(2004) 11 JH CK 0011

In the Jharkhand High Court

Case No : A.F.O.D. No. 100 of 2000 (R)

Jharkhand (Bihar) State Electricity Board and Others APPELLANT

Vs

State of Jharkhand and Another RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:

Citation : (2005) 1 JCR 241

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : V.P. Singh, for the Appellant; A. Poddar and D. Poddar, for the Respondent

Final Decision : Dismissed

Judgement

Hari Shankar Prasad, J.—This appeal, at the instance of the appellants, is directed against the judgment dated 29.6.2000 and decree dated 7.7.2000 passed in Money Suit No. 108/27 of 1987-88, whereby and whereunder the learned Subordinate Judge III. Ranchi, decreed the suit.

2. The case of the plaintiff in brief is that the plaintiff Usha Martin Udyog Ltd, registered under the Companies Act, at Tanti Silway. P.S. Tanti Silway, District. Ranchi, runs its business. Previously Usha Martin Udyog Ltd. was known as Usha Martin Black Ltd, which after conversion is known as Usha Martin Udyog Ltd. The plaintiff entered into an agreement in 1961 for taking high tension electric energy. According to the agreement, plaintiff consumed electricity and installed separate meters for factories as well as for domestic purposes and plaintiff sent separate monthly consumption report to the defendants and defendants in turn sent bill on the basis of electrical consumption. As soon as defendants sent bills, plaintiff went on paying the bill and before sending the bills ,the defendants have never any complaint against the plaintiff whatever bill was sent on the basis of monthly electrical consumption report, plaintiff went on paying the same within the stipulated date. Further case of the plaintiff is that on 21 January, 1966 defendants directed the plaintiff to send separate electrical consumption report

consumed in the factories on month basis but no objection was raised in that very letter that some changes have been made for preparation of bill. The facts is that every month from time to time defendants inspected the meters installed in the factories of the plaintiff and on that very basis payments have been made. Defendants on. 18th April, 1983 directed the plaintiff to get the electricity consumed for domestic purposes verified by Assistant Electrical Engineer and send electrical consumption report consumed for domestic purposes duly verified by Assistant Electrical Engineer and if the report is not verified by the Assistant Electrical Engineer then 10% of the total consumption will be charged as additional duty charge and according to the direction plaintiff sent duly verified domestic consumption report to the defendants and on that very basis defendants sent bill to the plaintiff and payments were made without any objection. But all of a sudden defendants, by their letter No. 200 dated 15th February, 1986 directed the plaintiff to pay the additional bill for a sum of Rs. 5,88,471.75 paise. This additional bill is related to the period from April, 1979 to March, 1983 and April, 1983 to August, 1983. According to the aforesaid letter, it was also directed that from 1st April, 1979, for all high tension consumers, circuit and meter will be installed. It was further informed through this letter that the meter, which has been installed for home consumption of the plaintiff, is neither tested by the competent authority of the Electricity Department nor the meter reading was taken by the particular authorized meter reader and that he total dutiable units already charged were less than dutiable units, which were levyable in terms of Clause 16 3(b") of the relevant tariff. According to the plaintiff, at the time of taking high tension electric energy at the factory, separate meter and circuit were installed for factory and domestic electrical consumption and statements of meter reading were made and the same was verified from time to time by the defendants and on that basis bills were sent by the defendants and the same was paid by the plaintiff. The further case of the plaintiff is that it had earlier filed CWJC No. 395/86 (R) and the Hoh''ble High Cqurt had stayed the demand and at the instance of the defendants the plaintiff filed objection before the Revenue '' Officer but the Revenue Officer did not properly consider the matter and by his order dated 30.10.86 has held that the supplementary bill dated 15.2.86 has rightly been charged. The writ application was dismissed on the ground that the matter requires investigation into the disputed question of fact and thereafter a sum of Rs. 5,88,471.75 paise was paid by the plaintiff to the defendants on 2nd September, 1986 by way of pay order No. 774934 dated 1.9.96, but such payment was made under protest. Thereafter, plaintiff filed SLP before the Supreme Court against the said judgment of the Patna High Court, which was however, withdrawn with liberty to file a suit before the appropriate Court. It is stated that the additional demand of charges in electricity energy raised by the defendants is illegal and wrongful. It is further stated that Clause 6.3(b) of the tariff has got no application where supply was commenced from 1961 and as such, purported supplementary bill dated 15.2.1986 and purported order dated 30.7.1986 are illegal and wrongful. It was further stated that defendants have already raised bill on the basis of statement prepared by the plaintiff in accordance with the direction and stipulations of the defendants on the basis of meter reading and defendants had accepted payments on the basis of said bill without any objection and, therefore, defendants are stopped from disputing the correctness of the said bill and from raising a supplementary bill in respect of the previous bill in question and it is not open to the defendants to reopen the correctness of levy of energy charges in respect of past period on the basis of audit report. The plaintiffs is also entitled to charge interest on the sum of Rs. 5,88,000/- and odd and the plaintiff filed a suit for claim as stated in the plaint.

