
(2015) 02 JH CK 0065
In the Jharkhand High Court
Case No : Writ Petition C. No. 3039 of 2010

DEW Concrete Ties Pvt. Limited

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Electricity Act, 1910 — Section 39, 44
Electricity Act, 2003 — Section 126 (5)

Citation : (2015) 02 JH CK 0065

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : M.S. Mittal, Senior Advocate, for the Appellant; Rahul Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This writ application has been filed for quashing the order dated 28.07.2008 (Annexure-10) passed by respondent No. 3, the Electrical Superintending Engineer, Electric Supply Circle, Jamshedpur, whereby and where under a final assessment made and the petitioner was directed to pay Rs. 11,12,600/- under section 126 (5) of the Electricity Act, 2003.

2. Sans unnecessary particular, the facts of the case is that petitioner took HT Industrial connection from the Jharkhand State Electricity Board (herein after referred as the Board) for manufacturing of concrete sleepers for Indian Railway. It is stated that on 07.02.2006, a surprise inspection conducted in the premises of the petitioner and two seals of L.V.-cum-C.T. Box were found broken. Thereafter, an FIR lodged and the Board provisionally assessed that the petitioner liable to pay Rs. 34.00 lakhs pilferage of electrical energy. Thereafter, petitioner moved this court by filing writ petition vide W.P. (C) No. 926/2006, challenging the provisional assessment order. While disposing that writ petition, a Single Bench of this Court directed the petitioner to deposit Rs. 30.00 lacs and

move before the Upphokta Sikayat Niwaran Forum, Ranchi (herein after referred as Forum). It appears that the Forum dismissed the application due to lack of jurisdiction. Thereafter, petitioner filed another writ petition being W.P. (C) No. 2885/2007, which was disposed of vide order dated 07.02.2008 with a direction to the petitioner to file representation before the Superintending Engineer. This Court further directed the Superintending Engineer to assess the actual loss caused to the Board, after giving opportunity of hearing to the petitioner. It is further ordered that if on final assessment, it comes to the light that petitioner had deposited excess amount, then the Superintending Engineer shall pass order for adjustment/refund of such excess amount. It appears that thereafter, petitioner filed representation which was disposed of by the impugned order as contained in Annexure-10.

3. It is submitted by Sri M.S. Mittal, learned counsel for the petitioner that during pendency of this writ petition, the Court of learned Judicial Magistrate vide order dated 25.08.2012 had accepted the final form dated 18.12.2006, submitted by the police in theft case. Thus, as a result of such acceptance of final form, petitioner has been acquitted in the theft case. In that view of the matter, no panel bill can be realized from the petitioner. Accordingly, it is submitted that the impugned order is liable to be quashed.

4. On the other hand, Sri Rahul Kumar, learned counsel appearing for the JUVNL submits that mere acceptance of final report by the Magistrate can not amount to a finding by the criminal court that theft of electricity was not committed. The learned counsel relied upon the judgment of Hon''ble Supreme Court in J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, . Sri Kumar further submits that more over present writ application is barred by constructive res judicata because against the impugned order final assessment Order (Annexure-10), petitioner had filed another writ petition being W.P. (C) No. 1819/2010 and in that writ application petitioner had only prayed for a direction upon the respondents to refund the excess amount along with interest to the petitioner, which the petitioner had deposited in compliance of the order dated 07.02.2008 passed in W.P. (C) No. 2885 of 2007. It is submitted that in that writ application, petitioner has not prayed for quashing the impugned order. In the present writ application, the petitioner challenged the validity of the impugned order, which the petitioner cannot do so on the ground of constructive res judicata. Sri Kumar relied upon the judgment of Hon''ble Supreme Court in Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, .

5. Having heard the contention of the learned counsels for the parties, I have gone through the records of the case.

6. In the supplementary affidavit, petitioner annexed the final report submitted by the Investigating Officer in Dhalbhum P.S. case No. 08/2006. In the said supplementary affidavit, petitioner also annexed the photocopy of entire order-sheets of the learned A.C.J.M. Ghatshila in G.R. No. 53/2006. From perusal order-

sheets, I find that FRT No. 49/2006(Annexure-13) received in the court of learned A.C.J.M. Ghatshila on 18.12.2006 and thereafter learned A.C.J.M. ordered for issuance of notice to the informant. It appears that when service report of notice has not been received, learned A.C.J.M. directed the office for re-issuance of notice on 31.07.2007. The said order has not been complied till 04.04.2008. Thereafter, case put up on 21.05.2012. On that day also service report of notice not received. However, on that the court ordered that the case be listed for hearing on FRT on 28.07.2012. Therefore, it appears that on 25.08.2012 the record put up before the Lok Adalat and on that day FRT accepted. From perusal of order dated 25.08.2012, I find that informant was not present while the aforesaid order passed. Under the said circumstance, acceptance of FRT in favour of petitioner is not legally correct.

