(2015) 02 JH CK 0070

In the Jharkhand High Court

Case No : Writ PetitionC. No. 2224 of 2010

Laxmi Business and Cement Company Ltd. APPELLANT

Vs

Jharkhand State Electricity Board and Others RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:
Electricity Act, 2003 — Section 126, 135, 135(1A), 154(5)(6)

Citation : (2015) 2 AJR 182

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : D.K. Pathak, for the Appellant; Navin Kumar, S.C. and Ravi Kumar Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This writ application has been filed for the following reliefs:

"(a) For issuance of an appropriate writ or a writ in the nature of MANDAMUS directing upon the Respondents to forthwith restore the electrical connection of the petitioner which has been disconnected on 5.5.2010 pursuant to a purported inspection alleging unauthorized use of electricity in terms of Section 135 of Electricity Act, 2003, inasmuch as the said disconnecting is tainted with malafide and arbitrariness and without any reasonable basis thereof.

(b) For issuance of an appropriate writ or writ in the nature of CERTIORARI for quashing the inspecting report dated 5.5.2010. inasmuch as the allegation levelled against the petitioner based upon such inspecting report alleging breaking of seals and unauthorized usage of electricity is not within the domain of Section 126 or 135 of the Electricity Act, 2003, since merely because some of the seals were alleged to be found broken does not make out the case of theft of Electricity.

(c) For a declaration that until such time the Electricity Board gets the meter tested under the provision of Clause 13.4 of Electricity Supply Code, Regulations, 2005, the licensee cannot proceed under section 126 of the Electricity Act, 2003 in raising penal bill, until such time the provision of clause 13.4 of the Electric Supply Code are strictly complied with by the licensee.

(d) For issuance of an appropriate writ or a writ in the nature of MANDAMUS directing upon the Respondents to forthwith send the meter, which has been removed from the petitioners premises on 5.5.2010 to the third party investigation/laboratory, as approved by the State Electricity Regulatory Commission.

(e) For issuance of an appropriate writ or writ in the nature of MANDAMUS directing the third party investigation/inspecting by the Vigilance Department of the Government of Jharkhand, in order to analyze/investigate as to whether the seals alleged to have been tempered with/duplicate can be verified so as to arrive at a logical conclusion, as to whether at all the seals purported to have been tampered is the actual seals of the Board or not and also as to whether in order to harass the petitioner allegations of theft is being made or not.

(f) For issuance of any other appropriate writ(s) or direction(s) or order (s) as Your Lordship may deem fit and proper in view of the facts and circumstances of the case for doing conscionable justice to the petitioner."

2. An Interlocutory Application filed by the petitioner being I.A. No. 2023 of 2010 wherein petitioner had prayed that provisional order of assessment passed on 05.05.2010 be quashed. Petitioner further prayed that the bill of Rs. 55,06,254/- raised on the basis of provisional assessment order dated 05.05.2010 be also quashed.

3. It appears that aforesaid I.A. has been allowed vide order dated 18.05.2010 and it is ordered that the amendment sought for in I.A. petition be treated as the part of main writ application. By the said order petitioner was directed to deposit a sum of Rs. 25,00,000/- (rupees twenty five lacs) in two equal installments, within a period of four weeks. It is further directed that if such payment made by the petitioner then the electric connection of the petitioner''s premises shall be restored.

4. It appears from the counter affidavit that the said amount has been paid, consequent upon, the electric connection of the petitioner''s premises restored. Thus, at present, the petitioner has confined his prayer for quashing the inspection report dated 05.05.2010, quashing of provisional assessment order on the basis of above inspection and also quashing of bill of Rs. 55,06,254/- issued on the basis of aforesaid provisional assessment order.

