
(2014) 11 JH CK 0037

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 247 of 2010

Harihar Cold Storage

APPELLANT

Vs

Jharkhand State Electricity Board

RESPONDENT

Date of Decision : 01-11-2014

Acts Referred:

Electricity Act, 2003 — Section 126, 135, 152, 154(5), 156

Citation : (2015) 1 AJR 55

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : M.S. Mittal, Advocate for the Appellant; Ajit Kumar, Navin Kumar and Amit Sinha, Advocate for the Respondent

Judgement

Prashant Kumar, J.—This writ application has been filed for a direction upon the respondents for restoration of electrical line in the premises of petitioner. The petitioner has also challenged the final assessment order dated 05.02.2010 (Annexure-10), whereby and whereunder it was ordered that the petitioner is liable to make payment of Rs. 23,28,208/- on account of pilferage of electrical energy.

2. The facts of the case in brief is that the petitioner Harihar Cold Storage is a partnership firm. It appears that petitioner firm took an electric connection vide consumer no. GRL-4778(HT), having a contract demand of 115 KVA. It appears that on 09.09.2009, an inspection conducted by the team of Jharkhand State Electricity Board in the premises of Harihar Cold Storage and it was found that the consumer was unauthorizedly using the electricity by connecting an extra 3 1/2 core LT cable to the outdoor bushing of the distribution transformer, situated in the back side of premises. The extra cable emanating from the LT bushing was terminating at the change over in the panel room of the petitioner's premises. Thus an arrangement was made to control and restrict the actual energy consumption in the meter, which is clear case of unauthorized use of electricity, therefore, attracts action under section 135 of the Electricity Act.

3. Accordingly, an FIR lodged against the petitioner vide Gola P.S. Case No. 75 of 2009. It appears that officials of Electricity Board had disconnected the electrical connection of the petitioner on the date of inspection. The assessing authority provisionally assessed the loss caused to the Electricity Board to the tune of Rs. 23,45,472/-. Accordingly a provisional assessment order (Annexure-4) passed on 11.09.2009 and a bill (Annexure-5) issued. Against that petitioner has filed an objection by Annexure-6.

4. It appears that this writ application filed for a direction commanding the respondents to restore the electrical connection of the petitioner. During the pendency of the writ application, the final assessment order passed on 05.02.2010 as contained in Annexure-10, was challenged by filing an amendment Application (I.A. No. 986 of 2010). The said amendment had been allowed vide order dated 10.3.2010. By the same order, the Electricity Board was directed to restore the power supply of the petitioner, if petitioner deposits Rs. 7,00,000/-. It is submitted by learned counsel for the petitioner that during the pendency of this writ application, petitioner had deposited Rs. 7,00,000/-, accordingly its electrical connection restored. Thus, at present, this writ application is confined to second prayer of the petitioner i.e. for quashing of Annexure-10.

5. Learned counsel for the petitioner submits that there is no procedure for assessment prescribed in section 135 of the Electricity Act. Therefore, the procedure for assessment prescribed in section 126 of the Act is to be followed, because 3rd proviso of section 135 of the Electricity Act laid down that the assessment be made in accordance with the provisions of the Act. It is submitted that the procedure for assessment of unauthorized use of electricity prescribed only under section 126 of the Electricity Act. It is submitted that the procedure prescribed under clause 15.8 of the Regulation framed by the Electricity Commission is arbitrary and violative of the principle of natural justice, as no appeal provided against the order of assessment. It is submitted that in the instant case, the assessing authority had adopted the formula of $L \times D \times H \times F$, which was prescribed by the Jharkhand State Electricity Board on the basis of 1993 tariff. It is submitted that the Jharkhand State Electricity Board has no jurisdiction to prescribe any formula for assessment, as the said power vested in Jharkhand State Electricity Regulatory Commission. Accordingly, it is submitted that the impugned order of assessment is wholly without jurisdiction.

6. Learned counsel for the petitioner relied upon a Division Bench judgment of Hon'ble Patna High Court in *Mosmat Swaran @ Swaran Manraw Vs. The State of Bihar and Another*, .

7. On the other hand, learned counsel for the respondents submit that the aforesaid argument of learned counsel for the petitioner is on the teeth of a Division Bench judgment of this Court in *M/s. Shyam Lal Iron and Steel Company Vs. Jharkhand State Electricity Board and Others*, , where it was held the procedure prescribed for assessment of electricity charges in case of

unauthorized use of electricity is different than the procedure prescribed under sub section 1(A) of Section 135 of the Electricity Act. It is submitted that under clause 15.8 of Regulation 2010 (promulgated by Jharkhand State Electricity Regulatory Commission) prescribed the procedure for assessment of electricity charges in case of theft and if anybody had any grievance against the said assessment order, then he can challenge it before the Special Court under section 154(5) of the Electricity Act. Accordingly, it is submitted that in view of Division Bench judgment of this Court, which became final as the SLP (filed against the same) had been dismissed by the Hon''ble Apex Court, the present writ application is not maintainable, hence, liable to be dismissed.

8. Having heard the submission of the parties, I have gone through the record of the case. It is admitted position that on the basis of inspection dated 09.09.2009, the respondents had filed an FIR against the petitioner for pilferage of electrical energy. It is also admitted position that thereafter provisional assessment order passed adopting the formula of $L \times D \times H \times F$ and the petitioner was held liable to pay Rs. 23,45,472/-. It then appears that during the pendency of this writ application final assessment order passed vide Annexure-10 and the assessing authority concluded that the petitioner is liable to pay Rs. 23,28,208/-. Accordingly a bill issued for payment of aforesaid amount vide Annexure-11.

