

(2015) 04 JH CK 0010
In the Jharkhand High Court
Case No : W.P. (C) No. 315 of 2010

Jharkhand State Electricity Board

APPELLANT

Vs

Rishi Cement Company Ltd.

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Electricity Act, 2003 — Section 126, 127, 135, 135(1A), 154(5)

Citation : (2015) 4 AJR 453 : (2016) 1 CCR 470 : (2016) CriLJ 402

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Navin Kumar, S.C. and Ravi Kr. Singh, ASC, for the Appellant; Biren Poddar, Deepak Sinha, Darshana Poddar and Piyush Poddar, for the Respondent

Final Decision : Disposed Off

Judgement

Prashant Kumar, J.—This application has been filed for quashing the order dated 22.12.2008 passed by the Respondent No. 2 in Appeal No. 11 of 2008 whereby and whereunder, he partly allowed the appeal and directed the Respondent No. 1 to pay Rs. 8,19,456/- to JSEB towards pilferage of electricity and the petitioner, electricity board was directed to refund the excess amount realized from the Respondent No. 1. It is submitted by Sri. Navin Kumar, learned counsel for the JUVNL that the order passed by respondent No. 2 is wholly without jurisdiction in view of Division Bench judgment of this Court in M/s. Shyam Lal Iron and Steel Company Vs. Jharkhand State Electricity Board and Others, . It is submitted that this is a case of theft of electricity, therefore, the provisions contained under Section 135 of the Electricity Act will apply. In this case/the provisions of section 126 of the Act has no application, consequently, no appeal lies under Section 127 of the Act. It is further submitted that if respondent No. 1 has any grievance against the assessment order, as contained in Annex-ure-2, it can file application before the Special Court under Section 154(5) & (6) of the Act.

2. On the other hand, Sri. Biren Poddar, learned counsel appearing for the respondent No. 1 submits that this case is of the year 2008. On that date, the

regulation as contained in 15.8 was not framed, therefore, this case will not be governed by the M/s. Shyam Lal Iron and Steel Company Vs. Jharkhand State Electricity Board and Others, . It is also submitted that in this case the Assessing Officer has applied the formula of LFDH, which was not available on the date of assessment, therefore, the order of assessment is bad.

3. Having heard the submissions, I have gone through the record of the case and the judgments cited by the parties in this respect. The Hon"ble Supreme Court, in The Executive Engineer and Another Vs. Sri Seetaram Rice Mill, has held that sections 126 and 135 of the Electricity Act, 2003 (hereinafter referred to as the Act) operate in different fields and have no commonality. Section 135 deals with offence of, and penalty for theft of electricity and it falls within criminal jurisprudence and mens rea is a constituent of said offence: Whereas Section 126 primarily falls under civil law and does not involve mens rea. Power of assessing officer under section 126 of the Act extends to passing of provisional and final assessment orders in cases of consumption of electricity beyond contracted load. Thus, in the aforesaid judgment, Hon"ble Supreme Court has clearly held that in case of theft, the provision contained under section 126 of the Act has no application. Thus in case of theft section 127 of the Act has no application.

4. The aforesaid aspect was considered by Division Bench of this Court in M/s. Shyam Lal Iron and Steel Company Vs. Jharkhand State Electricity Board and Others, , at paragraph No. 27 of the judgment which runs as follows:-

"27. It will be appropriate to mention here that under Section 127 which is statutory provision, right to appeal has been provided only against the order passed under Section 126 and not against the order passed under provision of Section 135(1A) or under Clause 15.8 of the Regulations 2010. Therefore, by implication or by clarification, it cannot be provided that the orders of assessment, which are passed under the provision of Section 135(1A) or under Clause 15.8 of the Regulations 2010 for the cases of theft are appealable irrespective of the fact that for those orders, a provision has been made under the Act empowering the Special Court to examine those assessment orders under Section 154(5) and (6) of the Act."

In the instant case, admittedly a FIR lodged against respondent No. 1 for pilferage of electricity by the officials of the Board on 09.06.2008. Thus, in this case the provisions as contained under section 126 of the Act has no application. It is submitted by Sri. Poddar, learned counsel for the respondent No. 1 that in fact petitioner themselves invoked the provisions of section 126 of the Act for assessing the amount, therefore, now it does not lie in their mouth to say that section 126 as well as section 127 of the Act have no application. The aforesaid submissions of learned counsel for the respondent No. 1 cannot be accepted, because it is settled principle of law that jurisdiction cannot be vested in an authority by concession, therefore even if the Board/JUVNL had not raised any objection regarding jurisdiction before the Respondent No. 2 where the appeal

was pending, the respondent No. 2 cannot decide the appeal. In my view, as well as in view of the judgment of the Division Bench, the remedy lies before the Special Court under section 154(5) and (6) of the Act.

5. The next contention of Sri. Poddar that the Board has assessed the amount on the basis of formula of LFDH, which is not available on the date of assessment, has also been explained by the Division Bench at paragraph No. 32 of the judgment. Thus, the said contention is not required to be explained again. In view of the discussions made above, the impugned order as contained in Annex-ure-3 cannot be sustained and it is held that the same is without jurisdiction. Accordingly, I allow this application and quash the impugned order. However, I give liberty to the respondent No. 1, if it so desire, to file an application before the Special Court under section 154(5) & (6) of the Act against the order of assessment as contained in Annex-ure-2.