5. Petitioner is a Company, registered under the provisions of Company''s Act. 1956 and it established a Cement Plant at Morangi, Hazaribagh. It further appears that for the running of its industry, petitioner took H.T. Connection from the Jharkhand State Electricity Board (herein after referred as ''the Board'') having contract demand of 1000 KVA. It is further stated that the Metering Unit

of the petitioner''s premises changed by the authorities of the Board on 01.02.2010. Thereafter, officials of the Board used to take distant reading every month. However, in the month of March, 2010, due to some problems the officers of the Board visited the factory premises of the petitioner and issued Metering Unit report vide Annexure-2.

6. It is alleged that thereafter, officers of the Board used to come to the premises of the petitioner and made extraneous demand, which was refused by the petitioner. Thereafter, suddenly on 05.05.2010, a team of the officers of the Board came in the premises of the petitioner and broke the seals of Metering Unit. The officers of the Board then broke the door of the power room and five seals, installed there. It is stated that against the aforesaid acts and omissions, petitioner tried to lodge report before Muffasil Police Station but his report not accepted by the police. Thereafter, petitioner sent the complaint to the Officer-in-Charge, Muffasil P.S. by registered post. It is stated that thereafter, the inspecting team went away and prepared an inspection report in the said report, signature of the petitioner or any of his representative not obtained. It is stated that in the report the officers of the Board stated that they found four flexible PVC wires connected with the CT secondary terminals, through inside glass of secondary box coyer of the metering unit. It is also stated in the inspection report that the above connection with the CT secondary terminal, had been done to suppress the actual energy consumption. It is further stated that one number of seal bearing Sl. No. 6173913 was found missing from the secondary box cover of metering unit which had been installed on 01.02.2010. It was also found by the inspecting team that the seal fixed on the door of metering room was found open. It appears that on the basis of aforesaid inspection, a First Information Report lodged against the petitioner, wherein it is alleged that the petitioner caused loss of Rs. 55,00,000/- to the Board. It further appears that the electric connection of the petitioners'' factory premises disconnected and the meter box removed and seized. It is stated that when on the basis of written complaint filed by the petitioner, no FIR lodged, then petitioner filed a complaint petition in the court of learned Chief Judicial Magistrate, Hazaribagh vide Annexure-6.

7. It appears that against the aforesaid inspection and disconnection of electric line petitioner filed the present writ application. Thereafter, a provisional assessment order passed on 05.05.2010, wherein the Assessing Authority assessed that petitioner put loss to the Board, to the tune of Rs. 55,06,254/-. The aforesaid assessment order served upon the petitioner vide letter No. 1589 dated 06.05.2010 and he was requested to make payment of the aforesaid amount or if he had any objection then file his representation within the statutory period. It appears that along with the aforesaid letter a provisional bill also served upon the petitioner. Thus, aforesaid provisional assessment order, supplementary bill as well as letter dated 06.05.2010 had been challenged by way of amendment.

8. It is submitted by the learned counsel for the petitioner that for initiating a

proceeding under section 126 of the Electricity Act, 2003 (herein after referred as the Act). it is necessary for the Board to comply the provisions of the Clause 13.4.1 of the Electricity Supply Code Regulation, 2005(herein after referred as the Regulation). It is further submitted that according to the aforesaid provisions, it is necessary for the Board to send the meter for testing in a National Laboratory and after receiving the report of National Laboratory, the Board could have entitled to assess the loss as per the procedure prescribed under section 126 of the Act. It is further submitted that action of the authorities of the Board in lodging the First Information Report is mala fide because the petitioner refused to meet their illegal demand. It is further submitted that calculation made in the provisional assessment order is illegal, therefore, cannot be sustained by this Court.

