

(2002) 11 JH CK 0036
In the Jharkhand High Court
Case No : LPA No. 522 of 2002

Industrial Resources and Monolithic Pvt. Ltd.	APPELLANT
Vs	
Jharkhand State Electricity Board and Others	RESPONDENT

Date of Decision : 26-11-2002

Acts Referred:

Citation : (2003) 2 JCR 295

Hon'ble Judges : Vinod Kumar Gupta, C.J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : M.S. Mittal, A.K. Yadav, V. Mittal and N.K. Pasari, for the Appellant;
V.P. Singh Rajesh Shankar and Mukesh Kumar, for the Respondent

Judgement

1. This appeal is directed against the Judgment dated 30th September, 2002, whereby the learned single Judge dismissed the writ application filed by the appellant challenging the order dated 19th January, 2002 passed by the General Manager-cum-Chief Engineer, Ranchi Area Electricity Board of the Jharkhand State Electricity Board. In the order dated 19th January, 2002 which the petitioner had challenged in the aforesaid writ application before the learned single Judge, the General Manager -Cum-Chief Engineer, Ranchi Area Electricity Board (respondent No. 2 in this appeal) while disposing of the appellant-writ petitioner's claim for remission etc. held finally that for (he period 1992-93 to 1998-99 the appellant-writ petitioner, after the grant of remissions was liable to pay A.M.G charges to the tune of Rs. 6,63,499.00 and further, as the respondent No. 2 had found that the appellant was guilty of not paying/depositing the A.M.G charges in time he was liable to pay the Delayed Payment Surcharge (D.P.S.), the respondent No. 2 also held him liable to pay an amount of Rs. 8,29,040.00 on account of D.P.S. The respondent No. 2 accordingly held the appellant liable to pay a total amount of Rs. 14,92,539.00.

2. Several grounds were taken by the appellant before the learned single Judge while assailing the aforesaid impugned order. None of the grounds found favour with learned single Judge. In view of the order that we propose to pass, we need

not go into the relevance or merits of any of the aforesaid grounds of challenge as urged by the writ petitioner-appellant before the learned single Judge, except the ground relating to the question of the right of personal hearing. Whereas before learned single Judge the appellant-writ petitioner strongly urged that as a matter of right the appellant was entitled to a personal hearing in support of its claim for remission etc., the learned single Judge was of the view that in the facts and circumstances of the case and because of the information that was available or could be supplied, the denial of the right of personal hearing did not prejudice the case of the appellant-writ petitioner. Broadly we find ourselves to be in agreement with the aforesaid view of the learned single Judge and we also reiterate that in a situation like the present one the appellant-writ petitioner could not complain of denial of the right of personal hearing nor could it be permitted to complain that because of the denial of this right any prejudice we caused to the appellant. No such right as such inhered in the appellant in this case.

3. In the facts and circumstances of this case however, and looking to certain figures which Mr. Mittal brought to our notice, we feel that the ends of justice shall be more appropriately served if the writ petitioner-appellant is afforded a personal hearing to canvass its point of view for a proper adjudication of the issues involved in this matter.

4. Mr. V.P. Singh, learned Sr. Advocate appearing for the Electricity Board submitted that the Jharkhand State Electricity Board has constituted a Consumer Redressal Forum which is a five Member Body headed by Justice P.K. Sarkar, a former Judge of Patna High Court. According to Mr. V.P. Singh, the J.S.E.B. has constituted the aforesaid Consumer Redressal Forum to hear the grievances of all types of consumers relating to all types of disputers between themselves and the Board and that if we have taken a decision in this case that the appellant-writ petitioner should be granted a personal hearing, we may remit this case to the aforesaid Consumer Redressal Forum which, after granting a hearing to the appellant writ petitioner, shall decide all the questions involved in this case afresh.

