
(2009) 02 JH CK 0061
In the Jharkhand High Court

Jai Mahavir Atta Mill

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

Electricity Act, 2003 — Section 126, 135, 181, 50, 56

Citation : (2009) 57 BLJR 1763 : (2009) ELR 326

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Petitioner is a flour Mill. The Factory was established on the land of the petitioner No. 2, which was leased out to the petitioner No. 1. Under the terms of the Agreement, the electric connection to the Factory was taken in the name of the land owner, namely, the petitioner No. 2, though the monthly energy bills for the consumption of electricity is to be paid by the Petitioner No. 1. The electric meters for the purpose of recording the units of electric consumption, was installed in the premises of the petitioner No. 1 by the Respondent-J.S.E.B.

On 18.10.2008, the officers of the Respondent-Electricity Board visited the factory premises of the petitioner No. 1 and therefore, had installed a SIM Card and Modem in the meter installed at the sub-station and report to that effect was prepared by the officers of the Board on which, the consumer's signature was also obtained. A month later on 20.11.2008, a team of officials of the Respondent-Board visited the Factory premises of the Petitioner No. 1 and carried out an inspection of the meter installed in the factory premises. On inspection, the officials claimed to have found that the body seals of the meter were tampered and an electronic circuit was also surreptitiously found inserted in the meter body. On the allegation that the consumer had dishonestly inserted the electronic circuits after tampering of the meter body seals for suppressing actual unit consumption and had thereby committed theft of electric energy and

on the ground that due to the purported theft of electricity, loss to the extent of Rs. 15,39,000/- had caused to the Board, an F.I.R. was lodged by the officials of the J.S.E.B. The electric supply to the factory premises of the petitioner No. 1 was promptly disconnected on 20.11.2008.

2. Challenging the allegations as contained in the F.I.R. and the disconnection of electric supply as being illegal, arbitrary and in violation of the provisions of the rules and regulations, issued by the Jharkhand State Electricity Board, the petitioner has filed the instant writ application with a prayer for a direction to the Respondent-Board to forthwith restore the electrical connection to the petitioner and also to carry out the provisional assessment of the purported loss in terms of provisions of Section 126 of the Electricity Act, 2003 only after fulfilling the requisite criteria, postulated in Clause 13.4 of the Regulations, issued by the Jharkhand State Electricity Regulatory Commission under the (Electricity Supply Code) Regulations, 2005.

3. Mr. M. S. Mittal, learned Counsel for the petitioner would submit that in exercise of the powers conferred by Clause (x) of Sub-section 2 of Section 181 read with Section 50 of the Electricity Act, 2003, the Jharkhand State Electricity Regulatory Commission, Ranchi had issued a Notification dated 27.07.2005 which was published in the Jharkhand Gazette Extraordinary dated 28.07.2005, containing its regulations known as the (Electricity Supply Code), Regulation 2005. The regulations, inter alia provide for procedures for testing and maintenance of meters. Clause 13.4 of the Regulations, specifically provide for testing and maintenance of meters. Learned Counsel explains that where the Distribution licensee intends to inspect the electric meters either on the request of the consumer or otherwise, on the grounds that the meter is defective and not recording the readings accurately, then the meters shall have to be tested by a third Agency, approved by the Commission. Before carrying out any such tests of the meters, the consumer has to be given seven days" prior notice intimating the date, time and place of testing of the meter to enable his authorized representative to be present for the testing.

Learned Counsel adds that the provisions of Section 126 of the electricity Act, which relates to assessment of the loss, can be invoked only after the meter has been duly tested in terms of Rule 13.4.3. Any assessment purportedly made under the provisions of Section 126 of the Act without first obtaining the Test Report of the defective meter, is totally wrong and illegal. Learned Counsel submits that in the instant case, the provisions of Regulation 13.4.3 was not adhered to by the officials of the Respondent-Board. Learned Counsel would explain further that for the purposes of obtaining a correct billing, a Modem and the SIM Card was installed for supplying the energy to the consumer's unit at the sub-station of the J.S.E.B. from where the energy was supplied to the consumer and the energy meter was also installed at the premises of the consumer for recording the units consumed. The billing is always done on the basis of the meter reading carried out at the sub-station and not on the basis of

the meter reading recorded in the energy meter installed in the consumer's premises. Readings in both the meters are noted down in order to ascertain as to whether there is any variation in both the readings and only in case of any variation found, then meters at both places are checked. Learned Counsel submits that in the present case, the Respondent-Board has not come out with the details of the readings of the meters installed at the sub-station of the J.S.E.B., which would otherwise have established that the adverse conclusions drawn by the officials of the inspecting team of the Respondent-Board against the petitioner are totally erroneous and misconceived.

