(2005) 06 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4173 of 2001

Himanshu Flour Mills Ltd. APPELLANT

Vs

Madhya Pradesh State Electricity Board and Others RESPONDENT

Date of Decision : 20-06-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Electricity Act, 1910 — Section 44

Citation : (2006) 1 JLJ 107 : (2006) 1 MPHT 22

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Ashok Lalwani, for the Appellant; M.L. Jaiswal and Manoj Kushwaha, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.—Petitioner has sought following reliefs :--

(i) That the Hon''ble Court be pleased to issue a writ in the nature of certiorari quashing the order/letter and bill demanding Rs. 19,11,846.07 and declare the same void and unexecutable.

(ii) That the Hon''ble Court be further pleased to issue a writ in the nature of certiorari quashing the order confirming the enhancing the amount of Rs. 19,11,846.07 to Rs. 41,37,045/- by respondent Nos. 4 to 6 and also declare the same null and unexecutable.

(iii) That, the Hon''ble Court be pleased to issue a writ in the nature of mandamus or any other writ commanding the respondents to refund the amount of Rs. 61,525/- received towards replacement of CT/PT instrument and amount of Rs. 2,73,900/- received by compelling the petitioner to pay towards the new connection charge along with interest at the rate of 21% per annum.

(iv) To issue a writ of certiorari or any other nature to quash the surcharge levied and demanded at the rate of 30% per month with compounding effect on the amount of Rs. 41,37,045/- illegally imposed.

(v) To grant any other relief including the payment of cost of the petition.

2. Facts of the case are that the petitioner is a company duly registered under the Companies Act, 1956 having its registered office at New Itwara Road, Bhopal. Petitioner company was engaged in the manufacturing and selling of wheat products and its unit was situated at Mandideep, village Sarkiya, Tehsil Goharganj, District Raisen (M.P.). Petitioner company sought high tension electricity connection of 247 KV on 27-2-1986 and thereafter on 16-10-1989 and on 22-2-1995 for additional connection for 203 KV and 48 KV. In this regard agreements were executed between petitioner and respondent Board. At the time of disconnection, petitioner was connected with a total load of 498 KV. Respondents in the intervening night of 24-3-1999 and 25-3-1999 inspected the premises of petitioner and registered a case of electricity theft and electricity connection of the petitioner was disconnected. A police report was lodged on 30th March, 1999. Respondents raised a demand of Rs. 19,11,846=07 paise by letters Annexure P-19 and P-21. Petitioner preferred an appeal against aforesaid demand and filed a writ petition before this Court which was registered as W.P. No. 2949/99. The writ petition was finally disposed of by order dated 29-1-2000 (Annexure P-24) by which the Review Committee was directed to decide the appeal within a period of two weeks from the date of its presentation. After the decision of the High Court, Review Committee decided the matter. The Review Committee enhanced the penal recovery from Rs. 19,11,846.07 to Rs. 41,37,045/-, as per circular dated 3-12-1999 (Annexure P-26). Petitioner challenged the said order before the Member Level Committee. In the meantime, respondents issued a notice u/s 44 of the Indian Electricity Act and sealed the electricity generator set of the petitioner. Thereafter, petitioner entered into fresh agreement with respondents and deposited Rs. 2,73,900/- as fresh connection charges. Petitioner was also directed to file an undertaking not to use its captive power plant. As per order of Review Committee, petitioner company was to pay 41,37,045/- which was challenged by the petitioner before Member Level Committee. This amount included surcharge, which was nearabout Rs. 20 lacs.

3. Petitioner submitted that out of Rs. 41,37,045/-, Rs. 22,07,115/-were deposited under protest awaiting decision of the Member Level Committee. By order (Annexure P-32), dated 13-9-2000, Member Level Committee dismissed the appeal of petitioner. Thereafter, respondents demanded bill amount alongwith surcharge at the rate of 30% per month on the balance amount of Rs. 41,37,045/- alongwith regular bill for energy consumed. Surcharge as on 9-8-2001 demanded from the petitioner was Rs. 38,73,555/-. A notice was issued to the petitioner to deposit aforesaid amount, failing which it was noticed for disconnection of the electricity. Petitioner challenged the aforesaid in this petition.