3. The defendants appeared and filed written statement taking ornamental defences such as suit is barred by law of limitation and law of estoppel and suit is bad for joinder and non-joinder of necessary party and State of Bihar is a necessary party in the suit. It is submitted that statement made in para 1 of the plaint is wrong and plaintiff is to prove the same.

4. It is stated that plaintiff had applied for power from the defendants for industrial purposes at 250 KVA and on due observance of legal formalities connection No. R/2095 was provided with a meter by the defendants and agreement was also executed. The claim of the plaintiff that separate meters were installed for recording quantum of electrical energy consumed for industrial as well as domestic purposes and that separate circuits were also made for the said purposes is false and misleading. The agreement was for single point of supply and defendants had supplied to the plaintiff one meter for industrial purposes on one point and no other meter was provided to the plaintiff by the defendants for any other purposes and only one meter has been provided to the plaintiff on due observance of Rule 57 of the Indian Electricity Rules, 1956 to record the total consumption of energy. The plaintiff may have made separate arrangement for recording industrial consumption as well as domestic consumption but there was no such agreement with the defendants. It is further stated that defendants are under duty and obligation to supply power to a requisitionist only on due observance of formalities required under the rules and general conditions of supply and not otherwise. The statement made in para 3 of the plaint is also not wholly correct and in this connection it is stated that plaintiff was required to pay electricity duty previously @ 6 paise per unit on its consumption prior to the amendment of Bihar Electric Duty (Amendment) Act, 1963, whereby and whereunder electricity duty @ 6 paise per unit of energy was leviable on actual electrical energy consumed by the industrial and agricultural consumption and @ 7 paise per unit for other consumption, which position will be clear from letter No. ED-2-1965307-Patna dated 11.8.1986 of Government of Bihar, Finance (Commercial Taxes) Department. Hence the need for separate metering arrangement, if any, was required to be made from August, 1965 and prior to August, 1965 the electricity duty charge on all the consumption were not exempted by the Government u/s 9 of the Electricity Duty Act, 1948. When the provision of separate meter was not made but the plaintiff submitted separate readings of its domestic and commercial consumption and the same have been

taken by the defendants in good faith believing that the plaintiff had been provided separate meters by the defendants as required u/s 26 of the Indian Electricity Act, 1910 but the fact is that meters installed by the plaintiff were not provided by the defendants as per the law nor they were tested by the defendants before installation on due observance and necessary formalities. The defendants under mistaken belief believed that the meter has been supplied by the defendants, accepted the statement of readings taken by the plaintiff and accepted the payment in good faith and it was a bonaflde mistake. The defendants admit that the officials of the defendants had visited the premises of the plaintiff for verification of the meter -reading recorded by the plaintiff but allegation for inspection of other meters which were installed by the plaintiff, is not admitted and is false. The defendants have made agreement with the plaintiff only for the single point supply. With regard to para 6 of the plaint, it is submitted that plaintiff did not comply the demand as stated and the onus is upon him to prove the same. The letter dated 18.4.1983 of the defendants itself suggests that the plaintiff himself was submitting the readings without its verification by any of the authorities of the Electricity Board and, therefore, so far as the plaintiff was concerned, as per Tariff Notification, 1979, No. Com/ CAR-1007/79-89, Clause 16 6(b), State Electricity Duty, 10% of the total energy consumption would be chargeable as electricity duty on him and as per law and the agreement, both the parties are bound by the tariff. The defendants admit that supplementary bill was submitted but the same was submitted as per rules of the Board. The defendants have admitted the averments made in para 12 to 17 of the plaint and lastly it was submitted that plaintiff has got no genuine claim and the suit is fit to be dismissed.

