(2014) 11 JH CK 0052

In the Jharkhand High Court

Case No : W.P.(C) No. 3986 of 2009

Jharkhand Urja Vikash Nigam Limited APPELLANT

Vs

Dew Concrete Pvt. Tiles Ltd. and Others RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:
Electricity Act, 2003 — Section 126, 126(3), 126(5), 127, 135

Citation : (2015) 1 JLJR 609

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Rahul Kumar and Prabhat Singh, Advocates for the Appellant; M.S. Mittal, Senior Advocate, Vineet Prakash and Shyam Narsaria, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—The learned counsel appearing for the petitioner seeks permission to make necessary correction in the cause title.

2. Permission is accorded.

3. Let necessary correction be carried out during course of day.

4. Seeking quashing of order dated 28.07.2008 passed by the Electrical Superintending Engineer, Electric Supply Circle, Jamshedpur, the petitioner-Jharkhand Urja Vikash Nigam Limited has preferred the present writ petition.

5. The brief facts of the case are that, the respondent No. 1 M/s. Dew Concrete Pvt. Tiles Limited is engaged in business of manufacturing concrete sleeper for the Indian Railways. The H/T Industrial connection to the respondent No. 1 was inspected by the Electrical Executive Engineer (MRT),-J.S.E.B., Jamshedpur on 30.01.2006. A surprise inspection was conducted on 07.02.2006 in which both the seal L.V.-cum-C.T. Box were found broken. A First Information Report was lodged on 07.02.2006 and the loss to the Board was assessed at Rs. 34 lakhs. The respondent No. 1 moved this Court in W.P.(C) No. 926 of 2006 challenging the provisional order of assessment. This Court directed the respondent No. 1 to

deposit a sum of Rs. 30 lakhs and to move before Vidyut Upbhokta Sikayat Niwarayn Forum of Jharkhand State Electricity Board. However, the Forum declined to hear the matter on the ground of lack of territorial jurisdiction and therefore, the respondent No. 1 approached this Court again in W.P.(C) No. 2885 of 2007 which was disposed of vide order dated 07.02.2008 directing the respondent No. 1 to file representation to the Superintending Engineer who was directed to assess the actual loss caused to the Board. A further direction was also issued to the Superintending Engineer to pass appropriate order of adjustment/refund, if the amount paid by the respondent No. 1 was in excess of the actual loss assessed by the Superintending Engineer. Consequently, the Superintending Engineer passed the assessment order dated 28.07.2008, assessing the total loss to the Electricity Board at Rs. 11,12,600/-.

6. It is stated that Section 126(5) of the Electricity Act, 2003 provides that the Assessment Officer has to find the period of unauthorized use of electricity in cases where exact period of unauthorized use of electricity is not possible to ascertain. The Electricity Act, 2003 provides a mechanism for assessment which is on LxFxHxD Formula, in case of unauthorized use of electricity. The energy used is required to be assessed under Clause 16.9 of the Tariff-1993 which was applicable till December, 2003.

7. A counter-affidavit has been filed on behalf of the respondent No. 1 raising a plea of maintainability of the writ petition on the ground that there is a provision for appeal under Section 127 of the Electricity Act, 2003. It is stated that on a false accusation, a First Information Report was lodged against the director of the company. A final assessment order was passed under Section 126(3) of the Electricity Act, 2003 whereunder, total loss was assessed at Rs. 11,12,600/- and in terms of order dated 07.02.2008 in W.P.(C) No. 1819 of 2010 the petitioner-Electricity Board was liable to adjust/refund excess amount. In view of decision in "M/s. Jai Mahavir Atta Mill & another Vs. Jharkhand State Electricity Board and others" (in L.P.A. No. 164 of 2009), formula of 1993-tariff that is, LxFxHxD cannot be made applicable in this case and the judgment in J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, is also not applicable in the present case. In the said judgment, the provision of 1993-tariff of the Bihar State Electricity Board has been dealt with and the provision of the Electricity Act, 2003 has not been considered in J.M.D. Alloys Case.

8. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

9. The scheme of the Electricity Act, 2003 indicates that the provision under Section 126 which is under Chapter XII and Section 135 which in part XIV of the Act are two separate and independent provisions. In cases falling under Section 126 when the assessing officer comes to a conclusion that the consumer has indulged in unauthorized use of electricity the assessing officer provisionally assesses, to the best of his judgment, the electricity charges payable by the assessee. After order of provisional assessment is served upon the assessee, a

reasonable opportunity of hearing is granted to the assessee and thereafter, a final order of assessment is passed. Against the final assessment order, an appeal under Section 127 of the Electricity Act is maintainable.

10. The learned counsel for the respondents has contended that against the order of final assessment, the present writ petition filed by the Jharkhand Urja Vikash Nigam Limited is not maintainable. Per contra, the learned counsel appearing for the Jharkhand Urja Vikash Nigam Limited has contended that this is a case of theft of electricity in which a First Information Report has been lodged on the same day i.e. on 07.02.2008. The conclusion in the order of final assessment is apparently erroneous.

11. No doubt a First Information Report has been lodged in the present case however, in view of the judgment in "M/s. Jai Mahavir Atta Mill & another Vs. Jharkhand State Electricity Board and others", the contention of the petitioner that the Electrical Superintending Engineer should have calculated the loss caused to the petitioner in terms of 1993-tariff cannot be accepted. Moreover, the Electrical Superintending Engineer has passed the final assessment order in pursuance of order dated 07.02.2008 in W.P.(C) No. 2885 of 2007 and the order passed by this Court was not challenged by the Electricity Board and thus, became final. Moreover, Section 154 of the Electricity Act gives power to the Special Court to assess the civil liability.

12. In the result, the writ petition is dismissed. However, the petitioner would be at liberty to adopt procedure prescribed in law for recovering the loss caused to the petitioner Jharkhand Urja Vikash Nigam Limited in the proceeding under Section 154 of the Electricity Act. Accordingly, I.A. No. 1105 of 2010 stands disposed of.