4. This petition was filed on 14-8-2001. There was some defect in the petition which was rectified as per order dated 22-9-2001. On 28-9-2001, this Court

directed petitioner to supply copy of petition to the Standing Counsel for Electricity Board and the case was fixed for hearing. On 10-10-2001, Counsel for respondents sought time to file return. But on the prayer of petitioner this Court passed following order on 10-10-2001 :--

Let this matter be listed on 30th October, 2001 to enable Shri P.K. Jaiswal, learned Counsel appearing for the Board to file the return.

As an interim measure, it is directed that if the petitioner deposits Rs. 12.00 lakhs within ten days, the Board shall not disconnect the electricity supply to the petitioner-Unit.

The aforesaid deposit shall be without prejudice to the contention raised in the writ petition.

Certified copy as per Rules within three days.

Thereafter, the case was listed on 22-10-2001 and the petitioner sought extension of time to comply with the order dated 10-10-2001 about deposit of Rs. 12 lakhs. This Court extended time for two weeks.

On 2-11-2001 again at the time of hearing, petitioner sought time till 20-11-2001 to comply with order dated 10-10-2001. Prayer was opposed by the respondents but the time was extended till 20-11-2001. On that date, this Court specifically warned the petitioner that if the petitioner does not comply with the order dated 10-10-2001, no further extension shall be granted.

On 22-11-2001 again petitioner sought time, this Court passed following order in the case :--

It is submitted by Mr. Ashok Lalwani, learned Counsel for the petitioner, that the Managing Director, Shri Pramod Kumar Jain, has been hospitalised as he has suffered a heart attack. Learned Counsel prays that if some more time is granted he would pay the amount as directed by this Court.

Mr. P.K. Jaiswal, learned Counsel, though initially combated the prayer but on perusal of the documents filed by the petitioner with regard to the illness of its Managing Director he reduced his note of vehemence and left it to the discretion of this Court.

Keeping in view the totality of circumstances and taking note of the illness of the Managing Director of the petitioner-Company the time is extended till 28-11-2001. This concession is given as Mr. Lalwani has prayed for a month''s time. As the oral prayer made by Mr. Lalwani is accepted in entirety this Court hereby makes it clear that no further extension shall be granted. If the petitioner fails to deposit the amount as directed by this Court by 28-12-2001 it would be open to the Board to take appropriate steps as warranted in law.

C.C. as per rules.

Thereafter, on 9-1-2002, 25-11-2002, 21-2-2002, 14-3-2002, 15-3-2002, 21

-3-2002 and 3-4-2002, the case was listed but it was adjourned on one or other ground. On 10-4-2002 when the case was listed this Court passed following order :--

Petitioner was directed to inform this Court whether he has deposited the amount of the electricity charges which he enjoyed during the currency of the interim order which was granted by this Court.

Shri Lalwani seeks further time to ascertain the fact.

It be listed on April, 16th, 2002 as prayed by Counsel for petitioner.

Thereafter, on 16-4-2002, following order was passed :--

Learned Counsel for the petitioner is directed to file an affidavit with respect to that fact which is required to be furnished as per order dated 10-4-2002.

List it on 26-4-2002.

C.C. as per rules.

On 26-4-2002 the case was listed and was adjourned to 1-5-2002. On 1-5-2002, following order was passed :--

List next week.

Petitioner to report the payment of the electricity dues, which he has enjoyed as per interim order positively by the next date, failing which, it is made clear that petitioner may not be entitled to be heard and petition may not be entertained by this Court.

C.C. as per rules.

Thereafter, on 10-5-2002, the case was listed and it was stated by the petitioner that he has preferred L.P.A. against order dated 1-5-2002 and the case was adjourned for four weeks. Thereafter, the case was adjourned on several occasions.