7. Moreover, in J.M.D Alloys Limited v. Bihar State Electricity Board and others (Supra) at paragraph No. 13, the Hon"ble Supreme Court held as follow:--

"In our opinion, the mere acceptance of final report by the Magistrate cannot amount to finding by the criminal court that theft of electricity was not committed. The accused was not even summoned, no charge was framed nor was any evidence recorded. In such a situation, it cannot be held that the criminal court has recorded any finding to the effect that the petitioner has not committed theft of electricity. That apart, the purpose of a trial under Sections 39/44 of the Indian Electricity Act is entirely different and the object is to punish and sentence the person who is alleged to have committed the offence. The trial of an accused in a criminal case can have no bearing in the matter of assessment made in accordance with the tariff of the value of electricity dishonestly abstracted or consumed. Therefore, the contention raised on the basis of alleged acceptance of the final report in the criminal case has absolutely no merit." 8. In view of the aforesaid judgment of the Hon"ble Supreme Court even if final report submitted by the Investigating Officer, accepted by the Magistrate, the same has no bearing on the final assessment. It is further contended by Sri Mittal that the aforesaid judgment of Hon"ble Supreme Court has been passed in the old Electricity Act, thus the same has no application in this case. In my view, the aforesaid contention of learned counsel for the petitioner is misconceived. The Hon"ble Supreme Court in the aforesaid judgment had considered the effect of the order of the Magistrate, by which he accepted the final form submitted by Investigating Officer on final assessment order passed by the assessing authority and concluded that the same has no bearing on the assessment order. Thus, the said law is still good and very much applicable in the facts and circumstances of this case.

9. It appears that after passing of the final order as contained in Annexure-10, petitioner filed W.P. (C) No. 1819/2010 for the following reliefs:

"For issuance of a writ or in the nature mandamus commanding/directing the respondents to immediately and forthwith release the excess amount along with interest which was paid by the petitioner in terms of the order or this Hon"ble

Court dated 7.2.2008 passed in W.P.(C) No. 2885 of 2007 and/or for issuance of such other appropriate writ or direction as would appear just and proper for doing equitable and conscionable justice to the petitioner in the facts and circumstances of the case." 10. In the aforesaid writ application, petitioner stated that since by the impugned order the final assessment of Rs. 11,12,600/- was made and petitioner paid Rs. 30.00 lacs as directed by this Court vide order dated 07.02.2008 in W.P. (C) No. 2885/2010, therefore, the petitioner entitled to get refund/adjustment of Rs. 18,87,400/- in the future bill. In the aforesaid writ petition, no prayer made for quashing the impugned order (Annexure-10). The public policy underlying Order II Rule 2 of the C.P.C. will apply in this case. If a person files a writ application seeking one of the relief arose from a cause of action, then he is precluded from instituting another writ application seeking other reliefs arose from same cause of action. The Hon"ble Supreme Court in *Devilal Modi v. Sales Tax Officer, Ratlam and others* (Supra) had held as follows:

"...Considering of public policy and the principle of the finality of judgments are important constituents of the rule of law, and they cannot be allowed to be violated just because a citizen contends that his fundamental rights have been contravened by an impugned order and wants liberty to agitate the question about its validity to agitate the question about its validity by filing one writ petition after another.... If constructive res judicata is not applied to such proceedings a party can file as many writ petitions as he likes and take one or two points every time. That clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by this court would also be materially affected. We are, therefore, satisfied that the second writ petition filed by the appellant in the present case is barred by constructive res judicata." 11. In view of the aforesaid law laid down by Their Lordships of Supreme Court, the present writ application is barred by constructive res judicata.

12. In view of above discussions, I find no merit in this writ application. Accordingly, the same is dismissed.