5. On the pleadings of the parties, the following issues were framed for their determination in the suit.

(i) Is the present suit of the plaintiff maintainable?''

(ii) Has the plaintiff right to bring such a suit?

(iii) Are separate meters were installed in the factories of the plaintiff for recording consumption of electricity for industrial and domestic purposes?

(iv) Was the plaintiff sending monthly statements of meter reading to the defendants as per agreement?

(v) Whether the monthly statements sent by the plaintiff and on the basis of which bills were sent by the defendants were correct or were sent as bonafide mistake?

(vi) Is additional bill sent by the defendants to the plaintiff legal?

(vii) Is the plaintiff entitled to the claim as prayed for?

6. The learned Court below took up for consideration issue Nos. 3, 4, 5 and 6 together and decided the same in favour of the plaintiff and against the

defendants. Other issues were also decided in favour of the plaintiff.

7. The case of the plaintiff-respondent is that there was an agreement in between the plaintiff-respondent and defendant-appellant in the year 1961 for the supply of electrical energy and meters were installed in the company-both for industrial consumption and domestic consumption-and month wise statements used to be sent after due verification by the engineers of the defendants and plaintiff-respondent and plaintiff-respondent made upto date payment till 1983. But an additional bill for the same over and above amount paid by the plaintiff-respondent was received and CWJC No. 395 of 1986 (R) was filed in the High Court and thereafter Special Leave Application was filed in the Supreme Court from where petition was withdrawn with liberty to file a suit in the Court and thereafter plaintiff-respondent filed Money Suit in the Court of Sub-Judge and from where a decree was passed in favour of the plaintiff- respondent.

8. On the other hand, case of the defendant-appellant is that only one meter was installed as per agreement and plaintiff-respondent out of its own will installed two meters but not according to the agreement of the year 1961 and due to short circuiting from 1971 to 1983 additional bill for the aforesaid period was sent which is permissible under rules and is legal.

9. Now the issues that arise for determination are; whether additional bill sent by the defendants to the plaintiff is legal and, whether appellant is entitled to the relief claimed in the appeal?

10. Both issues are inter-connected and, therefore, they are taken up for the sake of convenience. Admitted case of the parties is that additional bill was sent to the plaintiff-respondent by defendant-appellant for which plaintiff-respondent initially filed CWJG before the High Court, but when purpose was not served, then they preferred SLP before the Supreme Court but plaintiff-respondent withdrew the petition with liberty to file a suit in the appropriate court. Further admitted case of the parties is that in pursuance of the additional bill, the plaintiff- respondent paid a sum of Rs. 5,88,471.75 paise to the defendant-appellant so that electrical connection may not be cut off. Further admitted case of the parties is that there was an agreement between the parties in the year 1961 for supply of 250 KVA line by the defendant-appellant to the plaintiff-respondent. The point of difference between both of them is that, whereas plaintiff-respondent, claims that they were sending month wise bills for industrial consumption as well as for domestic consumption duly verified by the engineers or meter readers of the defendants every month and defendants-appellants used to send the bill after verification from their end and then plaintiff- respondent cleared the bills.

11. Plain tiff-respondent has examined as many as five witnesses, whereas appellants-defendants have examined six witnesses PW 1 is a formal witness who has proved documents as Ex. 2, 2/1 and 2/2. He has also proved lawyers notice Ext. 1.

