
(2015) 05 JH CK 0030

In the Jharkhand High Court

Case No : Writ Petition (C) Nos. 1992 of 2005 and 3105 of 2007

Jharkhand State Electricity Board and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Citation : (2015) 3 AJR 86

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : A.K. Sahani, for the Appellant; Sarvendra Kumar, J.C. to Sr. S.C.-II, Advocates for the Respondent

Judgement

Prashant Kumar, J.—Both the writ applications are heard together and disposed of by this order.

2. In W.P.(C) No. 1992 of 2005, the Jharkhand State Electricity Board (J.S.E.B.) has challenged the order dated 09.12.2004 passed in Case No. 28 of 2004 by Consumer Grievance Redressal Forum (hereinafter referred as "Forum"), whereby and whereunder the Forum declared that the inspections conducted by the J.S.E.B. is not in accordance with law, therefore it quashed the bill raised on the basis of aforesaid. The Forum further directed the Executive Engineer (Supply) to raise revised bill in favour of M/s. M.R. Industries Ltd. (Consumer) on the basis of sanctioned load of 8 H.P. and Consumer was directed to pay the same within the period stipulated in the bill.

In the W.P.(C) No. 3105 of 2007, the petitioner - M/s. M.R. Industries Ltd. (Consumer) prayed that a direction be issued commanding the Jharkhand State Electricity Board to implement the direction given by the Forum in Case No. 28 of 2004 and for restoration of electrical line.

3. It is worth mentioning that during the pendency of this writ application the electrical connection of the petitioner restored by the J.S.E.B. as directed by this Court.

4. It appears that M/s. M.R. Industries Ltd. took LTI electrical connection from the Board in the year 1975 having a contract load of 8 H.P. It then appears that the relation between Consumer and Board was smooth till 2000. However, in the month of June, 2000 the Consumer received a bill of Rs. 20,186.06. It is stated that after receiving the said bill, the Consumer made representation and requested the Board to make necessary correction in the impugned bill. However, as directed by the Executive Engineer, Consumer made ad-hoc payment. It is stated that inspite of the fact that the Consumer had made ad-hoc payment, his electrical connection was disconnected on 03.08.2000. Thereafter, the Consumer made another ad-hoc payment of Rs. 5,484/- and then only his electrical connection restored on 06.09.2000. It is stated that on 25.08.2000, the Anti Power Theft Team of the Board inspected the premises of the Consumer and found that the Consumer is consuming electricity at the load of 23.85 H.P. Accordingly, the Board issued a revised bill on 13.04.2001 asking the Consumer to pay Rs. 13,180.06. Later on, the Board issued another bill on 14.09.2001 of Rs. 1,29,787.25. It appears that the aforesaid inspection report and bills challenged by the Consumer in W.P.(C) No. 5446 of 2001. The said writ application disposed of vide order dated 19.10.2001 with a direction to the petitioner (Consumer) to file a representation before the Executive Engineer (Electrical), Jharkhand State Electricity Board and the Executive Engineer (Electrical) has been directed to dispose of the representation by reasoned order, within six weeks from the date of receipt of the representation. It appears that thereafter Consumer filed a representation and the said representation was disposed of by the Executive Engineer vide order dated 31.12.2001. Against the said order, the Consumer filed another writ application vide W.P.(C) No. 3060 of 2002. The aforesaid writ application disposed of with a direction to the Consumer to file application before the Consumer Grievance Redressal Forum, J.S.E.B. Accordingly, the Consumer filed application before the Forum, which was registered as Case No. 28 of 2004. The aforesaid case was disposed of by the Forum vide judgment dated 09.12.2004. Against that, the Board filed W.P.(C) No. 1992 of 2005, whereas the Consumer filed W.P.(C) No. 3105 of 2007 for a direction to implement the said order.

5. It is submitted by Sri Ravi Kumar Singh, learned counsel for the Jharkhand Urja Vikash Nigam Limited that on the inspection of the premises of the Consumer, the Inspecting team found that Consumer was using grinder drilling machines, welding machines, compressor machine etc. which could not be run by the sanctioned load of 8 H.P. It is submitted that the said inspection was carried out in presence of Consumer, but he refused to sign on the inspection report. It is further submitted that Consumer was given full opportunity of hearing by the Executive Engineer, when the Consumer has filed representation as per the direction of this Court in W.P.(C) No. 5446 of 2001. Under the said circumstance, the judgment of Forum cannot be sustained.

