
(2015) 05 JH CK 0029

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1565 of 2012

Jharkhand State Electricity Board

APPELLANT

Vs

Sudisa Foundry Pvt. Ltd.

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Electricity Act, 2003 — Section 126, 127

Citation : AIR 2015 Jhar 74 : (2015) 3 AJR 201

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

**Advocate : Mukesh Kumar Sinha, S.C. and Amit Sinha, for the Appellant;
Deepak Sinha, Darshana Poddar and Piyush Poddar, Advocates for the Respondent**

Final Decision : Allowed

Judgement

Prashant Kumar, J.—This application has been filed for quashing the order dated 21.06.2011, passed by the Vidyut Upbhokta Shikayat Niwaran Forum, Ranchi in case No. 16 of 2010, whereby and whereunder, it directed the petitioner to refund the amount along with interest paid by the respondent towards the bill issued by the petitioner as contained in Annexures-7 and 9 of the counter affidavit. The petitioner further prays for quashing the order dated 30.11.2011, passed by Electricity Ombudsman, Jharkhand in Appeal No. EOJ/16/2011, whereby and whereunder, it confirmed the aforesaid order passed by the Vidyut Upbhokta Shikayat Niwaran Forum, Ranchi.

2. It appears that petitioner-J.S.E.B. vide letter No. 392, dated 30.2.2010, served a provisional bill of Rs. 1,88,184/- upon the respondent, purported to be issued under Section 126 of the Electricity Act, 2003, and asked the petitioner to deposit the amount within a week or file objection against the said provisional order before the assessing authority namely, the Electrical Superintending Engineer, Electrical Supply Circle, Jamshedpur.

3. It appears that the respondent had not filed any objection and deposited the

amount raised in the bill. It is submitted that aforesaid amount deposited under protest.

4. It appears that later on, as prayed by the respondent, the Board issued "No Objection Certificate" so that the respondent may take electrical connection from "JUSCO". It further appears that after some time, the respondent filed a writ application challenging the aforesaid provisional assessment order as well as the aforesaid bill. The writ application disposed of by a Bench of this Court with a direction to the respondent to approach the Vidyut Upbhokta Shikayat Niwaran Forum, Ranchi (hereinafter referred as "Forum") for the redress of its grievance. Accordingly, respondent filed application before the "Forum". It appears that the "Forum" by the impugned order disposed of the said application of the respondent and held that the sanctioned load of respondent had not come under the "unauthorized use of electricity" and therefore, Section 126 of the Electricity Act, 2003 has no application. Against the said order petitioner-J.S.E.B. filed an appeal before learned Ombudsman, Jharkhand, which was dismissed vide order dated 30.11.2011. The aforesaid orders of the "Forum" and "Ombudsman", challenged in this writ application.

5. It is submitted by Sri Mukesh Kumar Sinha, learned counsel for the petitioner that in case of unauthorized use of electricity, a complete procedure prescribed under the Electricity Act, 2003. He further submits that the "Forum" as well as "Ombudsman" has no jurisdiction to decide the dispute relating to unauthorized use of electricity. Thus, both the impugned orders are illegal and without jurisdiction. Sri Sinha further submits that from the material available in the counter affidavit, it is apparent that respondent had accepted provisional assessment order and deposited the entire amount. Under the said circumstance, it is not open for the petitioner to challenge the said assessment order.

6. On the other hand, Sri Deepak Sinha, learned counsel for the respondent submits that the provisional assessment order is without jurisdiction, therefore, the same is non-est in the eyes of law. Hence, respondent has right to file application for refund of the said amount. He further submits that the "Forum" as well as "Ombudsman" had rightly decided that extracting of electricity in excess of contract demand is not "unauthorized use of electricity" therefore, Section 126 of the Electricity Act, 2003 has no application. Accordingly, he submits that impugned orders do not require any interference by this Court.

7. Having heard the submissions, I have gone through the record of the case. Admittedly, a provisional assessment order along with bill served upon the respondent and was asked to file objection within seven days or pay the amount mentioned in the bill. It is admitted position that the respondent, in stead of filing any objection, had deposited the amount, which had been accepted by the J.S.E.B. Section 126 of the Electricity Act, 2003, runs as follow:

"126. Assessment-(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or

used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objection, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5)."

8. From perusal of the aforesaid provision of the Act, it is clear that a consumer has two options. The first option is to file objection as per the provisions contained under sub-section 3 of the Section 126 of the Act. Whereas the second option is to accept the provisional assessment order and deposit the amount as per sub-section 4 of the Section 126 of the Act. In this case, I find that the respondent had elected second option. Under the said circumstance, in my considered view, later on it is not open for the respondent to challenge the aforesaid provisional assessment order, because "doctrine of election" will apply. This Court in *Mars Marcantiles Pvt. Ltd. Vs. Jharkhand State Electricity Board*, (2014) 4 JLJR 344, has decided this issue after relying upon the judgment of the Hon'ble Supreme Court and held that once the consumer choose the second option for depositing the amount as per Sub-section 4 of Section 126 of the Electricity Act, 2003, then later on it is not open for him to challenge the provisional assessment order.

9. Under the aforesaid facts and circumstance, I find that this case is squarely covered by aforesaid judgment. Moreover, I find that provisional assessment

order and bill issued under Section 126 of the Electricity Act can only be challenged before the assessing authority and thereafter appeal can be filed under Section 127 of the Electricity Act. Thus, "Forum" or "Ombudsman" have no jurisdiction to decide the matter. Therefore, in my view, impugned orders passed by the "Forum" and "Ombudsman" are wholly without jurisdiction, thus cannot be sustained.

10. Accordingly, I hereby allow this application and quash the impugned orders.