12. PW 2 is Yugal Kishore Prasad. He is Manager of plaintiff-company as well as Principal Officer also. The plaintiff had taken electrical connection for industrial and domestic purpose from Bihar State Electricity Board and plaintiff transformer of 11,000 volt used to consume electricity according to its need. Domestic consumption means electrical consumption in office, quarter, etc and electricity consumed for domestic purposes, a separate meter was installed. The meter reading was verified by engineers of Bihar State Electricity Board and monthly statement was sent to the Bihar State Electricity Board and after verification bill was sent by the Bihar State Electricity Board and plaintiff after receipt of the bill from the Bihar State Electricity Board used to make the payment. The trouble cropped up in 1986 on the question of consumption of electricity for domestic purposes and defendants sent the bill worth Rs. 5,86,471.75 paise which is quite illegal. As against that demand, the plaintiff moved before the High Court in CWJC No. 395 of 1986 in which an order was passed staying realization of the bill and further directed the plaintiff to file a petition before Revenue Officer of the Board for verification and Revenue Officer rejected the prayer of the plaintiff. Thereafter, High Court dismissed the writ application of the plaintiff. Thereafter plaintiff- respondent filed SLP before the Hon''ble Supreme Court but later on, withdrew the application with liberty to file the suit before a competent Court and at the same time, the plaintiff-respondent deposited the amount under protest. The defendants had agreed to supply single point electricity and for that defendants had installed a separate meter for industrial consumption as well for domestic consumption and a copy of the agreement is with the defendants.

13. PW 3 is D.K. Perumal. Who is Supervisor in General Maintenance Section. According to him, Maintenance Section looks after the electrical sub-station, generator, factory lighting and quarter lighting, etc. For industrial and domestic consumption, line is taken from different circuits and separate meters have been installed for the same. Thereafter month wise separate statement is sent by the plaintiff- respondent to the defendants-appellants and after verification by the engineers of the defendants, the bill was sent by the defendants-appellants to the plaintiff- respondent and after receipt of the same by the plaintiff-respondent, payment was made. Prior to 1986 separate meters were installed for the industrial consumption as well as for domestic consumption and inspection of the same used to be made by the Assistant Engineers of the defendants and on that very basis, monthly statement was sent to the defendants-appellants and after verification from their end, bill was sent to the plaintiff-respondents and thereafter payment was made."

14. PW 4 is Nand Kishore Patoria. He works in the company plaintiff-respondent was supplied electrical connection by Bihar State Electricity Board and the connection was in relation to the High Tension connection. A separate agreement was entered between the parties and this High Tension connection is from 1961 and from time to time there was change in load of the electrical consumption and for that, a separate agreement was made. The electricity which is supplied by High Tension is converted into 440 volt and there is separate circuit which is for

industrial consumption as well as for domestic consumption. His evidence is more or less similar to the evidence of other witnesses.

15. PW 5 is Vinay Kumar Singh. He has also come to say that officials used to verify meters installed for domestic as well as for industrial consumption and monthly reading of the consumption was sent duly verified by the officers of Bihar State Electricity Board and from there bills used to be sent by the defendants-appellants and upon receipt of the same payment was made. There is no due lying with the plaintiff-respondents. Ext.-10 is an agreement entered into between the parties.

16. On the other hand, six witnesses have been examined on behalf of the defendants-appellants. DW 1 is Baleshwar Prasad Singh. He is formal witness.

17. DW 2 is Chinta Mani Singh. He is also a formal witness.

18. DW 3 is Baij Nath Sahay. He is an Accountant in Bihar State Electricity Board. According to him, additional bill which has been sent to the plaintiff-respondents has been sent on the basis of short Charge Audit Report. This bill is relating to the electrical duty. He has also stated that after receipt of the additional bill, the plaintiff-respondent had moved before the High Court from where the plaintiff-respondent was directed to raise dispute before the Revenue Officer of the defendants where after hearing both the sides. The Revenue Officer rejected the prayer of the plaintiff- respondent. The additional bill which has been sent to the plaintiff-respondent, is concerning domestic consumption and electrical duty and the amount realized towards electrical duty is deposited in the commercial account of Bihar Government. According to him, meter reading of domestic consumption was used to be taken by consumers but meter is supplied by the Board and domestic meter is installed by consumer himself, but before installation of meter for domestic consumption, that has to be tested by the Board and for that some fees has to be deposited and after that MRT Section issues certificate of meter testing and after receipt of certificate, the meter is installed. But no such fee has been deposited not testing of meter has been done, that is why additional 10% on total consumption of electricity for domestic purposes has been charged which is quite legal. According to him, an agreement was not entered in his presence and therefore, he has got no knowledge about the same. According to him, there are such terms in the agreement that for the domestic consumption, consumers will install the meter and Bihar State Electricity Board will inspect the same. He further says that he has got no knowledge about the audit report. According to him, the bill was prepared by Ram Briksha Singh and A.K. Mitra, but both of them have not been examined in the case. He cannot say as under what circumstances, additional bill was sent to the plaintiff-respondent.

