

(2015) 02 JH CK 0055

In the Jharkhand High Court

Case No : Writ Petition (C) Nos. 3304, 4285, 4286 and 4287 of 2008, 1687 of 2007 and 2401 and 2433 of 2010

Jharkhand State Electricity Board and Others

APPELLANT

Vs

Lord Balajee Manufacturing Steel Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Citation : (2015) 4 AJR 338

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Prabhat Singh, A.S.C., for the Appellant; M.S. Mittal and Shilpi John, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—In these writ applications, common question of law raised as to whether Jharkhand State Electricity Board entitled to raise bills on the basis of 100% contract demand after enforcement of the tariff order 2003-04 w.e.f. 01.01.2004? Accordingly, all the cases heard together and disposed of by this common order.

2. It appears that respondents in all cases are owners of induction furnace and bills raised against them on different dates by the Jharkhand State Electricity Board (J.S.E.B.) on the basis of 100 % contract demand (prescribed in the tariff of 1999) even after coming into force of tariff order 2003-04.

3. It is relevant to mention that tariff order 2003-04 issued by the Jharkhand State Electricity Regulatory Commission (J.S.E.R.C.) on 27.12.2003 and made effective from 01.01.2004. It appears that in the tariff of 2003-04, consumers belonging to H.T.S.S. category are required to pay actual demand charge @ Rs. 300 per K.V.A. Since the impugned bills raised on the basis of 1999 tariff order therefore, respondents filed application before the Vidyut Upbhokta Shikayat Nivaran Forum (hereinafter referred as "Forum") challenging the bills.

4. It appears that Forum after considering the contention of both the parties allowed the application of the consumers/respondents and hold that w.e.f 01.01.2004 Jharkhand State Electricity Board has no power to raise bills on the basis of 100% contract demand as prescribed in 1999 tariff order. Accordingly Forum directed J.S.E.B. for issuance of monthly energy bills in respect of respondents on the basis of actual K.V.A. recorded in the meter in each month. The Forum further directed the Board to adjust the excess money, realized from the respondents, in subsequent bills with interest as per Electricity supply code regulation 2005(hereinafter referred as supply code).

5. Being aggrieved with the aforesaid orders of the Forum, J.S.E.B. filed different appeals before the Electricity Ombudsman Jharkhand. Details of the case Nos. and dates of their disposal respectively are as follows:

Case No. EOJ/04/2008 disposed of on 09.05.2008

Case No. EOJ/09/2008 disposed of on 03.06.2008

Case No. EOJ/10/2008 disposed of on 05.06.2008

Case No. EOJ/11/2008 disposed of on 20.06.2008

Case No. EOJ/25/2000 disposed of on 21.01.2009

Case No. EOJ/27/2008 disposed of on 24.01.2009

Case No. EOJ/01/2006 disposed of on 15.02.2007

6. By the aforesaid orders, learned Ombudsman affirmed the orders of the Forum and dismissed the appeals. Against the orders of Forum and learned Ombudsman, these writ applications filed by the Jharkhand State Electricity Board.

7. Learned counsels for the petitioners submits that according to Clause 1.4 of the terms and conditions of tariff order 2003-04 all other terms and conditions in respect of meter rent, supply at lower voltage capacitor charge, Circuit-Breaker Charge, Electricity duty, rebate, security deposit, surcharge for exceeding contract demand etc. shall remain the same as existing in the State. It is submitted that prior to 01.01.2004, tariff order issued by Bihar State Electricity Board in the year 1999 was applicable, so far it relates to consumers owning induction furnace. Thus, it is submitted by learned counsels for the petitioners that as per aforesaid tariff, petitioner entitled to raise bills to the consumers owning induction furnace on the basis of 1999 tariff, which prescribed that consumers are liable to pay demand charge on the basis of 100% contract demand. Accordingly, it is submitted that orders of Forum and learned Ombudsman are not sustainable.

8. On the other hand learned counsels for the respondents, appearing in different writ petitions, have submitted that aforesaid contention of the Board has been overruled by a Bench of this Court in The Jharkhand State Electricity Board Vs.

Kumardhubi Steels Pvt. Ltd.--> , wherein it was held that from 01.01.2004 tariff order issued in the year 1999 by the Bihar State Electricity Board had no application. It is submitted that aforesaid judgment of this Court attains finality after disposal of Special Leave to Appeal No. 20104/2009. It is further submitted that the Hon''ble Supreme Court again in Jharkhand State Elect. Board and Others Vs. Laxmi Business and Cement Co. P. Ltd. and Another, held that w.e.f 01.01.2004 the tariff order issued by Bihar State Electricity Board in the year 1999 has no application in the State of Jharkhand. It is further submitted that against the aforesaid judgment, petitioners filed a review application vide Review Petition (C) No. 139 of 2015, which was also dismissed by the Hon''ble Supreme Court vide order dated 05th of February 2015. It is accordingly submitted that now it is not open for the petitioners to raise aforesaid point of law, as the same has been set at rest by the Hon''ble Supreme Court.

9. Having heard the submissions, I have gone through the record of the cases and various judgments of this Court as well as of the Hon''ble Supreme Court. The only point of law raised in these cases as to whether Jharkhand State Electricity Board has power to raise bills, in case of respondents, on the basis of 1999 tariff order issued by B.S.E.B.? The above point of law considered by the different Benches of this High Court and the Hon''ble Supreme Court. For the first time the matter was considered by a Bench of this Court in Jharkhand State Electricity Board versus M/s Kumardhubi Steels Pvt. Ltd. (Supra). In that case this Court, vide order dated 17.04.2009, has held that tariffs of 1999 and 2001 issued by Bihar State Electricity Board have no application in the State of Jharkhand w.e.f 01.01.2004. This order has been confirmed by the Hon''ble Supreme Court, as Special Leave to Appeal filed against it has been dismissed. Again this Court in M/s Bimaldeep Steel Pvt. Ltd. versus Jharkhand State Electricity Board (disposed of on 12.02.2015) has reiterated the same proposition of law. It further appears that Hon''ble Supreme Court in Jharkhand State Electricity Board and others versus Laxmi Business and Cement Company Private Ltd. and Another (Supra) has held that the tariff order issued by the Bihar State Electricity Board has no application in the State of Jharkhand w.e.f. 01.01.2004. As stated above, the review petition filed by the Jharkhand State Electricity Board against the aforesaid judgment of Hon''ble Supreme Court in Laxmi Business and Cement Company Private Ltd. has been dismissed on 5th of February 2015. Thus, w.e.f. 01.01.2004 tariff order issued by the Bihar State Electricity Board in the year 1999 in relation to induction furnace consumers, has no application in the State of Jharkhand. Hence the Jharkhand State Electricity Board is not entitled to raise bills against the consumers owning induction furnace on the basis of 100% contract demand as prescribed in the tariff order 1999.

10. From perusal of the impugned orders I find that Forum as well as learned Ombudsman had followed the same principle and has held that w.e.f 01.01.2004 petitioners-Jharkhand State Electricity Board is not entitled to raise bills on the basis of 1999 tariff. In that view of the matter I find no illegalities in the

impugned orders.

11. In view of the discussions made above, I find no merit in these writ applications. Accordingly, all the writ applications are dismissed.

12. However, I order that parties shall bear their own costs.