5. At the time of hearing, learned Counsel for respondents raised a preliminary objection that in view of the specific order dated 1-5-2002, this petition deserves to be dismissed as the petitioner has not complied with orders of this Court and petitioner who has invoked extra ordinary jurisdiction of this Court under Article 226/227 of the Constitution of India and sought interim order but has not complied with conditions of the order nor has paid current bills of electricity consumed after ad interim writ. Respondents filed an affidavit of M.K. Gupta, Superintending Engineer (O & M) in which following facts are stated :--

1. I say and state that petitioner in this petition has challenged the supplementary demand of Rs. 41,37,045/-. On 10-10-2001, the Hon''ble Court directed the petitioner to pay Rs. 12 lakhs within 10 days, the Board shall not disconnect the electrical supply to the petitioner unit and fixed the case for

30-10-2001. The order of the Hon''ble Court was not complied with. The petitioner moved an application for extension of time for complying the order dated 10-10-2001. The Hon''ble Court vide order dated 22-10-2001 extended the time for further period of 2 weeks for paying Rs. 12 lakhs.

2. I say and state that regular bill for the month of August, 2001 was issued on 17-9-2001 amounting to Rs. 5,64,198/- the due date was 8-10-2001. Thereafter Board gives further one week time for making the said amount to avoid disconnection. The petitioner paid Rs. 4,24,046/- on dated 17-10-2001, but failed to pay the amount of Rs. 80,152/- due to the stay order granted 10-10-2001 the supply was not disconnected. Similarly for the month of September, 2001 bill for Rs. 665316.87 NP was issued on 17-10-2001. The petitioner paid 514917/- on 28-11-2001. The petitioner failed to pay the amount of Rs. 1,50,405/- which include the amount of Rs. 80,152/-. Similarly for the month of October, 2001 a bill for Rs. 483886.74 NP was issued on 17-11-2001. The petitioner paid a sum of Rs. 412211/- on 22-12-2001 and failed to pay the amount of Rs. 71675.85 NP for the month of November, 2001 a bill for Rs. 626884.42 NP was issued on 18-12-2001 no payment was made and due to arrears of Rs. 6,26,884.42 NP the supply was disconnected on 29-12-2001. At the time of disconnection of supply a bill for Rs. 3,23,606/- was issued for the period till 29-12-2001 but no payment was made. Thereafter, from the month of January, 2002 to August, 2002 bill for minimum charges was issued to the petitioner as per terms of HT agreement. The petitioner failed to make the payment of above bills and as such supply was permanently disconnected on 1-9-2002 and agreement was also terminated. On 1-9-2002 a sum of Rs. 23,67,028/-(Rs. 8,85,193/- + Rs. 12,41,560/-) was outstanding for the period from November, 2001 to 31-8-2002.

3. I say and state that the petitioner consumed the electricity and enjoyed the supply without payment of regular bills in view of the stay granted by his Hon''ble Court and as such during stay period the electricity dues amount comes to Rs. 8,85,193/- which he is liable to pay in view of order passed by this Hon''ble Court on 1-5-2002.

4. I say and state that in respect of minimum charges for the period from January, 2002 to 1-9-2002 a sum of Rs. 1241560/- was billed to the petitioner but no payment has been made so far.

5. I say and state that in respect of theft of electrical energy at present a sum of Rs. 36,53,121/- is outstanding. This amount include principal amount plus surcharge. Apart from the above dues a sum of Rs. 12,41,560/- is outstanding towards minimum charges and a sum of Rs. 8,85,193/- towards the dues of electricity dues for the period for which petitioner enjoyed electrical energy as per the interim order of the Hon''ble High Court.

6. It is submitted by the respondents that on 10-10-2001, this Court directed by way of interim measure to the petitioner to deposit Rs. 12 lakhs but the

