(2003) 09 CAL CK 0022

In the Calcutta High Court

Case No : Writ Petition No. 16941 (W) of 2003

Kumar Plastics Pvt. Ltd. and Another — APPELLANT

Vs

West Bengal State Electricity Board and Others — RESPONDENT

Date of Decision : 29-09-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) 1 CHN 37

Hon'ble Judges : Pradipta Ray, J

Bench : Single Bench

Advocate : Arindam Sinha and V. Raja Rao, for the Appellant;Pramit Ray and Sumit Ray, for the Respondent

Judgement

Pradipta Ray, J.—The petitioner No. 1 Kumar Plastics Pvt. Ltd. a company incorporated under the provisions of the Companies Act, 1956 is a consumer of electricity supplied by the West Bengal'' State Electricity Board (hereinafter referred to as the Board). The petitioner No. 2 is the Managing Director of the petitioner No. 1 company. In this writ petition the petitioners has challenged the provisional assessment made by the Superintending Engineer, Commercial, Howrah District Circle upon allegation of malpractice/theft/pilferage of energy, assessing provisionally an amount of Rs. 47,71,704/- payable by the petitioner company and demanding immediate payment of 25% of the provisionally assessed amount upon threat of disconnection.

2. It has been stated in this writ petition that the metering apparatus installed by the Board for the purpose of recording consumption of electricity are in a room kept under the lock put by the Board and the key of the said room containing metering apparatus was in the custody of the Board at the material point of time. On or about January 6, 2003 several employees of the respondent No. 1 Board visited the petitioner''s factory, opened the lock of the meter room with the key in their possession and checked the metering equipment. On the said date they did not make any kind of allegation against the petitioner Company and left the

factory premises locking the said room. On January 7, 2003 a team of staff of the Board came, opened the meter room, disconnected supply of electricity, removed the metering apparatus, drew up a seizure list and got it signed by two unskilled labourers of the factory. The respondent No. 1 thereafter raised a bill dated January 16, 2003 for an aggregate amount of Rs. 1,22,800/- including the charge for alleged pilferage detected on January 7, 2003. As the petitioners were in need of immediate restoration they immediately paid the said bill amount without prejudice. On January 24, 2003 a new meter was installed in meter room and supply was restored to the factory. On February 7, 2003 the impugned provisional assessment bill for a total amount of Rs. 47,71,704/- was served on the Company. The assessment notice contained a direction to pay 25 per cent of the assessed amount for continuation of supply of electricity subject to final assessment.

3. The petitioners have denied the allegation of theft or pilferage of electricity and alleged that as the key of the meter room was with the officers of the respondent No.1 Board, there could not be any tampering or interference with the metering apparatus by the petitioners or their men. The petitioners have raised a suspicion that when on January 6, 2003 the employees of the Board opened the meter room without giving any notice and without calling anybody from the petitioner company the said employees might have tampered with the metering apparatus in order to foist a case of malpractice and pilferage and to extort money on such pretext.

4. The petitioners have further contended that once the Board raised a bill after alleged detection of malpractice and obtained payment they cannot raise any further bill before making final assessment after giving opportunity of hearing to the petitioners.

5. One Sri Tikenderjit Pal working as Foreman in the Central Testing Deptt. of the Board has affirmed an affidavit admitting that he visited the premises of the petitioners on January 6, 2003 under the authority given by the office of the Deputy Chief Engineer, Testing, for the purpose of routine checking of the metering performance. He does not say that there were other employees with him. According to him he detected mismatching of current displayed in the meter and reported the same to his superior on the next date. On the basis of his report a team led by Sri Tapan Kumar Chatterjee, Superintending Engineer, Vigilance, visited the factory premises on January 7, 2003 and detected that the meter was tampered for lowering energy registration. It has further been pointed out in the said affidavit that after installation of new meter the petitioners consumption of electricity rose appreciably for the month from January 16, 2003 to February 19, 2003 to about Rs. 95,000/- showing that previous meter was under registering consumption of electricity.

During hearing of this writ petition several highly disputed questions of fact have been raised particularly relating to the inspection held on January 6, 2003 and the subsequent report of pilferage made on January 7, 2003, It has been pointed out by the respondents that employees of the Board are always authorized and have the right to make surprise visits to check and verify the working of the metering equipments. According to them the inspection held on January 6, 2003 was such a routine inspection during which mismatching of current was detected.

6. It is not possible to decide those disputed questions of fact in the writ jurisdiction. Final assessment is to be made after hearing the petitioners. In the hearing for the final assessment the petitioners can raise all questions disputing the allegation of malpractice and pilferage and such factual dispute, if raised, will be determined therein.

