
(2006) 11 MP CK 0078
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2682 of 1999

Jabalpur Steels Pvt. Ltd.

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 21-11-2006

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49, 79

Citation : (2007) 1 MPLJ 388

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Manoj Sharma, for the Appellant; M.L. Jaiswal with Ku. Vandana Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

Petitioner is a small scale industry. It applied for approved load of 325 Kilo Volts which was granted by the Respondent Board. It is stated that unlawful demands were being made by the Respondents authorities and in order to pressurise the Petitioner, a false case of electricity theft was prepared. An inspection was shown to have been made and a Panchnama was prepared on 16-9-1998 as contained in Annx.P/3. A notice of demand for Rs. 28 lacs vide Annx.P/4, was received by the Petitioner which was contrary to the Panchnama involving merely Rs. 5 lacs. In view of this, the demand has been assailed as totally illegal and arbitrary. It is further stated in the petition that the demand has been raised again in an illegal and arbitrary manner to the tune of Rs. 46 lacs vide Annx.P/6. In the aforesaid background, the petition has been preferred for the following reliefs:

(i) It is therefore, prayed that the Hon'ble Court may be pleased to quash the impugned order dated 26-5-1999 (Annx.P/1).

(ii) That the Hon'ble Court may be pleased to issue an appropriate order/direction directing the Respondents produced the entire records.

(iii) That the Hon"ble Court may be pleased to issue the appropriate order or direction for any enquiry against the erring Officers.

(iv) That Hon"ble Court may be pleased to entire action of Respondents in raising the demand of additional amount is unlawful and unsustainable in eye of law.

(v) That the Hon"ble Court may pleased to direct the Respondents to pay the compensation for a loss of as far as by the Petitioner.

Averments contained in the writ petition have been denied in the return by filing it to the effect that the Petitioner has committed theft of electricity and was so found in the inspection which was carried out in the premises of the Petitioner in the presence of Director Shri Ajay Khandelwal. The seals were found to have been tampered. It was further found that a wire was inserted below the backlight strip of test terminals block of C.T. through which "R" and "B" phases were found short. Thus, the theft of electricity was well established and F.I.R. was duly lodged with the police. As a consequence, the electricity supply was disconnected, it has been further contended that at the time of F.I.R., a tentative amount of Rs. 5.5 lacs was mentioned because it was not possible to calculate the exact amount of theft of energy at the spot without going through the billing details and other relevant records of the Petitioner. The calculation as to how the amount of Rs. 28 lacs was worked out is contained in Annx.R/1. After the theft was detected, the Petitioner made a request to restore the electricity supply which was duly considered. The restoration of electricity supply was allowed subject to making down payment in two instalments of Rs. 1.5 lacs each and giving an undertaking to pay the balance amount liable to be worked out by the Electricity Board. This undertaking was executed duly by the Director of the Petitioner on stamp paper which is contained in Annx.R/2.

As regards the quantum of liability, it is stated that the same has been duly explained in the decision dated 24-2-1999 of the Central Level Review Committee as contained in Annx.R/6. Accordingly, a prayer for dismissal of the writ petition has been made.

Shri Manoj Sharma, Learned Counsel for the Petitioner heavily relied upon the Panchnama dated 16-9-1998 contained in Annx.P/3. Attention of this Court has been drawn to internal page 3 of Annx.P/3, wherein it has been mentioned that all the seals of metering equipments were found in proper condition. In the light of this, it has been contended that the theft of electricity was not possible at all and the amount of liability worked out on the basis of theft of electricity is totally illegal and arbitrary.

In order to examine the contention of the Learned Counsel for the Petitioner, it is necessary to understand the functioning of Electricity Board in the process of granting electric connection to a small scale industry. High voltage electricity is supplied by the Board through high tension wires. It reaches upto metering equipment and through this equipment, it is converted to "the particular strength of voltage which is required by a particular consumer.

In the present case, the metering equipment, accordingly, made a provision for supply of electricity of the requisite strength as required by the Petitioner. If, all the seals of metering equipment were found intact that would mean that electric current was available to the Petitioner of required strength. Thereafter, the electric wires pass through SEMS Meter which records the consumption. It contains (i) Test Terminal Box (ii) Meter Terminal (iii) One Inner Box (iv) One Outer Box. It is clearly mentioned at page 1 of the Panchnama Annx.P/3 that the inspection was conducted at about 2:30 P.M. in the presence of Shri Ajay Khandelwal (who happened to be Director of the Petitioner) and the seal of item described at No. 4 above was found broken and some white material was found to have been pasted on the broken seal. After removing it, the outer box was opened. Thereafter, the seal of item No. 3 (i.e. the inner box) was also found to have been tampered. Again some white material was found to have been pasted on the seal and the colour of the seal was also found to have been changed. A physical verification was made and it was found that shorting wires were used in between "R" strip of C.T. and T.T.B (Current Transformer and Test Terminal Box). Moreover, insulation was found to have been removed from the main load terminals of the metering equipment and separate PVC insulation was found to have been applied. Apart from this, insulation was found to have been broken on the load side jumper and a tape was found to have been applied in its place.

