
(2010) 03 JH CK 0010
In the Jharkhand High Court

G.R. Rice and Dal Mill

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Electricity Act, 2003 — Section 126, 127, 135, 56

Citation : (2010) 4 JLJR(Jhar) 382

Hon'ble Judges : Sushil Harkauli, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sushil Harkauli, J.—I have heard both sides.

2. The petitioner's establishment was inspected and a case of alleged theft of energy was detected because of which the power supply of the petitioner's unit was disconnected u/s 135 of the Electricity Act 2003. The said provision empowers the Board to disconnect the supply upon detection of theft.

3. Subsequently, an assessment was made of about Rs. 40,00,000/- (forty lacs) u/s 126. The assessment is presently under challenge in an appeal u/s 127.

4. In the meantime the petitioner obtained an order from a Division Bench of this Court in L.P.A. No. 450 of 2009 on 21.12.2009 for restoration of the electricity supply upon deposit of 50% of the amount assessed. The supply was restored although not promptly, according to the petitioner. Subsequently, it was again disconnected and again reconnected. According to the petitioner's averment the supply is continuing, but the petitioner is aggrieved by a notice given to the petitioner under para- 11.11 of the Electricity Supply Code Regulations 2005. The said provision requires 15 days clear notice in writing for disconnecting the power supply due to non-payment.

5. The petitioner contends that notice should have been given under para- 11.10 and not 11.11. The difference according to the petitioner is that under 11.10 the

petitioner has a right to dispute the bill by depositing under protest the average amount of electricity bill paid by the consumer during the preceding six months.

6. I am unable to agree with this submission. Para 11.10 does not contemplate any notice but merely gives a right to the consumer. The provision of para 11.11 is in identical words as used in Section 56(1) of the Electricity Act 2003 and the provision in 11.10 is identical to the words of the proviso to Section 56(1). Under the circumstances, this contention that notice has been given under a wrong provision fails.

7. The petitioner then contends that in the notice given now, the petitioner is disputing the Minimum Monthly Guarantee Charges for the period during which the supply remained disconnected I.e. March to December, 2009. According to the petitioner, relying upon the decision of a Division Bench of the Patna High Court in the Case of Electric (Patlipura) Power Equipment Private Limited v. The Bihar State Electricity Board and Ors. reported in 1992 (2) PLJR 62, it has been submitted that where the disconnection is illegal, it is not open to the Electricity Board to require payment of Annual Minimum Guarantee. As against this Division Bench decision reliance has been placed from the side of the respondents upon the decision of the Supreme Court in the case of Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, which has been followed in the case of Orissa State Electricity Board Vs. Orissa Tiles Ltd., . It has been argued that the cases relied by from the respondent's side suggest that for the reasons given in the case of M/s Green Rubber Industries (Supra) the minimum charges can be required by the licensee according to the petitioner this decision of M/s Green Rubber Industries has been considered in the case decided by the Division Bench of the Patna High Court which has been referred to above.

8. Whether the disconnection of the power supply of the petitioner was or was not illegal, prima-facie is the question upon which the issue turns. The submission from the petitioner's side on this count is two fold. Firstly, it has been argued that if the appeal succeeds wholly or in part and the assessed amount u/s 126 which is about forty lacs is reduced or waived, the disconnection would become illegal.

9. This submission is contingent upon a future event which may or may not come about. Besides the disconnection in the present case was not due to non-payment of the amount assessed u/s 126 but was on account of detection of theft u/s 135, therefore, the reduction of the assessed amount u/s 126, even if ultimately done in the appeal u/s 127, will not make the disconnection illegal.

10. The second contention in support of the alleged illegality of the disconnection is that the petitioner has not yet been convicted by a criminal Court with regard to the alleged theft and if the petitioner is acquitted by a Criminal Court, the respondents would not be permitted to contend that the petitioner had indulged in theft of energy. This contention also does not appear to be correct, because as above this is contingent upon a future event which may or may not ultimately

come about, and besides for making a disconnection upon detection of theft, the Board is not required u/s 135 of the Act to await the decision of a criminal Court.

11. Thus, it cannot be said at this stage that the disconnection made u/s 135 was illegal. Consequently, the Division Bench decision relied upon by the petitioner which prohibits the Board from charging the Annual Minimum Guarantee in case of illegal disconnection, for the duration of the disconnected period does not apply.

12. Thus the petitioner's contention on both grounds I.e. the payability of the Minimum Monthly Guarantee and the provision of law under which notice has been given, fails.

13. This writ petition being without any merit is dismissed.