19. DW 4 is Shiv Nandan Singh. He is a formal witness.

20. DW 5 is Amar Nath Mishra. He is an Assistant Engineer. He is also not competent witness on the point of sending additional bill as he has got no

knowledge about the agreement that was entered into between the parties. He has not inspected the meter at the time of his posting. According to him, as per 1993 tariff, 10% additional consumption will be on the total consumption and not for industrial consumption only. But he is not in a position as to what tariff was prevalent in 1979 to 1983.

21. DW 6 is A.N. Kabiraj. He is retired Accountant of Bihar State Electricity Board. According to him, additional bill which was sent to the plaintiff-respondent, was relating to short assessment which is connected with the electricity duty that was prepared on the basis of audit report in his presence and that amount is deposited in the commercial account of Bihar Government. He is not in a position to say as to how bill was prepared relating to the industrial and non-industrial consumption and he has got no knowledge. He admits that bill was prepared on the basis of reading made by the Assistant Engineer and monthly statement was sent by the plaintiff-respondent but he is not in a position to say as to whether after verification of reading report and other papers, the bill was prepared and during this period, it was never pointed out that wrong bill was prepared.

22. From perusal of oral and documentary evidence as well as from perusal of deed of agreement, it appears that in the company of the plaintiff-respondent, separate meters and circuits were installed both for industrial consumption and domestic consumption and meter reading of which was done by the plaintiff-respondent and time to time inspection of the same is made by the Engineers of the defendants. It also appears that after recording meter reading, monthly statements were prepared and the same were sent to the defendants where these statements were verified by Engineers of defendants and defendants used to send bill to the plaintiff-respondent relating to consumption of electricity both for industrial and domestic consumption and on the basis of that verification report by the defendants, the plaintiff-respondents used to make payment. During the period statements were sent it was never alleged on behalf of the defendants-appellants that bills are wrongly prepared. DW 1 has admitted that due to bona fide mistake, correct bills were not sent to the plaintiff-respondent, as a result of which additional bill was sent. The plaintiff-respondent according to the terms of agreement used to send monthly statement of consumption of electricity and on receipt of the verified bill by the defendants, the plaintiff-respondents used to make payment.

23. Learned counsel for the appellants submitted that additional bill sent by the defendants-appellants was based on the short circuit report and that was genuine. Learned counsel further submitted that the plaintiff-respondent violated the terms of agreement as supply of electricity was for single point only but the plaintiff-respondents secretly installed two meters-one for domestic consumption and another for industrial consumption-and used to send monthly statement, although those statements were verified by the Engineers of the defendants but under bona fide mistake. No such meter was supplied by Bihar State Electricity

Board for domestic consumption and only one meter was installed by Bihar State Electricity Board in respect of both for industrial and domestic consumption and, therefore, 10% additional consumption, was calculated on the basis of total consumption due to lapse on the part of the plaintiff-respondent and, therefore, additional bill which was sent was genuine and defendants-appellants was justified in sending that Bill and additional bill for realizing that amount. Learned counsel further submitted that Bihar State Electricity Board, which had supplied meter for domestic consumption, also sent the bill which upon receipt by the plaintiff-respondent, payment was made. But in fact, company had never supplied any meter for domestic consumption and due to violation by plaintiff-respondent and under bona fide mistake that statement was verified by defendants-appellants and after audit reports, that additional bill was sent.