petitioner did not deposit the amount and sought extension as stated hereinabove. Petitioner has deposited Rs. 4,24,046/- on 17-10-2001, Rs. 5,14,917/- on 28-11- 2001 and Rs. 4,12,211/- on 22-11-2001 total Rs. 13,51,174/- and except this, no amount was paid by the petitioner. The electricity connection of petitioner was not disconnected as per ad interim writ issued by this Court. Petitioner has not deposited Rs. 12 lacs as directed by this Court on 10-10-2001 in spite of various extension of time. Petitioner has also not paid running bills of the period after issuance of ad interim writ and only paid partial amount. As the petitioner has not complied with order of this Court and has misused ad interim writ, he is not entitled for hearing in the case. It is also submitted that not only the petition be dismissed but the petitioner be directed to pay all the dues forthwith because the respondents were restrained to recover the amount because of the ad interim writ dated 10-10-2001. Petitioner though invoked extra-ordinary jurisdiction of this Court but has not complied with the conditions in the order and misused ad interim writ issued by this Court by not paying electricity charges while respondents were restrained to disconnect the electricity connection of the petitioner.

7. Learned Counsel appearing for petitioner opposed the contention and it is submitted that the petitioner after order dated 10-10-2001 has deposited Rs. 3 lacs and thereafter has paid running bills but the respondents in the running bills demanded surcharge on outstanding amount which was not at all payable by the petitioner. Respondents have also added extra fee which was not at all due against the petitioner. Running bills raised by the respondents were on higher side and rightly not paid by the petitioner. Apart from this, petitioner has good case on merits which deserves hearing. Petitioner''s electricity connection has been disconnected by the respondents on 29-12-2001. If the petitioner is not heard on merits, he will suffer irreparable loss. The order dated 10-10-2001 could not be complied with by the petitioner because of financial constraint. Petitioner deserves to be heard on merit as petitioner is having good case on merits.

8. It is not in dispute that by order dated 10-10-2001 petitioner was directed to deposit Rs. 12 lacs and the respondents were restrained by ad interim writ from disconnecting the electricity connection of the petitioner. The petitioner did not deposit entire amount of Rs. 12 lacs in spite of getting extension of time on 22-10-2001, 2-11-2001 and 22-11-2001. Petitioner electricity was disconnected on 29-12-2001 when the petitioner failed to comply with the order dated 22-11-2001 by which time was extended upto 28-12-2001, for the payment of the amount. It appears that the petitioner got ad interim writ and has not complied with orders of this Court. Thereafter petitioner sought extension of the time just to deceive the Court as the petitioner was not having bonafide intention to pay the amount. Though in the aforesaid bills, petitioner raised certain objections in respect of surcharge but the fact remains that the petitioner had not paid remaining amount of bills issued for the period in which ad interim writ remained in force. If the petitioner was not having money or was having

sufficient cause for not depositing the amount then it ought to have been come with clean hands by placing all the facts on record immediately but sought extension of time and had not deposited the amount. In the aforesaid circumstances, whether the petitioner is entitled for hearing on merits of the case who has not complied with orders of this Court though protected by interim orders from this Court.

9. The leading case is King v. General Commissioner (1917) 1 KB 486, wherein Viscount Reading, C.J. held thus :--

Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent abuse of its process, to refuse to proceed any further with the examination of its merits....

In the said case on appeal, Lord Cozens Hardy M.R. while affirming the view observed :--

For these reasons I think that the view taken by the Divisional Court was perfectly right. The Court for its own protection is entitled to say-- ''we refuse this writ of prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us.

Full Bench of Allahabad High Court in Asiatic Engineering Co. Vs. Achhru Ram and Others, held thus :--

A person obtaining an ex parte order or a rule nisi by means of a petition for exercise of the extra-ordinary powers under Article 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist the persons invoking these extra-ordinary powers should not attempt, in any manner, to misuse this valuable right by obtaining ex parte orders by suppression, misrepresentation or misstatement of facts. Applying this principle to the present case, we feel that, in this case, the petitioner Company has disentitled itself to ask for a writ of prohibition by material suppressions, misrepresentations and misleading statements which have been found by us above.