9. On the other hand, learned counsel for the respondents submitted that in the First Information Report, it is mentioned that inspection carried out by the Board''s officials in presence of police officers and it was found that petitioner tampered five seals of the metering unit secondary box cover. The inspection team also found that four flexible PVC wires were connected with the CT secondary terminals through inside glass of the secondary box cover of the metering unit. It is further submitted that above connection of CT secondary terminal had been done to suppress the actual reading of energy consumption. It is stated that from the aforesaid acts and omissions, it is clear that petitioner was committing theft of electrical energy. Accordingly, First Information Report lodged against the petitioner. It is stated that provisional assessment order has been made on the basis of formula LxHxFxD, which was recognized by the Division Bench of this Court in M/s. Shyam Lal Iron and Steel Company. v. Jharkhand State Electricity Board and others, reported in 2013 (3) JLJR 435. Thus, there is no illegality in the provisional assessment order and the bill raised on the basis aforesaid provisional assessment order. It is submitted that allegation of theft is mala fide and imaginary, because at the time of inspection, police officers present, which will manifest from the First Information Report. Accordingly, it is submitted that this writ application has no merit, thus, liable to be dismissed.

10. Having heard the submissions, I have gone through the records of the case.

11. It is an admitted position that an inspection carried out on 05.05.2010 in the factory premises of the petitioner by a team of the officers of the Board. From perusal of inspection report (Annexure-4), it appears that inspection team found that four flexible PVC wires were connected with the CT secondary terminals through inside glass of the secondary box cover of the metering unit. The inspecting team further found that the aforesaid connection made with a view to suppress the actual reading of the energy consumption. The team further found that one number of seal bearing Sl. No. 6173913 was found missing from the secondary box cover of metering unit which was installed on 01.02.2010. The team further found that the seal fixed on the door of the metering room was

open. Accordingly, First Information Report lodged against the consumer (petitioner). On that day itself, the team of the Board disconnected the line, removed the meter box and seized the various articles from the place of occurrence.

12. From perusal of First Information Report, it is clear that at the time of inspection, police officers present along with the inspection team. Thus, in my view, the contention of learned counsel for the petitioner that the officers of the Board broke the door of the metering unit and installed PVC wires with a view to falsely implicate the petitioner in a theft case is not acceptable. Moreover, aforesaid allegation made by the petitioner against the inspecting team is a question of fact, which can be looked into by the trial court while appreciating the evidence led by the petitioner in his defence. In my view, at this stage, in the writ jurisdiction, it is not open for this court to quash the inspection report on the basis of aforesaid disputed question of fact.

13. The next contention of the learned counsel for the petitioner that before making provisional assessment order, it is necessary for the Board to take recourse of Clause 13.4.3 of the Regulation, 2005 and send the meter for testing in a National Laboratory is misconceived. From the plain reading of the provisions contained in Clause 13.4 of the Regulation, 2005, it is clear that the same relates to the testing of the meter, if the meter is defective. The instant case relates to theft of electricity, thus, in this case, provisions of section 135 of the Act will apply. As per section 135(1A) of the Act, in case of theft, it is open for the Assessing Officer to disconnect the electric connection in the premises and make assessment of the loss and serve a bill upon the consumer (petitioner). Clause 15.8 of the Regulation, 2005, prescribes the method and formula (LxHxFxD) for assessment in case of theft of electricity.

14. From perusal of assessment order as contained in Annexure-11, it appears that the Assessing Officer made assessment applying the aforesaid formula. Thus, prima facie, I. find no illegality in the same. The Division Bench of this Court in M/s. Shyam Lal Iron and Steel Company (Supra) had approved the aforesaid method of assessment in case of theft. Thus, the contention of learned counsel for the petitioner that the assessment has not been made in accordance with law is not acceptable. However, the aforesaid assessment can be challenged by the petitioner before the Special Court as per provisions contained in Section 154(5)(6) of the Act At this stage, I do not find any reason to interfere with the aforesaid assessment.

15. In view of the discussions made above. I find no merit in this writ application. Accordingly, the same is dismissed.

16. As noticed above, petitioner has already deposited Rs. 25,00,000/-(rupees twenty-five lacs) vide order dated 18.05.2010, he is directed to deposit rest of the assessed amount within one month from today. If said amount is not deposited by the petitioner, within the aforesaid period; it is open for the

electricity Board to disconnect the electric connection of the petitioner''s premises and take all other coercive steps for realization of the assessed amount.