9. The Hon''ble Apex Court in *The Executive Engineer and Another Vs. Sri Seetaram Rice Mill*, has held that the two provisions, one under section 126 and another under section 135 of Electricity Act 2003, are absolutely distinct and separate provisions and having different scopes. As noticed above, in the instant case, an FIR lodged for theft of electricity. It further appears that on the date of inspection itself, the electrical connection of the petitioner disconnected as provided under section 135, sub section 1(A) of the Act. It further appears that as per the 3rd proviso of section 135 sub section 1(A), assessment order has been served upon the petitioner and petitioner was directed to pay Rs. 23,45,472/-. Though in the said assessment order, it was mentioned that the same has been assessed under the provisions of section 126 of the Electricity Act, but only because a wrong provision mentioned in the assessment order, the same will not become an order passed in that provision. The judgment of Hon''ble Apex Court, in *Seetaram Rice Mill*, already laid down that the field of section 126 and 135 of the Electricity Act are totally different and distinct. The Division Bench of this Court in *Shyam Lal Iron and Steel Company (Supra)* has held that procedure for assessment of electrical charges in case of theft, has been prescribed under clause 15.8 of the Regulation promulgated by the Jharkhand State Electricity Regulatory Commission and if the assessment has been made according to the aforesaid procedure laid down under Clause 15.8 of the Regulation then the only remedy for the consumer is to challenge the same under section 154(5) of the aforesaid Act, before the Special Court. It is worth mentioning that against the judgment of Division Bench of this Court, an application for special leave filed before the Hon''ble Supreme Court vide SLP No. 27328 of 2013 which was dismissed vide order dated 23.09.2013. Thus, the law

laid down by Division Bench of this Court in Shyam Lal Iron and Steel Company case (Supra) is a binding precedent.

10. A Division Bench of the Hon''ble Patna High Court in Most Swaran Vs. State of Bihar (Supra), had made an observation that in case of theft also the assessment will be made as per the procedure laid down under section 126 of the Electricity Act. In my view said discretion is not a binding precedent, specially in view of the fact that the Division Bench of this Court has held that the procedure for assessment in the case of theft of electricity, as provided under section 135 of the Electricity Act, is different from the procedure of assessment prescribed under section 126 of the Act. Moreover before the Division Bench of Patna High Court, question arose for determination was, whether on payment of assessed amount the offence will be compounded under section 152 of the Electricity Act 2003? It appears that while deciding that question, the Division Bench of the Hon''ble Patna High Court made an observation that the assessment under section 135 will be done as provided under section 126 of the Act.

11. It has been held by the Constitution Bench of Hon''ble Supreme Court in The State of Orissa Vs. Sudhansu Sekhar Misra and Others, that :-

" a decision is only an authority for what had actually decides. What is the essence in a decision is its ratio and not every observation found therein nor what logically falls from various observations made in it".

Thus, in view of aforesaid law, laid down by the Hon''ble Supreme Court in connection with law of precedent, the Division Bench judgment of Patna High Court, relied by learned counsel for the petitioner cannot be accepted, specially in view of the Division Bench judgment of this Court rendered in Shyal Lal Iron and Steel Company Case (Supra), which is directly on the issue arose in this case.

12. The submission of learned counsel for the petitioner that as per the 3rd proviso of section 135 Sub Clause 1(A), the assessment can be made as per the provision of this Act and there is no other procedure for assessment prescribed except under section 126, has no leg to stand. It is worth mentioning that the Jharkhand State Electricity Regulatory Commission has power to make regulation under section 181 of the Electricity Act. Clause (x) of sub section 2 of section 181, read with section 50 of Electricity Act, 2003 and Clause 2 of Electricity (Removal of Difficulties Order),2005, empowers the Jharkhand State Electricity, Regulatory Commission to promulgate regulation regarding method of assessment of electricity charges payable in case of theft of electricity, pending adjudication by the appropriate Court. Thus the procedure prescribed for assessment of electric charges in case of theft under regulation framed by the Jharkhand State Regulatory Commission is, in my view, a procedure prescribed under the Electricity Act 2003. The next submission of learned counsel for the petitioner that there is no appeal against the assessment order hence procedure prescribed under clause 15.8 of the Regulation 2010 is arbitrary and violative of the principle of natural justice, is also not acceptable. In my view against the

order of said assessment, the consumer has right to file application before the Special Court under section 154(5) of the Act, which has power to make final assessment. It is worth mentioning that against the order of Special Court, an appeal lie before the High Court under section 156 of the Act. Thus, the assessment order passed by the assessing authority under section 135, read with Clause 15.8 of the Regulation 2010, framed by the Jharkhand State Electricity Regulatory Commission, is not final and is subject to further scrutiny by the Special Court and in appeal by the High Court.

13. In view of the discussions made above, the final assessment order passed in this case, cannot be challenged in this Court directly under writ jurisdiction, because a statutory remedy is available against the same under section 154(5) of the Electricity Act. Thus, this is not a fit case in which this Court should interfere with the order of assessment as contained in Annexure-10 of the writ application, which was passed after giving opportunity to the petitioner and can be challenged only before the Special Court as provided under section 154(5) of the Electricity Act. Accordingly, I find no merit in this writ application, hence the same is dismissed.

14. The petitioner is directed to pay remaining amount i.e. Rs. 23,28,208-7,00,000= Rs. 16,28,208/- within one month from today. It is made clear that if petitioner will not deposit aforesaid amount within the stipulated period then it is open for the respondents to take all coercive steps, including the disconnection of electricity of the petitioner's firm, for realizing the said amount.