6. On the other hand Sri A.K. Sahani, learned counsel appearing for the Consumer submitted that in view of the Division Bench judgment of the Patna

High Court in the case of Bihar State Electricity Board and Others Vs. Sri Bir Ispat, (1998) 3 BLJR 1985 : (1999) 1 PLJR 466 , the aforesaid inspection is not legal, therefore, the Forum had rightly quashed it. It is submitted that in fact no inspection made in the premises of Consumer in his presence or in presence of his representative. It is further submitted that even no independent witness was present at the time of inspection. Sri Sahani further submits that no explanation given by the Inspecting Team as to why they have not inspected the premises in presence of independent witness. Sri Sahani submits that even after the inspection, the Inspecting Team had not supplied copy of inspection report to the Consumer, nor they gave show cause notice before raising the penal bill. It is also submitted that the Consumer was not given any opportunity of being heard, before raising the bill. It is submitted that the Forum had quashed the inspection as well as penal bill relying upon the aforesaid judgment of Patna High Court, therefore, there is no illegality in the aforesaid order of the Forum. Sri Sahani then submits that the electricity Company be directed to implement the judgment of the Forum.

7. Having heard the submissions, I have gone through the record of the case. From perusal of the Inspection Note (Annexure-12 to the W.P.(C) No. 1992 of 2005), I find that the said inspection was carried out by the five officers of the electricity - Company. In the said inspection report though there is an endorsement that representative of the Consumer has refused to sign, but there is nothing in it to show, who was the representative of the Consumer. There is nothing in the inspection report to show that on refusal of the Consumer or his representative, the Inspecting Team had called any independent witness and carried out inspection in his presence.

8. The Hon"ble Patna High Court in the case of Bihar State Electricity Board Vrs. Bir Ispat (Supra) at paragraph No. 9 has held as follows:-

"The Boards officials are empowered to inspect the consumers premises. As the inspection is carried out in order to find out/detect the use of unauthorised load and other irregularities in consumption of the electricity, it is not necessary of the Board to give advance notice about the inspection to the consumer, because such a notice will frustrate the very purpose of the surprise inspection. But inspection must be made in the presence of the consumer or his representative if available on the spot. If they are either not available or are not willing to co-operate with the officials in the inspection, it will be open to the Board to carry on the inspection. But fairness demands that in such a case as far as possible the inspection must be done in presence of some independent persons other than the employees of the Board. If at the time of inspection, the consumer is found using the electricity in excess of the contracted load and/or is guilty of other irregularities/illegality in connection with the electricity supply he must be supplied with the inspection report and given a show cause notice before passing any order against him. Before imposing any additional liability in the form of electricity charges, it is necessary that the consumer must be given a reasonable

opportunity of being heard. In absence of such procedural safeguards, if any order is passed or electricity bills are raised adversely affecting the consumer the same are liable to be declared as arbitrary and unfair. In the instant case, the impugned order/bills have been passed without giving any opportunity of being heard to the petitioner. Therefore, they cannot be sustained."

Thus, as per the aforesaid judgment of the Division Bench of the Patna High Court, it is necessary for the inspecting team to carry out inspection in presence of the Consumer or his representative. If the Consumer or his representative are not willing to co-operate with the officials in the inspection, then it will be open to the Board to carry on the inspection, but if possible the same may be done in presence of some independent persons. In that view of the matter, if the Consumer or his representative is not co-operating with the Board officials, then the Board officials have to take necessary step for calling the independent witness. But from perusal of inspection report, I find that the inspecting team had not taken any pain for calling the independent witness. In that view of the matter, the inspection conducted in this case is against the law laid down by the Division Bench of the Patna High Court.

9. From perusal of the impugned order, I find that the learned Forum had quashed the impugned inspection, relying upon the aforesaid judgment of the Hon''ble Patna High Court. Thus, I find no illegality in the impugned order. Accordingly, the aforesaid order is hereby affirmed.

10. In the result, I find no merit in the writ application filed by the Board/ Jharkhand Urja Vikash Nigam Limited (W.P.(C) No. 1992 of 2005). Accordingly, the above writ application is hereby dismissed.

However, I allow writ application filed by the Consumer vide W.P.(C) No. 3105 of 2007 and direct the Jharkhand Urja Vikash Nigam Limited to raise the bill as per the direction of the Forum and the Consumer is directed to pay the same in accordance with law.