

(2009) 11 JH CK 0089
In the Jharkhand High Court

Jai Mahavir Atta Mill and Another

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Electricity Act, 2003 — Section 126

Citation : (2009) 11 JH CK 0089

Hon'ble Judges : Sushil Harkauli, J; Rakesh Ranjan Prasad, J

Bench : Division Bench

Judgement

1. Heard the parties.
2. Learned Single Judge while disposing the writ application relegated the petitioner before the Assessing Officer for finalizing the assessment u/s 126 of the Electricity Act, after disposing of the objection of the petitioner to the provisional assessment.
3. The grievance of the petitioner in this appeal is that while so relegating the petitioner, the learned Single Judge did not make any interim arrangement for restoration of the electricity supply of the petitioner, subject to any condition being imposed upon the petitioner for the reconnection. According to the petitioner, continued disconnection of supply means closure of industry, not only affecting the petitioner but also several others.
4. The provisional assessment which has been made at Rs. 15,39,000/- has been made on the basis of the formula $L \times F \times D \times H$. This formula has been prescribed by the Jharkhand State Electricity Board and not by the Regulatory Authority. The Electricity Board under the new code does not have the power to prescribe such a formula, and now if any formula can be prescribed for the purpose of making assessment, it can be done only by the Regulatory Authority.
5. Unless the Assessing Officer records the finding, after examining supply record of that area regarding the hours of supply and the hours of load shedding, that the supply hours were to an extent where it was possible for the consumer in

question to utilize the full load which was sanctioned, using the multiplier of the contracted load or its percentage would not appear to be proper. Therefore, for the purpose of making an interim arrangement during the pendency of the final assessment proceeding, multiplier of average consumption has been used by this Court instead of the contracted demand in several cases. However, in the present appeal, it does not appear that any average consumption has been mentioned by the petitioner and, therefore, for the purpose of interim arrangement only and not for the purpose of final assessment, the contracted load or its percentage as used in the provisional assessment is being allowed to be used in the formula.

6. However, u/s 126 of the Act, the period of one year has to be presumed as the period of theft of energy only if the actual period of theft cannot be ascertained.

7. On the facts of the present case on 18.10.2008, the Modem and the Sim was installed in the meter. On that date, the report does not indicate finding of any foreign device or circuit as would tamper of the recording of the electricity consumption. On 20.11.2008, an inspection was carried out in which it is alleged that a device or foreign circuit was found inside the prohibited and sealed area of the electric meter. It does not appear to be the case of the respondent atleast so far, that the foreign device or circuit was of such size or shape or was so clearly concealed that it would not have been noticed by a normally observant officer of the Electricity Department at the time of replacement of the Sim or Modem.

8. In view of the above circumstances, for the purpose of interim arrangement, it can safely be presumed that the period of theft of energy would not go beyond 18.10.2008 i.e. the date with which Sim and Modem was replaced, and when nothing was found wrong.

9. Thus, the period of theft being reduced from the one year period taken in the provisional assessment a little over one month period which as stated above is ascertainable, roughly 1/12 of the provisional assessed amount would be payable and the petitioner should deposit the same with the Respondent-Board for reconnection.

10. Therefore, it is directed that if the petitioner deposits a sum of Rs. 1,50,000/- with the Respondent-Board, the power supply of petitioner will be restored immediately and will be continued till the petitioner continues to pay the current bills. This order will operate till the final assessment is made. The remaining part of the demand of Rs. 1,39,000/- i.e. other than the aforesaid amount of Rs. 1.5 lacs will remain suspended till the final assessment.

11. The petitioner will have two weeks" time from today to file objection to the provisional assessment.

12. With the aforesaid direction/observation, this appeal is disposed of.