

(2022) 11 JH CK 0013

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3638 Of 2010

Jharkhand State Electricity Board

APPELLANT

Vs

M/s. Synergy Polypacks Pvt. Ltd And Others

RESPONDENT

Date of Decision : 02-11-2022

Acts Referred:

Electricity Act, 2003 — Section 126, 127

Citation : (2022) 11 JH CK 0013

Hon'ble Judges : Kailash Prasad Deo, J

Bench : Single Bench

Advocate : Mrinal Kanti Roy, Dhananjay Kumar Pathak

Final Decision : Dismissed

Judgement

Kailash Prasad Deo, J

1. The petitioner has preferred this writ petition on 31.07.2010 against the order dated 25.05.2009 passed by the respondent No.2-the Assessing Officer-cum-Electrical Superintending Engineer, Electric Supply Circle, Dhanbad, whereby on the basis of consumption taken from a tempered meter illegally reduced the amount to Rs.17,28,032/- from Rs.58,26,240/-, which was raised by the same Assessing Officer on the basis of his best judgment during the provisional assessment done under Section 126 of the Electricity Act, 2003. The said provisional bill of Rs.58,26,240/-was raised by the JSEB on the respondent No.1 on account of detection of theft/pilferage of electricity.

2. Learned counsel for the petitioner Mr. Mrinal Kanti Roy has submitted, that though the order of assessment under Section 126 of the Electricity Act, 2003 has to be appealed under Section 127 of the Electricity Act, 2003 but in case of the licensee this provision of Section 127 of the Act is not applicable and, as such, the writ petition is maintainable.

3. Mr. Dhananjay Kumar Pathak, learned counsel appearing on behalf of the respondent No.1 has submitted that the conduct of the Jharkhand State

Electricity Board is very important in this case though the case was filed wrongly before this Court under writ jurisdiction though the appeal is maintainable under Section 127 of the Electricity Act, 2003, which reads as follows:

" 127. Appeal to appellate authority.-- (1) Any person aggrieved by a final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (I) shall be entertained unless an amount equal to [half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed alongwith the appeal.

(3) The appellate authority referred to in sub-section (I) shall dispose of the appeal after hearing the parties and pass appropriate order and sent copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section

(I) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (I) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount, shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent. per annum compounded every six months."

4. Learned counsel for the respondent No.1 has further submitted that "any person aggrieved" includes licensee as well as consumer. The person who is aggrieved will prefer an appeal with condition that he shall deposit the half of the amount assessed by the assessee. It is a case where the Electrical Superintending Engineer has reduced the amount and to delay the disposal of this case the Electricity Board has not preferred an appeal by depositing the amount before the Electricity Board or Assessing Officer rather they have preferred a writ, which remain pending for 12 years as defective and even till today the defect has not been removed because J.S.E.B. wants to protect their officer from coercive action for their illegal act.

5. After perusal of the records, it appears that the writ petition was filed on 31.07.2010 and listed before the Lawazima of Registrar (Vigilance) on 20.11.2010 but nobody appeared. Subsequently, on consent of both the parties the matter was referred before the National Lok Adalat in terms of order dated 03.07.2015 by a Co-ordinate Bench of this Court, which was to be held on 11.07.2015 but that was not done and it was only a delaying tactics by the Jharkhand State Electricity Board now Jharkhand Urja Vikash Nigam Limited.

Subsequently, the defects was also not removed. Thereafter, the matter was again listed before Lawazima of Registrar General on 11.10.2017 but nobody appeared on behalf of the petitioner. Thereafter, a Co-ordinate Bench of this Court has passed an order on 12.12.2018 for issuance of notice to the respondents and for removal of the defects but the defects have deliberately not been removed so that the culprit of this case may retire or may be exonerated because of the lapse of time.

6. Subsequently, the matter was listed before this Bench on 06.09.2021, when Mr. Mrinal Kanti Roy appeared on behalf of the petitioner and prayed for two weeks' time to remove the defects but the same has not been removed. Thereafter again, the matter was listed on 01.10.2021 when this Court has again given time to the Electricity Board for certain query with regard to (1) what prevented the Board in preferring the appeal? (ii) what was the reason to keep such matter pending for more than 10 years by not removing the defects? (iii) whether the same has caused revenue loss to the State or not? (iv) who will compensate the revenue loss accrued to the State by way of interest on the said amount? And four weeks' time was granted. Subsequently, this matter was listed on 01.11.2022 when adjournment was sought for but the defects have not been removed.

7. Learned counsel for the respondent has submitted that an attempt was taken before this Court by filing a writ, where there is statutory provision of appeal because appeal is a inter-se matter which could have been decided expeditiously and the culprit may have been punished because of his laches but this case is an example of the Jharkhand State Electricity Board, who deliberately kept the case pending for more than 12 years under the defects, unless and until, the Court has passed an order that the defects must be removed and thrice the Hon'ble Bench has granted time to remove the defects but the same has not been removed and, as such, the writ petition is not maintainable and it may be dismissed.

8. Mr. Mrinal Kanti Roy, learned counsel for the petitioner was asked to explain what do you mean by "any person aggrieved", whether it includes licensee or includes only consumer? When this Court has asked him to place any judgment before this Court, he failed to explain that any person only includes consumer, he could not cite any judgment of the Hon'ble Supreme Court or Hon'ble High Courts to satisfy this Court that any person only means consumer not licensee.

9. Though, normally two times is to be granted by the Court under the Jharkhand High Court Rules to remove the defects but three times time has been granted in this matters but no action has been taken. Yesterday, fourth time the matter was adjourned but no action has been taken, as such, this Court is passing this order regarding maintainability of the writ petition so as to dispose of the matter, which is pending before this Court since 2010.

10. Under the aforesaid circumstances, it would would not be proper to keep

such matter pending before this Court though it was brought to the knowledge of the Chairman-cum-Managing Director of the Jharkhand Urja Vikash Nigam Limited in terms of the order dated 01.10.2021, since Section 127 of the Electricity Act, 2003 speaks about any person aggrieved, which mean it may be licensee or be consumer but the conditions are same. Legislature has clear intention while considering any person aggrieved, a law cannot be considered in the manner that consumer has to deposit the money and the licensee has not to deposit the money, accordingly, the writ petition is hereby dismissed as any person aggrieved includes both parties maybe licensee or consumer.

11. The Chairman, Jharkhand Urja Vikash Nigam Limited is directed to take action against the erring officers, who are responsible for causing such loss to the Jharkhand Urja Vikash Nigam Limited by initiating the proceeding and following the principles of natural justice but the proceeding must be completed within a period of six months so that the State may not suffer loss because of irresponsible person having low integrity. The loss which has caused to the Jharkhand Urja Vikash Nigam Limited must be recovered from the erring officers as for their whims and fancies the State cannot be put loss.

12. Let a copy of this order be communicated to the Chairman-cum-Managing Director, Jharkhand Urja Vikash Nigam Limited.