
(2015) 07 JH CK 0050

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3005 of 2011

Jharkhand State Electricity Board

APPELLANT

Vs

Usha Martin Limited

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Citation : (2015) 4 AJR 83

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Ajit Kumar, Senior SC, Navin Kumar, SC and R.K. Singh, ASC, for the Appellant; Biren Poddar, Sr. Adv., Darshana Poddar, Piyush Poddar and Deepak Sinha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—In this writ application, petitioner prays for quashing the judgment dated 31.3.2011, passed by the Electricity Ombudsman, Jharkhand in Case No. EOJ/09/2010, whereby and whereunder learned Ombudsman dismissed the appeal filed by the petitioner(JSEB) against the order dated 9.10.2010, passed by Vidyut Upbhokta Shikayat Niwaran Forum (hereinafter referred as "Forum") in Case No. 20 of 2006. Petitioner further prayed for quashing the order dated 09.10.2010, passed by the "Forum" in Case No. 20 of 2006, whereby and whereunder, he allowed the application filed by the consumer-Usha Martin Limited (sole respondent) and held that the respondent should not be treated as running "in arrears" on account of non-payment of fuel surcharge, and accordingly, further held that respondent is entitled to all rebates including load factor rebate as admissible under the provisions of new tariff 2003-04.

2. The sole respondent-Usha Martin Limited is a Company registered under the Companies Act and it took power connection from the petitioner under High Tension Service (HTS) category and the tariff issued by the Jharkhand State Electricity Regulatory Commission (hereinafter referred as Commission") is applicable on it. It is stated that the "Commission" had issued tariff order for the

financial year 2003-04 for HTS category consumer. As per the above tariff order, the HTS consumers are entitled to get two types of rebates (i) voltage rebate and (ii) load factor rebate. However, the load factor rebate is not available to such consumers, who are "in arrears". It is stated by the respondent that though the respondent had paid all the monthly energy bills within the due date, but in spite of that petitioner -Board refused to give load factor rebate to it on the pretext that the respondent was "in arrears" so far it relates to fuel surcharge. The case of the respondent is that it filed a writ application in the High Court challenging the various Notifications by which the rates of fuel surcharge has been fixed. In the said writ application, the respondent-consumer further challenged the different bills served upon it by the petitioner-Board levying fuel surcharge. It appears from the order of the "Forum" that in the aforesaid writ application an ad-interim order had been passed by the High Court in the following terms:

"During the pendency of the case, if the petitioners deposit 50% of impugned bill amount in respect to fuel surcharge of the year 2000-2001, the respondent will not take coercive step against the petitioners. This order, however, will not be applicable in respect to arrears of earlier period, current bill and other dues, if any."

The petitioners may also deposit the fuel surcharge for the period April, 2001 onwards at the same rate which it has been charged or paid up-to March, 2001 till final decision is taken by the Board."

3. Accordingly, the respondent-consumer states that it had paid 50% bill amount of fuel surcharge of the year 2000-2001 as per the direction of this Court and is also paying the fuel surcharge for the period April, 2001 onwards at the same rate. Thus, the respondent is not "in arrears" of the fuel surcharge. But inspite of that, petitioner-JSEB is not giving the benefit of load factor rebate to the respondent as admissible under the tariff order 2003-04.

4. It appears that aggrieved with above action of the petitioner, the respondent had filed an application before the "Forum" vide Case No. 20 of 2006 (annexure-1). The "Forum" after giving opportunity of hearing to both the sides vide judgment dated 09.10.2010, held that the petitioner cannot be treated as running "in arrears" on account of non-payment of the fuel surcharge and further held that the respondent is entitled to rebates including the load factor rebate as admissible under the tariff order 2003-04.

It further appears that against the aforesaid judgment of the "Forum", petitioner-JSEB filed an appeal before the Electricity Ombudsman, Jharkhand vide Appeal No. EOJ/09/2010 which was dismissed vide judgment dated 31.3.2011 and, thereby, the learned Ombudsman approved/confirmed the judgment passed by the "Forum" dated 09.10.2001 rendered in the Case No. 20 of 2006. Against the aforesaid two judgments of the learned Ombudsman and "Forum", the present writ application filed.

