyam Lal Iron & Steel Company through one of its M/s. Shyam Lal Iron and Steel Company Vs. Jharkhand State Electricity Board and Others, , a provision has been made under the Electricity Act, 2003 empowering the Special Court to examine the assessment order under Section 154 (5) and (6) of the Act. On a wishful thinking of the Electricity Board of succeeding in the criminal case, it cannot withhold the excess amount paid by the petitioner which this Court: vide order dated 07.02.2008 had directed to be refunded to the petitioner.

11. In the result, the writ petition is allowed and the respondent No. 1 is directed to refund the amount within a period of four weeks. All the I.As. stand disposed of.