7. The petitioners have however raised certain pertinent questions relating to inspection of January 6, 2003. It has been contended that the surprise inspection made by Board''s employee on January 6, 2003 was wholly unauthorised, illegal and mala fide, Ld. Advocate for the petitioners has referred to the provisions of Clauses 22(A), 22(B) and 22(C) of the Conditions of Supply of the Board (hereinafter referred to as the "Supply Condition") to point out that only the officers mentioned in the table given in the said Clause 22(C) can enter the premises, inspect installation, disconnect the supply and lodge F.I.R.

8. On behalf of the Board it has been submitted that under Clause 14 of the Agreement entered into between the consumer and the Board of employees of the Board have always the right to inspect the electrical equipments of the consumer''s installation for all or any of the purposes connected with the supply of electrical energy and as such the inspection made on January 6, 2003 was authorized and lawful.

9. Undisputedly the key of the room containing metering apparatus was with the Board. There is also no dispute that on January 6, 2003 at least one employee of the Board came to the factory premises without any notice, opened the key and entered the meter room in absence of anybody from the consumer. There is no allegation that the consumer caused any obstruction or did not allow the Board''s employee to inspect the metering installation.

10. In the back-drop of the said undisputed facts the relevant clauses relating to inspection of electrical equipments are required to be examined and analysed. The relevant provisions are:

CLAUSE 14 OF THE AGREEMENT:

The consumer shall from time to time and at all times allow the employees of the Board to inspect the electrical equipment of the consumer''s/installation for all or any of the purposes connected with the supply of electrical energy to the consumer under this Agreement.

CLAUSE 9 OF THE CONDITIONS OF SUPPLY:

a) The Board''s representatives shall be entitled and must be permitted any reasonable times upon informing to the occupier, or to any member of his family or to any representative in his employ the purpose of visit, to enter upon premises to which energy is supplied for the purpose of inspecting, testing, repairing or altering and reading meters, cutting off supply and for other purposes connected with apparatus belonging to the Board.

b) The consumer shall afford the Board all reasonable information and facilities to enable them to keep all records required under the Indian Electricity Act, 1910 and Rules or Govt. Regulations relating to the supply and use of electrical energy for the time being in force.

c) The Board also reserves the right to have access to the Board''s apparatus and/ or consumer''s installation and apparatus in the premises for inspection and other purposes.

CLAUSE 22(A)(1) OF THE CONDITIONS OF SUPPLY:

Notwithstanding anything contained is(sic) condition 9, any officer of the Board authorised in this behalf under condition 22(C) and accompanied by such other employee(s) of the Board as he may take with him for the purpose, may at any time enter upon the consumer''s premises and check in ********** body seals, apparatus, circuits or installation through which energy is supplied or is being supplied or is being consumed, used or drawn, where there is reason to suspect that the consumer has committed or is being engaged in the commission of, any act of prejudicial use of supply, or malpractice or theft, as the case may be. In case the consumer or its representative or its employee refused to present, the authorized officer and employee(s) accompanying him shall record such refusal and shall proceed in the matter.

CLAUSE 22(B)(1) OF THE CONDITIONS OF SUPPLY:

Where on an inspection made under Clause 22(A) the authorized officer is of the view that the consumer has committed an act of malpractice, or theft or pilferage of energy, the authorized officer shall disconnect the supply of energy of the consumers forthwith and without any notice to the consumer and shall lodge an FIR with the local Police Station within 24 hours from such disconnection.

11. Clause 14 of the Supply Agreement casts an obligation on the consumer to allow/ permit the employees of the Board to inspect electrical equipments. This clause does not deal with the right of the supplier to inspect. Right actually flows from clause/para 9 of the General Conditions of Supply. Clause/para 9 of the General Conditions of Supply requires an information to be given to the occupier of the premises. A combined reading of the said Clause 14 of the Agreement and clause/para 9 of the Supply Conditions indicates that the Board''s representative are entitled to inspect the electrical equipment after informing the consumer. Even in case of surprise visit or inspection, the representatives of the Board is to inform the consumer to be present at the time of actual inspection/ testing of the equipments. Actual checking is to be done after giving an opportunity to the consumer or his representative to be present.

12. Clause/para 22(A) of the Supply Conditions also reinforces the requirement that the actual testing or inspection should be made in presence of the consumer or its representative. Procedural fairness requires removal of elements which may give rise to reasonable suspicion about genuineness and/ or bona fide of the inspection report. Ultimate inspection or checking without giving any opportunity to the consumer to be present at the time of inspection and making such serious allegation of theft or pilferage are contrary to basic principle of justice, fairplay in action and even the provisions of the Supply Conditions.

13. In view of the undisputed position that metering apparatus room was under the lock and key of the respondent Board, that employees of the Board entered the said room on January 6, 2003 and held alleged inspection without any notice and in absence of any representative of the petitioner the allegation made against the petitioner require deeper and closer determination by some independent authority or functionary.

