
(2014) 07 JH CK 0054

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 3047 of 2009

Jamshedpur Roller Flour Mills (Pvt.) Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board

RESPONDENT

Date of Decision : 11-07-2014

Acts Referred:

Electricity Act, 2003 — Section 126, 135, 135(1), 135(1A), 154

Citation : (2014) 07 JH CK 0054

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Delip Jerath, Advocate for the Appellant; Ajit Kumar, Rupesh Singh and Amrendra Pradhan, Advocate for the Respondent

Judgement

Prashant Kumar, J.—This writ application has been filed for quashing the Annexure-7 dated 23.06.2009, which is an electricity bill raised by respondents on the basis of provisional assessment made by it. It appears that petitioner is a Company, registered under the Companies Act and engaged in a business of Roller Flour Mill at Sunder Nagar, District- Singhbhum (East). For the said business, petitioner took electric connection having sanctioned load of 250 KVA, later on said sanctioned load was enhanced from time to time. It appears that on 22.06.2009 officers of the respondents-Company conducted an inspection in the factory premises of the petitioner and found that the seal of the meter was tampered, locking system of Glass Box of Metering Unit changed with fibre body, locking system disturbed by welding. Accordingly, the Inspecting Team concluded that petitioner did so with a view to reduce measurement of actual consumption of electricity. Accordingly, the Inspecting Team prima facie comes to the conclusion that the case of petitioner would be within the purview of section 135 of the Electricity Act. Thereafter, the Inspecting Team seized the Meter and other equipments by-preparing a seizure list. Thereafter, they disconnected the electric supply of the petitioner. It appears that thereafter, an F.I.R. lodged against the petitioner vide Pursudih (Sunder Nagar) P.S. Case No. 118 of 2009 dated 22.06.2009. It appears that thereafter, the Authorised Officer (Assessing Officer)

made an assessment and vide Annexure-7 asked the petitioner to pay Rs. 85 lacs towards electric energy consumed by it during the theft period. Against that order petitioner filed present writ application.

2. This Court vide order dated 05.08.2009 had directed the then Electricity Board to restore the electric supply in the premises of petitioner, on the condition that petitioner shall deposit Rs. 10 lacs out of provisional assessment demand of Rs. 85 lacs. It is stated at Bar that petitioner already deposited aforesaid Rs. 10 lacs, thereafter, electric supply of the petitioner's factory had been resumed. It appears that thereafter. Assessing Officer made final assessment and directed the petitioner to pay a sum of Rs. 58,10,352/- towards the electric consumption made by it during the theft period. This, final assessment has been challenged by the petitioner by filing Interlocutory Application being I.A. No. 3103/09. The aforesaid I.A. has not been moved and uptill now no order has been passed on it. Thereafter, another I.A. filed being I.A. No. 1385/2010 in which prayer has been made for quashing the final assessment orders i.e. Annexures-11 and 11/1. This I.A. has also not moved and no order passed in it.

3. Shri Delip Jerath, learned counsel for the petitioner has submitted that in the assessment, orders preliminary assessment order as well as the final assessment order, the respondents have not assigned any reason in terms of regulation framed by Jharkhand State Electricity Regulatory Commission, He further submitted that the Assessing Officer had not mentioned any reason in both the assessment orders. Shri Jerath further submitted that as per Regulation 15.8 Clause (vii), no case of theft could be booked only because seal of the meter is missing or tampered or breakage of glass window, unless it is corroborated by consumption pattern of consumer and such other evidence, as may be available. It is submitted that since in the F.I.R. as well as in the assessment orders, consumption pattern of the consumer had not been mentioned by the Authorised Officer, therefore, it can be safely said that this is not a case of theft. Hence, assessment made by the Authorised Officer is illegal and without jurisdiction. Accordingly, it is submitted that the impugned assessment orders both provisional as well as final and the bills raised on the basis of said assessment orders, cannot be sustained. It is further submitted that as per Clause 15.5 of the Regulation framed by the Jharkhand State Electricity Regulatory Commission, procedure for assessment laid down under section 126 of the Electricity Act will be applicable in the case of assessment made under section 135 of the Electricity Act. It is submitted that in the present case procedure laid down under section 126 of the Electricity Act has not been followed, and, therefore, both the assessment orders and the bills raised on the basis of said orders are illegal and liable to be quashed.

4. On the other hand, Sri Ajit Kumar, learned counsel for the Electric Company submitted that in the F.I.R. and inspection note the Authorised Officer has categorically stated that on inspection, it was found that seal of L.V. Box of metering Unit has been tampered, locking system of L.V. Box of Metering Unit

found tampered and glass of L.V. Box found changed with fibre body. It was also found that locking system was completely disturbed by welding. The Assessing Officer concluded that petitioner had done so with a view to reducing the measurement of actual consumption on electric energy. Accordingly, Sri Ajit Kumar submitted that aforesaid conduct of petitioner comes within the four corners of definition of theft as defined under section 135(1) of the Electricity Act, 2003. He further submitted that though in the assessment order consumption pattern has not been mentioned, but this is a question of fact, which the Electric Company can brought on record by way of evidence before the Special Judge under section 154 of the Electricity Act, as and when petitioner raised any objection regarding the said assessment. He further submitted that as per Section 135(1A), the Authorised Officer has to mention only that he detected a theft of electricity committed by the consumer. He further submits that under section 135(1A) 4th proviso the Assessing Officer is required to make assessment as per formula mentioned under section 153 of the Electricity Regulation. Learned counsel for the Electric Company heavily relied upon the Division Bench judgment of this Court in M/s. Shyam Lal Iron and Steel Company Vs. Jharkhand State Electricity Board and Others, .