5. We seem to be in agreement with the view of Mr. V.P. Singh. If the Electricity Board has constituted a Forum for the redressal of the grievances of the consumers which is headed by a retired Judge of the High Court can it also has other members having technical knowledge and expertise, it shall be in the fitness of things if every consumer, before approaching this Court by invoking this Court's jurisdiction under Article 226 of the Constitution, first approaches the aforesaid Forum with request for redressal of his grievances. Actually, in our considered opinion, the constitution of the aforesaid Forum provides every consumer with an alternative remedy which is efficacious in the sense that before invoking this Court's jurisdiction under Article 226 of the Constitution, both, the consumer as well as the Board will have the benefit of an alternative Forum adjudicating upon the disputes between these two parties and if any one of the parties is aggrieved of the adjudicatory result of this Forum, it may be open to

such a party to approach this Court under Article 226 of the Constitution. The Board has done well to constitute such a Forum. Since the Forum is comprised of technical experts relatable to various aspects governing the subject matter of the controversy between the consumer and the Board, we have no doubt in our minds that this Board would be in an ideal condition to appreciate the contours of the controversy involved between the parties and to effectively adjudicate upon the disputes as are raised before it. The insistence upon such a consumer availing of this alternative remedy before his petition under Article 226 of the Constitution is entertained by the Court would be in the nature of a general rule. Such an insistence, of course, would always be subject to such principles of law which normally govern the rule that before a writ petitioner's petition is entertained under Article 226 of the Constitution, the Court must enquire as to whether he has availed of the alternative remedy or not. It goes without saying, and there are pronouncements galore, that there is no absolute bar in the Court entertaining a petition under Article 226 inspite of the alternative remedy having not been exhausted, but we say that such instances are not the rule; these are exceptions and fall within the well defined Constitutional parameters such as total lack of jurisdiction etc. This however, is not the occasion to deal with such question or issues. We are, therefore, of the view that before this Court entertains any application of consumer under Article 226 of the Constitution, it should be desirable that the said consumer has exhausted the aforesaid alternative remedy.

6. Being in agreement therefore with Mr. V.P. Singh's aforesaid submission in this case, we direct that the aforesaid Forum shall adjudicate upon the entire gamut of the disputes which resulted in the passing of the impugned order dated 19th January, 2002 by respondent No. 2. However, we do wish to make it clear that by remitting this matter to the Forum we should not be construed to have held that in every such case the right of personal hearing inheres in any party. It is only in this particular case, based upon its very own peculiar facts and circumstances, we thought it fit that the aforesaid Forum may hear the parties and decide afresh the issue involved herein. We must hasten to add that we have not gone into the merits of the controversy forming the subject matter of this appeal and all questions are left open. This judgment shall not be construed on any expression of opinion by us on any issue involved in this case.

7. The impugned order dated 19th January, 2002 is accordingly quashed and set aside. Consequently therefore, the judgment dated 30th September, 2002 passed by the learned single Judge is also set aside. The matter is remitted to the Consumer Redressal Forum headed by Mr. Justice P.K. Sarkar, a former Judge of Patna High Court. This forum shall, after hearing the appellant-writ petitioner and the representative of the Board, decide the entire issue forming the subject matter of this appeal. Undoubtedly, it goes without saying that the Forum shall pass a speaking order as is expected of it in every such adjudicating process.

8. If the appellant-writ petitioner deposits a total amount of Rs. 10 lakhs in the

manner indicated here-in-below, the respondents shall not disconnect the electricity supply with respect to the disputed bills for A.M.G. and D.P.S for the period 1992-93 to 1998-99 :

(i) Rs. 5 lakhs on or before 16th December, 2002 ;

(ii) Rs. 5 lakhs or before 10th January, 2003.

9. Till 16th December, 2002 there shall be unconditional stay of the disconnection of power supply. If despite the aforesaid order the appellant fails to deposit even one of the aforesaid installments of Rs. 5 lakhs within the period here-in-above mentioned, the respondents shall be at liberty to disconnect the power supply.

10. To enable the Forum to decide the issue, the appellant may file a detailed comprehensive representation supported by all documents and paper within ten days from today.

11. The appeal is accordingly disposed off with the aforesaid observations.

12. Let copies of this order be given to the learned counsel appearing for the parties.