In Shiv Prasad Pandey Vs. Bharat Sanchar Nigam Limited, Hon''ble Justice Shri Dipak Misra, considering similar circumstances held thus :--

11... Thus, the petitioner did not clearly state that what was his relation and on what post his relation was working. An edifice is built by Mr. Shukla that such relation cannot influence the tender making process. Learned Counsel has impressed upon this Court to interpret the word "official" as it does not include the category in which the brother of the petitioner is working. I would have ordinarily ventured to interpret the said word and what is its legal impact would have been. I would have possibly determined whether incorporation of such clause is permissible in law. I would have also dealt with the fact whether the incorporation of said clause offend conscience of equality clause as enshrined under Article 14 of the Constitution. But, a pregnant one, the fact which cannot be easily ignored is that the petitioner in his affidavit did not say that he had a brother who was working in the Department in such capacity. In that event, the Department would have been in a position to detect whether the petitioner had been truthful and, therefore, possibly interpreted as per the requirement of law. The petitioner, on the contrary, chose to play possum and tried to take a chance with the Department. It is a well settled principle of law that a litigant is expected to visit the Court with clean hands. He who docs not come with clean hands to the Court of law has to suffer the wrath of justice. He who comes to temple of justice must come with an absolute truthfulness and should not suppress anything which is within his special knowledge. He who suppresses what is within his knowledge commits fraud. It is well known ''fraud'' and ''justice'' cannot co-exist. Fraud vitiates everything. Truth is the ultimate end of justice. ''Justice'' cannot remain alien to ''truth'' and ''truth'' cannot ignore the concept of justice. As the petitioner has not come with clean hands and indubitably did not speak the whole thing in his affidavit and tried to behave in a different manner to get the advantage, I am not inclined to interpret the clause at his behest. In law it is well settled a person who approaches the High Court for issuing prerogative writ which is issued by exercising discretionary/equitable jurisdiction may refuse to interpret a provision if the petitioner is at fault. As in the present case the petitioner is not truthful, I decline to interpret the provision at his instance.

10. Now considering the facts of the present case, petitioner may be having some good case on merits, but he invoked extraordinary jurisdiction of this Court and sought ad interim writ. Court exercised its jurisdiction on 10-10-2001 by issuing ad interim writ in favour of the petitioner. The petitioner was directed to deposit Rs. 12 lacs as a huge recovery was standing against the petitioner. By the aforesaid order on one hand petitioner was protected from coercive action by the respondents for disconnection of the electricity and was permitted to continue with the electricity connection and simultaneously respondents were restrained to recover amount from the petitioner as the petitioner was allowed to pay Rs. 12 lacs out of the total amount of recovery and to enjoy electricity connection. Petitioner knowing it well that the aforesaid order is a conditional one and he has to deposit not only Rs. 12 lacs but has to pay running bills, petitioner did not comply with the orders of this Court and sought extension of time without disclosing the excuse as pleaded at the time of argument but has failed to fulfill its obligation. It has also not paid running bills. During the course of arguments learned Counsel for petitioner tried to convince that the petitioner deposited security amount with the respondents which was nearabout Rs. 7 lacs and the respondents can appropriate aforesaid security amount towards bills. But this by

itself will not be a ground to arrive at a finding that the petitioner has duly complied with orders passed by this Court. Firstly petitioner had to deposit Rs. 12 lacs and was under obligation to pay running bills. It was enjoying ad interim writ and by way of interim protection, petitioner''s electricity was not disconnected by the respondents. Petitioner has willfully not paid the said amount and also running bills. If the petitioner was having some excuse it ought to have disclosed at the time of extension of time or adjournment of the case which was not done. In aforesaid circumstances, petitioner is not entitled for hearing on merits of the case, and is denied opportunity to consider the case on merits as the petitioner has not come with clean hands and played fraud by not complying with the orders and seeking extension of the time just to deceive this Court and to deprive the respondents for their dues.

11. In view of the aforesaid, I am not inclined to go into merits of the case and this petition is dismissed.

12. As the respondents were restrained to recover their dues on 10-10-2001, in these circumstances, it is directed that the dues as on 10-10-2001 along with current bills till 29-12-2001 shall be recovered from the petitioner. Respondents shall issue a notice of 30 days for the payment of the aforesaid, in default of which respondents shall be entitled to recover aforesaid only, by auctioning petitioner''s industry at Mandideep, Bhopal.

13. The respondents shall be entitled for the cost which is quantified to Rs. 2000/-.