From the aforesaid discussion, it is clear that seals of SEMS Meter were found to have been tampered and the manner of theft of electricity was exposed which prevented the recording of consumption of electricity in Sems Meter. The aforesaid inspection as contained in the Panchnama (Annx.P/3) was undisputably conducted in the presence of Director Shri Ajay Khandelwal of the Petitioner, who gave an undertaking as contained in Annx.R/2 to the following effect:

In consideration of the Board agreeing to my/our request to restore supply and accept the payment of Rs. 1.50 lacs before reconnection and another Rs-1.50 lacs after 15 days of reconnection as part payments of the supplementary demand towards detection of theft of energy on 16-9-1998 in respect of my/our HT connection No. N-143 for 325 KVA contract demand at 33 KV at Adhartal Jabalpur. I/We the consumer(s) hereby agree and assure that the decision as may be taken by the Board in my/our case would be acceptable to me/us. I/we also agree that I/We shall make payment as decided by the Central Level Review Committee of the Board in our case.

I/We agree that in the event of default in payment of the supplementary bill as decided by the Central Level Review Committee of the Board my/our connection shall be liable to be disconnected.

Shri Manoj Sharma, Learned Counsel for the Petitioner, has been unable to impugn the Panchnama and has been consequently unable to establish that there did not occur a theft of electricity as revealed in the Panchnama contained in Annx.P/3.

In this view of the matter, the Petitioner is found to be involved in the theft of electricity, and obviously the Respondents have a power to recover from the Petitioner an amount which is due against it in accordance with law. No specific ground has been raised to establish/demonstrate that the amount of liability worked out by the Respondents is contrary to any Act/rule or Circulars applicable to M. P. State Electricity Board.

As regards the objection about quantum, it is seen that the Central Level Review Committee, has clarified the manner in which the exact amount of liability has been worked out. Learned Counsel for the Petitioner has been unable to demonstrate any incorrectness or illegality in Annx.R/6. Since the Petitioner has been found to be involved in the case of theft of electricity, it would be appropriate to refer to paragraphs 6 and 7 of the decision of the Supreme Court in the case of M.P. Electricity Board, Jabalpur and others Vs. Harsh Wood Products and another, as under:

The question, therefore, is: whether the view of the High Court is sustainable in law. It would be seen that Section 49 read with Section 79 of the Electricity(Supply) Act, 1948 gives power to the Appellant Board to determine and also to revise tariff from time to time. Admittedly, in exercise of the power the tariff has been determined and the principles governing the supply of electricity have been enumerated. Clause 31(e) is relevant in this behalf. It provides as under:

(e) Where any consumer is detected in the commission of any malpractice with reference to his use of electrical energy including authorised alternations to installations, unauthorised extension and use of devices to commit theft of electrical energy the Board may, without prejudice to its other rights, cause the consumer's supply to be forthwith disconnected. The supply may be restored in the discretion of the Division Engineer of the Board if the consumer forthwith compensates the Board and pays all dues as per bill and takes such other actions as he may be directed by the Divisional Engineer of the Board to take in this connection.

A reading thereof clearly indicates that the Appellant Board, when it detects that any consumer had committed any malpractice with reference to his use of electrical energy including authorised alternations to installations, unauthorised extension and use of devices to commit theft of electrical energy, may, without prejudice to its other rights, disconnect the supply of electricity forthwith and may call upon the consumer to make payment for compensation of the unauthorised use of electricity which is now stated to be a theft of electricity. It is not in dispute that an FIR had already been lodged for theft of electrical energy. It is seen that the proceedings have been drawn in the presence of the representative of the Respondent Industry and the meters were found to have been tampered with. In furtherance thereof, a prima facie conclusion of pilferage has been reached that the meters were tampered with and the Respondents were called upon to pay the difference of the rate for electricity said to have been

consumed during the stated period of the detection. It would appear that the said assessment was based upon the previous consumption. It is seen that since the proceedings are pending, it would not be desirable to record any finding in this behalf.

Accordingly, I do not find any justifiable reason to interfere in the impugned order including that about quantum of liability. The petition stands accordingly dismissed with costs of Rs. 5,000/- (Rupees Five Thousand), if certified already.