5. Having heard the submissions, I have gone through the records of the case.

6. Admittedly, the present case arose on the basis of inspection held on 22.06.2009. During the said inspection, Inspecting Team had found that seal of L.V. Box of Metering Unit was tampered, locking system of Glass L.V. Box of Metering Unit was found changed with fibre body, locking system disturbed by welding, accordingly, the Inspecting Team came to the conclusion that aforesaid misdeeds done by the petitioner with a view to extracting electrical energy illegally. Accordingly, an F.I.R. lodged after seizure of various articles from the factory premises of the petitioner. It appears that by Annexures-6 and 7 Authorised Officer (Assessing Officer) made provisional assessment of theft of electric energy and concluded that petitioner is liable to pay Rs. 85 lacs. Accordingly, authorised officer raised a bill regarding the same.

7. As noticed above, it was submitted by the learned counsel for the petitioner that in the instant case, procedure laid down under section 126 of the Electricity Act has not been followed as required by Regulation 15.5 of the Regulation issued by Jharkhand State Electricity Regulatory Commission, 2005. Aforesaid submission of learned counsel for the petitioner does not found favour in view of Division Bench judgment of this Court delivered in M/s. Shyam Lal Iron & Steel Company case (Supra). In that judgment the Hon'ble Court has held that procedure of assessment of consumption of electricity in case of inspection under section 126 of the Electricity Act and the procedure of assessment of consumption of electricity in case of theft detected under section 135 are different under the Regulation framed by Jharkhand State Electricity Regulatory Commission. In the aforesaid case, enough provision laid down under the Regulation 15.5 of the Regulation has not been considered but a similar provision

issued by the Govt. of India in clarificatory order dated 12.11.2007 was considered and after considering the same the Division Bench has held as follows:

"In view of the above, we cannot read the communication dated 12th November, 2007 of the Ministry of Power as a clarificatory order mixing the two subjects for the purpose of assessment or energy consumed, one under Section 126 and another under Section 135: or one Clause 15.7 and another Clause 15.8 of the Regulation of 2010 as one and the same."

8. A similar view can be taken while rejecting the aforesaid argument raised on behalf of the petitioner in relation to Clause 15.5 of the Regulation. It is also made clear that Clause 15.5 has been brought in the Regulation by amendment in the year 2008, whereas the procedure for assessment in the case of theft was incorporated in the Regulation by amendment in the year 2010. Thus, if by subsequent amendment a separate procedure has been incorporated then in that case Regulatory Commission ought to have removed the earlier provision as contained in Clause 15.5 of the Regulation. However, aforesaid confusion can be removed by Regulatory Commission by exercising power as contained under Clause 21 of the Regulation for removing the defects. Accordingly, I direct Jharkhand State Regulatory Commission to remove the defect.

9. Now, coming to the merit of the case, from perusal of Annexure 6 and 7, I find that Authorised Officer (Assessing Officer) had not assigned any reason as to how he came to the conclusion that the petitioner is liable to pay Rs. 85 lacs for the theft of electricity consumed by him during the theft period under Clause 15.8 of the Regulation. From perusal of Annexure-6, I find that Authorised Officer had not mentioned the applied formula by it for asserting the liability of petitioner. Thus, in my view, Annexure-6 cannot be sustained.

10. Accordingly, I quash Annexure-6 and direct the Authorised Officer (Assessing Officer) to make assessment on the basis of formula prescribed under Clause 15.8 read with Annexure-1 of Electricity Supply Code Regulation 2005, as amended by Jharkhand State Gazette Notification No. 501 dated 01.9.2010. It is made clear that this is a case of theft, thus, Authorised Officer (Assessing Officer) has to make assessment as per Electricity Regulation. It is made clear that final assessment is not within the jurisdiction of Assessing Officer as held by the Division Bench of this Court in M/s. Shyam Lal Iron & Steel Company case (Supra).

11. Accordingly, I direct the Authorised Officer to make re-assessment as per the provision contained under section 158 read with Annexure-1 of Electricity Supply Code, 2005 as amended in the year 2010 within two weeks from today. Petitioner is directed to pay re-assessed amount after adjusting Rs. 10 lacs (which the petitioner has already paid as per direction of this court) within one month from the date of receipt of assessment order. It is made clear that if petitioner will not pay the said amount within one month from the date of receipt of assessment order, then it is open for the Electric Company to disconnect the

electric connection of the petitioner and realise the assessed amount in accordance with law.

12. However, it is also made clear that if petitioner so advised, may challenge the assessment order before the Special Court in terms of Section 154 of the Electricity Act, 2003.

13. With the aforesaid observation and direction, this writ application is disposed of. Let a copy of this order be sent to Jharkhand State Regulatory Commission for complying the direction given at paragraph No. 9 of this order.