24. On the other hand, learned counsel for the plaintiff-respondent submitted that in 1961 High Tension electricity supply agreement was made between the plaintiff- respondent and Bihar State Electricity Board (Ext. -10). It has been stated in the plaint that for recording quantum of electrical energy consumption separate meters were installed for recording consumption of industrial and domestic purposes and for the said purposes, separate meters were provided. It has further been stated in the plaint that plaintiff-respondent used to supply monthly statement of electricity consumption for domestic and industrial purposes and on the basis of the same, defendants-appellants used to raise bills against which payments used to be made and the bills were exhibited by the defendants-appellants without any protest. In Para-8 and 9 of the written statement, it is admitted that at the time of agreement of 1961 there was no need for a separate meter arrangements and, therefore, plaintiff-respondent''s monthly statement of commercial and domestic consumption were being exhibited by the defendants as a whole and the claim of the defendants-appellants that these statements were being exhibited under a bona fide mistake is not acceptable. The witnesses who have been examined on behalf of the defendants have got no knowledge about the agreement nor verification ,of statements furnished by the plaintiff-respondent nor raising of bills and those who were concerned with raising of bills have not been examined and one of them is said to have died. Further, the defendants-appellants have admitted that they were accepting statements furnished by the plaintiff- respondent under a bona fide mistake that said agreement is there and on that very basis and under that bona fide mistake, statement was being verified and sent to the plaintiff-respondent for payment of the same. Further, under provision of Bihar Electricity Duty Act, 1948, before realization of electricity duty, the competent authority has to asses dues after giving hearing and order passed is subject to appeal. The department of Commercial Taxes did not sent notices for hearing. Admittedly no notices were given to the plaintiff- respondent by the department of commercial taxes, Bihar State Electricity Board realized the bill from the plaintiff but there is no proof that the said money was deposited with the commercial taxes department under Rule 7 of the Bihar Electricity Rule 7 of Bihar State Electricity

Rule, 1948 which lays down that deposit of electricity duty has to be made in the Treasury by challans. Defendants-appellants has not filed any challan showing deposit of duty realized from the plaintiff- appellant in the Treasury and no such report has also been submitted. Further, claim was made in the year 1986 for the period from 19th April 1979 to August 1983 and the claim from April 1979 up to 1983 was clearly barred by limitation as having been made after more than three years. In the tariff of 1979 it is mentioned that 10% of total consumption shall be presumed if a separate meter for domestic purposes is not provided and it is nowhere mentioned in the agreement that meter should be tested by the MRT Division of Bihar State Electricity Board. Again by letter dated 18.4.1983 defendants directed, that the monthly statement of energy consumption should be sent after due verification by the concerned Assistant Electrical Engineer which was complied. Even when tariff of 1979 was in operation. This shows that testing of meter for domes- tic purposes was not statutory requirement and statements furnished by the plaintiff- respondent were verified by Engineers of defendants-appellants and thereafter bill was sent to the plaintiff-respondent and then payments were used to be made.

25. Considering submissions of the learned counsel for the parties, perusal of oral and documentary evidence adduced on behalf of both the sides coupled with the fact that appellant-defendants have admitted that no protest was made under bona fide mistake believing that meter for domestic consumption has been supplied by the defendants-appellants and as such, there is no mistake on the part of the plaintiff-respondent and plaintiff-respondent went on depositing bill as sent by appellants defendants after verification. Further, no chance of hearing was given to the plaintiffs-respondents on the issue of sending additional bill and charging 10% on total consumption for domestic purpose. Further, no competent witness was examined on behalf of appellant who could throw light on agreement, raising of bills and audit report, nor any witness has been produced on behalf of the appellant-defendants to show that the plaintiffs-respondents was guilty for installing separate meter for domestic consumption and simply saying so is not enough and those witnesses who were concerned with the matter in issue were not produced on the ground that one of them is dead and other could not be available for his evidence in the Court. When a mistake was committed by the appellants-defendants under bona fide mistake, then the appellants-defendants ought not to have sent the additional bill for its own bona fide mistake and at a late stage when limitation started running, is also not justified. In that view of the matter, issues are decided against the appellants-defendants, there is no merit in this appeal, which is accordingly dismissed but in the circumstances without any order as to costs.