5. Sri Ajit Kumar, Senior Standing Counsel, appearing for the JSEB (now, JUVNL) submits that in the instant case it is an admitted position that in the tariff order 2003-04, a HTS consumer is entitled to get two types of rebates (i) voltage rebate and (ii) load factor rebate. He further submits that the load factor rebate is available to only those HTS consumers, who are not "in arrears". Sri Ajit Kumar, learned senior counsel for the petitioner then submits that it is also an admitted position that respondent had filed a writ application challenging the Notifications (by which rates of the fuel surcharge had been fixed) and the bills by which the respondent was asked to pay the fuel surcharge for the year 2000-2001. He then submits that it is also an admitted position that during the pendency of the writ application filed by the respondent, an ad-interim order passed, whereby the respondent was asked to deposit 50% of the impugned bill amount in respect of the fuel surcharge for the year 2000-2001 and the petitioner was directed not to take coercive step against the respondent. Accordingly, he submits that this Hon"ble High Court in the aforesaid writ application had not stayed the impugned bill, rather directed the petitioner for not taking any coercive step for realization of 50% of the bill amount. He then submits that the aforesaid 50% bill amount which the respondent has not paid for the year 2000-2001 towards the fuel surcharge is arrears and, therefore, the respondent is not entitled to get benefit of the load factor rebate as prescribe under tariff order 2003-04. Learned counsel for the petitioner further submits that the writ application filed by the respondent and other consumers challenging the Notification of the fuel surcharge has already been dismissed by this Court vide Judgment dated 8th May, 2015, passed in C.W.J.C. No. 2758 of 2000(R) and analogous cases. Accordingly, he submits that the interim order passed earlier in the case filed by the respondent is no more available, therefore, respondent is "in arrears" for payment of the fuel surcharge. Accordingly, he is not entitled to get rebate as stipulated in the tariff order 2003-04.

6. Learned counsel for the petitioner-Board relied upon the judgment of the Hon"ble Supreme Court in Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, (1997) 3 JT 545 : (1997) 2 SCALE 719 : (1997) 5 SCC 772 : (1997) 2 SCR 844 : (1997) 1 UJ 620 , and submits that once a writ application or any proceedings comes to an end with the dismissal, then in that case it is the duty of the Court to put the parties in the same position they would have been but for the interim orders of the court. Accordingly, he submits that now in the changed scenario, the respondent-consumer is not entitled to get the load factor rebate as per the provisions of the tariff order 2003-04.

7. On the other hand, Sri Biren Poddar, learned senior counsel for the respondent-consumer submits that during the operation of stay order, the recovery of any due is not permissible under the law, therefore, the respondent could not be said to be in default and/or "in arrears" during the aforesaid period. He submits that even after dismissal of the case, the consumer cannot be penalized for not paying the due amount by the order of the Court. Learned counsel for the respondent relied upon judgment of the Hon"ble Supreme Court in M/s.

Consolidated Coffee Ltd. Vs. The Agricultural Income Tax Officer, Madikeri and Others, (2000) 7 SCALE 520 : (2001) AIRSCW 2354 : (2000) AIRSCW 4173 : (2000) 7 Supreme 550 . He submits that since the 50% amount of the impugned bill is not payable during the pendency of the writ application, therefore, the same due is not recoverable, thus, the respondent cannot be treated as "in arrears" for the said amount. Accordingly, Sri Poddar, submits that respondent is entitled to get load factor rebate admissible under the provisions of the tariff order 2003-04.

8. Having heard the submissions, I have gone through the record of the case. The only question in dispute is -

"Whether the respondent (Usha Martin Limited) is said to be running "in arrears" for non-payment of 50% bill amount of the fuel surcharge for the year 2000-2001, in view of the fact that a Bench of this Court has directed the petitioner-Board for not taking any coercive step against the respondent for realization of the aforesaid amount?"

9. The Hon'ble Supreme Court in Adoni Ginning Factory and Others Vs. Secretary, Andhra Pradesh Electricity Board, Hyderabad and Others, AIR 1979 SC 1511 : (1979) 4 SCC 560 : (1979) 11 UJ 464 , had interpreted more or less similar ad-interim order passed by the Court at paragraph-5 and held-

"5. The primary submission of the learned counsel was that there was no default on the part of the appellants in view of the injunction granted by the Supreme Court. We are unable to agree. The injunction granted by this Court restrained the Government from realising the arrears of enhanced charges. For the purposes of these appeals we may proceed on the assumption that the order of injunction bound the Electricity Board also. All that the injunction did was to restrain the Board from realising the arrears, which meant that the Board was restrained from taking any coercive action such as disconnection of supply of electricity etc. for the realisation of the arrears. The operation of G.O. No. 187 dated January 30, 1955, as such, was not stayed. Thus the obligation of the consumers to pay charges at the enhanced rates was not suspended though the Electricity Board was prevented from realising the arrears. It was up to the consumers to pay or not to pay the arrears. If they paid the arrears they relieved themselves against the liability to pay surcharge. If they did not pay the arrears they were bound to pay the surcharge if they failed in the appeals before the Supreme Court..... "

10. In the instant case also, from perusal of the ad-interim order as quoted above, it is clear that this Court has not stayed the bill, rather it said that if respondent deposits 50% amount of the impugned bill in respect to fuel surcharge for the year 2000-2001, then the petitioner-Board will not take coercive step against the respondent-consumer. Meaning thereby, the respondent was not restrained from paying the remaining 50% of the fuel surcharge for the year 2000-2001, rather petitioner-JSEB was restrained from taking any coercive

step for realising the aforesaid amount. In that view of the matter, 50% bill amount remain arrears and this has been shown by the petitioner-JSEB in different bills raised by it. Thus, it was open for the respondent-consumer to pay the aforesaid amount and get the load factor rebate. If the respondent did not pay the arrears, then such rebate is not available to it.