Referring to the amended provisions of the Electricity Act, 2003, learned Counsel submits that the provisions of Section 126 of the Act deals with circumstances where consumer is accused of committing theft of electricity. Learned Counsel explains that under the provisions of Section 126 of the Act, if an Assessing Officer comes to a conclusion that a person has indulged in unauthorized use of electricity then he shall make a provisional assessment of the electricity charges, payable by the consumer. The order of provisional assessment shall be served upon the consumer, who shall be entitled to file an objection before the Assessing Officer, who may, after affording a reasonable opportunity of hearing to the consumer, pass a final order of assessment of the electricity charges payable by the consumer. Learned Counsel explains further that on reading the provisions of Section 126 of the Act, it would be amply clear that the various Sub-sections of Section 126 lay down stage wise procedure beginning with the provisional assessment of the loss, followed by the service of the provisionally assessed bill to the consumer, to submit his objections, if any, a reasonable opportunity of hearing to the petitioner, his objections, thereafter final assessment of the amount of charges followed by notice of payment. It is only when after receipt of the notice for payment, the charges are not paid, then the Board may have the authority to disconnect the electric supply to the consumer. Referring to the provisions of penalty for breaking the seal, learned Counsel refers to Rule 138 of the Indian Electricity Rules, 1956 and submits that the Rule provide that the person breaking the seal on the electric meter shall be punishable to fine, which may be extended to Rs. 200/-. Learned Counsel adds further that the provisions of Section 135 of the Act, which deals with the offences and the penalties, can be applied only if the allegations of theft leveled against the consumer are proved.

Learned Counsel explains that the petitioners have not committed any offence u/s 135 of the Electricity Act, 2003, as has been wrongly alleged in the First Information Report. Learned Counsel refers yet again to the provisions of Section 56 of the Electricity Act, 2003, which is in pari-materia to that of Clause 11.10.1 of the Jharkhand (Electricity) Supply Code 2005, and submits that Clause 11.10.1 of the Code deals with disputed bills and lays down a procedure according to which the distribution licensee is obliged to serve a prior notice on the consumer, enabling the consumer to lodge his protest against the demand of payment of the disputed bill and only in case where the payment of the

demanded amount of the bill is not met, then the supplier could disconnect the electric supply.

Learned Counsel submits further that the petitioner has not been served with any provisional assessment/notice of hearing, in compliance to the statutory provisions of Section 126(3) of the Electricity Act, 2003. Learned Counsel adds that even otherwise, from the date of installing the Modem/SIM Card till the date when the inspection was made at the Factory premises of the petitioner, the total period was only 33 days and by no stretch of imagination, can it be accepted that during a span of 33 days, the Low Tension Unit of the petitioner would cause a loss of Rs. 15.39 lakhs approximately to the Respondent- Board. Learned Counsel explains further that the average billing of the petitioner is about Rs. 50,000/- per month and even on the basis of the average monthly billing, no such loss as claimed by the Respondent-Board could have been caused to the Respondent-Board.

4. By way of his supplementary affidavit filed during the pendency of this writ application, the petitioner has informed that it was only after the filing of the instant writ application and the assertion of the petitioner that no provisional bill was served on the petitioner by the Respondent-Board on the date of inspection, that the Respondents by letter dated 19.12.2008, had sent the provisional bill by Speed-Post to the petitioner. The provisional bill indicates that the calculations have been made for 12 months, namely from November, 2007 to October, 2008, although admittedly for the first time a SIM Card and the Modem was installed in the Meter on 18.10.2008 and therefore only one months' charge could have been levied.

Mr. M. Section Mittal explains that even on the basis of the petitioner's last 6 months' average unit consumption and on average calculation, the charges towards monthly consumption could not exceed Rs. 69,000/-

5. Counter affidavit has been filed on behalf of the Respondent- Board. Mr. Rajesh Shankar, learned Counsel for the Respondent- Board while denying and disputing the entire claim of the petitioner, would submit that the grounds as advanced by the petitioner, are totally misconceived and devoid of merit in the facts and circumstances of the present case. Learned Counsel explains that the electric supply to the petitioner's premises was rightly disconnected under the provisions of Section 135(1A) of the Electricity Act, 2003 after finding a prima facie case of theft of electricity by the petitioner. Learned Counsel explains that the Anti Power Theft (APT) Team of the Board Headquarters alongwith the local officials of the Board visited the premises of the petitioner on 20.11.2008 and on inspection, had found that the petitioner was committing theft of electric energy by inserting an electronic device in the energy meter installed at the petitioner's factory premises. The electronic device was found to be inserted in the electronic meter to interrupt the energy consumption of the petitioner. On detection of the theft of energy, the loss caused to the Board was provisionally assessed to the tune of Rs. 15,39,000/- and, under the amended provisions of Section 135(1-A)

of the Electricity Act, 2003, an F.I.R. was instituted against the petitioner and the electric supply of the petitioner was disconnected. Learned Counsel explains further that the reference to the provisions of Clause 13.4 of the Supply Code Regulation, is totally misconceived and irrelevant, since they are applicable only in case of defective meters and not in case where the running meters is tampered by inserting foreign elements/devices in an unauthorized manner in order to reduce the accurate recording of the electric energy consumption. It is further submitted that the provisional assessment bill has been served upon the petitioner with details of the calculations and the petitioner is therefore either obliged to pay the amount of provisional bill or file his objections against the same before the Assessing Officer under the provisions of Section 126 of the Electricity Act.