14. The petitioners have next contended that once a bill for payment under clause/para 22(7)(C) has been raised and payment made for obtaining restoration of supply they can not be again threatened with disconnection for non-payment of the 25 per cent of the provisionally assessed amount.

15. The amount under clause/para 22(B)(2)(a) of the Conditions of Supply is an ad hoc amount payable by a disconnected consumer for getting restoration of supply even before provisional assessment. The said clause expressly provides that payment under Clause 22(B)(2)(a) is an ad hoc amount to be adjusted against provisional/ final assessment. Clause/para 22(J)(2)(c) of the Supply Conditions makes the position clearer. Aforementioned clause/para 22(J)(2)(c) of the Supply Conditions is quoted below:

22(J)(2)(c). Such notice shall:--

"inform the consumer to pay the charges of provisional assessment after giving due credit to payment made, if any, under Clause 22(B)(2)(a) hereinabove for continuation of supply/restoration of supply in case no payment has been made under Clause 22(B)(2)(a) hereinbefore, within the date fixed in the notice, failing which line shall be disconnected. Such restoration shall be made upon payment of amount assessed provisionally and upon compliance of all other formalities that may be prescribed by the authorized officer to make provisional assessment as per Clause 22B(2)(G) hereinabove."

Restored supply of electricity will be continued only if provisionally assessed amount as demanded is paid. In the present case the petitioner No. 1 Company has been asked to pay 25% of the provisionally assessed amount for continuation of supply of electricity. If the consumer does not pay the amount as provisionally assessed and demanded, supply line is liable to be disconnected. Payment under Clause 22(B)(2)(a) of the Supply Conditions is a preliminary ad hoc payment subject to payment of provisionally or finally assessed amount. Contention of the petitioner in this respect can not be accepted.

16. As already pointed out this case has a special factual dimension inasmuch as officer of the Board admittedly opened and entered into the meter room without any notice and on the next day vigilance team inspected the meter room and the metering apparatus and detected tampering of seal. Even after unilateral inspection the employee of the Board did not lodge any complaint on the said night.

17. The said employee did not also inform the petitioner Company or his superior authority about his suspicion on January 6, 2003. It is thus required to be decided whether the petitioner Company''s could have any access to the metering apparatus.room which was admittedly kept under the lock and key of the Board. Recent allegations against a section of the Board''s inspecting staff and the Board''s own findings against some of its officers indicate that Board''s employees are not always above Board. This Court does not want to mean that in the present case the allegations against the petitioner No. 1 Company have been made mala fide but a suspicion as raised by the petitioners can not be said to be without any basis.

18. Petitioners have also raised some other pertinent factual aspect which deserve consideration by fact finding body. Petitioners have pointed out that on March 22, 2002 Electrical Inspector, Govt. of West Bengal inspected the electrical apparatus in the factory premises and issued his approval order. Thus there could not be any pilferage before March 22, 2002. It has also been stated that on August 19, 2002 the Board''s employees broke the seal and put a new one.

19. If the said statement is correct then there could not be allegation of tampering with the seal at least before August 19, 2002. The petitioners have also raised a technical question that whenever meter reading is obtained by use of Meter Reading Instalment (MRI), the seal is required to be broken and new seal is put after such measurement.

20. Thus the question raised by the petitioners do not appear to be frivolous or mere pretexts. All these questions are required to be considered and determined by the appropriate authority after giving due opportunity of adducing evidence and hearing. In order to sustain the allegation theft on pilferage of electricity that Board will be required to establish that the petitioners could have access to the metering apparatus room and tampered with the seal. In view of the special features of this case this Court is of the view that the petitioners can not be compelled to pay the amount demanded in the provisional assessment notice till determination of all factual questions in the proceeding for final assessment. Moreover proceeding for final assessment should be heard and disposed of by a competent officer from the Head Quarter and not by any officer attached to Howrah District Circle.

In the special facts and circumstances stated above this Court holds that the petitioners are not required to pay the amount as demanded in the provisional assessment until it is determined and established the petitioners could have access to the metering apparatus room and that the Board''s employee''s unilateral inspection of January 6, 2003 without asking any person from the petitioners company to be present was authorized, lawful and proper. The petitioners are at liberty to file written objection to the provisional assessment notice, if not already filed, within 4 weeks from date. In the present case a competent officer of appropriate rank and status from the Head Quarter of the Board will hear the dispute, determine all the relevant questions raised by the petitioners and pass a reasoned order. The officer hearing the dispute will give opportunity to the writ petitioners and the Howrah District Circle of the Board of adducing evidence and also of hearing. The officer from the Head Quarter will complete the hearing and pass his reasoned order within three months from the date of communication of this order.