11. The contention of Sri Biren Poddar, that if during the operation of the interim order the recovery of the tax stayed, even then after dismissal of the case, the assessee cannot be said to be in default, therefore, the assessee is not subject to any penalty. Sri Poddar relied upon Consolidated Coffee Ltd. Vrs. Agricultural Income Tax Officer, Madikeri and others(supra). The above decision has no application in the facts of this case, because in the instant case, there is no stay of the impugned bill. Secondly, in that case the Hon"ble Supreme Court was dealing with the penalty levied on the assessee for the tax amount, which has become due because of the stay order granted by the appellate authority. In this case, no penalty levied on the petitioner nor any coercive step taken against it for realization of the due amount. Rather in the instant case, the respondent claims that the benefit of load factor rebate be given to it, because the bill amount is not recoverable. The aforesaid contention of the petitioner is not tenable.

12. In the case of Khadi Gram Udyog Trust Vs. Ram Chandraji Virajman Mandir, Sarasiya Ghat, Kanpur, AIR 1978 SC 287 : (1978) 1 SCC 44 : (1978) 2 SCR 249 : (1977) 9 UJ 799 , the Hon"ble Supreme Court was interpreting the meaning of "arrears" as provided under Section 20 (4) of U.P. Buildings (Regulation of Letting, rent and Eviction) Act, 1972. Section 20 (4) of the aforesaid Act provides an opportunity to the tenant (against whom an eviction suit has been filed on the ground of default for payment of rent for four months) to pay entire arrears of rent along with damages to the landlord and/or deposit in the Court, then in that event the Court will pass an order relieving the tenant against his liability for eviction on that ground. In that case, the tenant had paid the rent from May 1, 1973 to February 28, 1975 together with interest. However, the tenant has not deposited the amount from January, 1960 to December 31, 1970 on the ground that the said rent is time-barred, therefore, not recoverable. The Hon"ble Supreme Court has held that -

"... The law is well-settled that though the remedy is barred the debt is not extinguished. On consideration of the scheme of the Act, it is clear that the statute has conferred a benefit on the tenant to avoid a decree for eviction by complying with the requirement of Section 20(4). If he fails to avail himself of the opportunity and has not paid the rent for not less than four months and within one month from the date of service upon him of a notice of demand, the landlord under Section 20(2) would be entitled to an order of eviction. Still the tenant can avail himself of the protection by complying with the requirements of Section 20 (4). As he has not deposited the entire amount due the protection is no more available. We agree with the view taken by the trial Court and the High

Court of Allahabad that the words "entire amount of rent due" would include rent which has become time-barred."

13. In view of the aforesaid judgment of the Hon"ble Supreme Court, it is clear that even if an amount is not recoverable, being barred by the statute and/or by the order of the Court, then also the due will not be extinguished. Accordingly, in the instant case, 50% amount of the bill, in respect of the fuel surcharge of the year 2000-2001 is not recoverable, but the same remain a due. Therefore, the petitioner has all rights to deny the benefit of the load factor rebate to the respondent as the aforesaid dues never extinguished even during the operation of ad-interim order.

14. It is admitted at the bar that the writ application filed by the respondent, challenging the Notification, by which the rates of the fuel surcharge had been fixed and the bills, raised by the petitioner, charging the fuel surcharge for the year 2000-01, has been dismissed by this Court vide judgment dated 8th May, 2015, passed in C.W.J.C. No. 2758 of 2000(R) and analogues cases. In that circumstance, the ratio of Kanoria Chemicals and Industries Ltd. and others Vrs. U.P. State Electricity Board and others (supra) is applicable in this case. In the aforesaid judgment, their lordships after considering various other judgments delivered by the Hon"ble Supreme Court had concluded that -

"..... It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court..... "

15. Thus, in view of the aforesaid law laid down by their lordships of the Hon"ble Supreme Court, I have no hesitation in holding that the respondent-consumer is "in arrears" for fuel surcharge for the financial year 2000-2001, therefore, not entitled for getting the load factor rebate, as admissible under the provisions of the tariff order of 2003-04.

16. In view of the discussions made above, I hereby allow this writ application and quash the judgments delivered by learned Electricity Ombudsman, Jharkhand and the "Forum", dated 31.03.2011 and 09.10.2010, respectively. I further order and declare that since the respondent-consumer is "in arrears" during the relevant period, therefore, not entitled for the load factor rebate under the provisions of the tariff order of 2003-04.