6. The facts which emerge from the rival submissions of the learned Counsel for the parties point out, that on the date of inspection a team of officials of the Board, had carried out an inspection of the electric meter unit at the premises of the petitioner's factory on 20.11.2008. The Inspection Report as recorded by the team, alleges that they had found the seals of the meters broken, and on testing of the meter, they had found that a foreign element, namely an electronic device, surreptitiously inserted inside the meter body. The effect of such insertion of the foreign device, as per the assertion of the Respondents, was suppression of the actual consumption of electric energy by disturbing the accurate recordings of the energy consumption. Inference was therefore drawn by the Inspecting Team that the consumer, namely the petitioner, had been indulging in theft of electric energy by dishonest means and has been unauthorizedly using the electric energy and thereby causing loss to the Respondent-Board. The installation of a Modem and the SIM Card in the corresponding meter at the substation of the J.S.E.B. from where the electric energy was supplied to the petitioner, was apparently for the purposes of observing the actual energy consumption of the consumer namely the petitioner. After about 13 days of the installation of the Modem and the SIM Card at the sub-station of the J.S.E.B. from where the electricity was supplied to the petitioner, the inspection was carried out at the petitioner's premises. The contention of the Respondents is that only after installation of the SIM Card and the Modem and on finding anomalies in the recorded units of electricity consumption at the sub-station, a reasonable suspicion was raised which had led to conducting the inspection of the meter installed at the petitioner's premises. These facts clearly suggest prima facie that it was a case of tampering of the meter and manipulation in the electric energy meters readings and no matter, how much the learned Counsel for the petitioner would try to impress, it does not indicate that it is a case of a defective meter, which did not reflect accurate readings on account of its auto-malfunctioning. The petitioner has not explained the presence of the foreign element, namely, the electronic device inside the body of electric meter, which was installed in his premises. The provisions of Clause 13.4.3. of the Regulations, has therefore no application in the facts and circumstances of the present case.

On the contrary, considering the fact that there was a prima facie case of detection of theft of electric energy by the consumer, the provisions of Section 135 of the Electricity Act are certainly attracted and under such circumstances, the disconnection of electric supply to the petitioner's premises was within the authority and power of the Respondent-Board.

7. The next question as raised by the learned Counsel for the petitioner is in respect of the exorbitant amount of the provisional assessment of charges towards purported loss. Learned Counsel, Mr. M. Section Mittal, would want to explain that even though the SIM Card and the Modem was installed about a one month prior to the date of inspection but prior to that and ever since the date when the electric connection was given to the petitioner's premises, there was no complaint whatsoever either of tampering with the electric meters or of unauthorized use of electricity in any manner against the petitioner, although the electric meters used to be inspected every month at the time when the concerned Officers of the Board to visit for recording the readings in the meters. As such, even if any alleged tampering of meter was detected on the date of inspection, the purported loss could have been assessed only for a period of 33 days prior to the date of inspection, i.e. the date when the SIM Card and the Modem installed in the Meter at the sub-station of the J.S.E.B.

From the calculations of the provisional assessment, it appears that the Respondents have made the calculation on the basis of the loss of energy during the past one year prior to the date of inspection. Learned Counsel for the Respondents would explain that it was only after installing the SIM Card and the Modem that a strong suspicion was raised and on the basis of which the Inspection was carried out and the theft was detected. The unauthorized use of electric energy by way of theft through insertion of electronic device in the electronic meter has apparently been continuing since past several months and would have continued to remain undetected, had the SIM Card and the Modem not been installed in the electronic meter at the sub-station of the J.S.E.B. from where electric supply to the petitioner's unit was made. Under such circumstances, the period for assessing the loss has been taken as 12 months prior to the date of inspection and on the basis of $L \times F \times D \times H$ method, the unit loss was assessed and the provisional assessment was made to the extent of Rs. 15,39,000/-.

8. The petitioner has challenged the calculation on the ground that it is arbitrary and the method of calculation is erroneous and not in consonance with the prescribed Rules. This Court would not be inclined to go into this dispute, since such dispute has to be addressed squarely and only by the Assessing Officer as per the provisions of Section 126 of the Electricity Act, 2003.

9. Since the provisional bill has already been served, the petitioner may file his objections thereto before the Assessing Officer and await the final assessment. If the petitioner feels aggrieved by the final assessment made by the Assessing Officer, he may avail the benefit of alternative remedy of Appeal before the

appropriate Forum.

10. For the reasons discussed and stated above, I do not find any merit in this writ application, which is accordingly dismissed.