

(2010) 01 JH CK 0069
In the Jharkhand High Court

Madhu Sudan Mittal

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 13-01-2010

Acts Referred:

Citation : (2010) 01 JH CK 0069

Hon'ble Judges : Gyan Sudha Mishra, C.J.;Rakesh Ranjan Prasad, J

Bench : Division Bench

Judgement

1. This matter has been listed for further orders on the writ petition which initially had been filed by the petitioner, M.S. Mittal but it was subsequently, vide order dated 10.11.2006, treated by the High Court as a petition on its own motion and the petitioner was appointed as amicus curiae to support the suo motu proceeding.

2. The primary issue which had been raised by the petitioner and was later taken up by the High Court is with regard to huge shortage of electricity in the State of Jharkhand and this Court ever since 2001, has been passing numerous orders to ensure that the Respondent-Jharkhand State Electricity Board do not (sic) behind in supplying the required electricity which is required for the State of Jharkhand.

3. In the process, the Damodar Valley Corporation was impleaded as a party respondent along the Central Government and the Jharkhand State Regulatory Commission.

4. On perusal of the materials on record, Mr. M.S. Mittal, Amicus Curiae invited the attention of this Court to the order passed by a Division Bench of this Court on 1.5.2008 wherein the Court, inter alia, had issued a direction as follows:

The Central Government already agreed to supply 267 MW of electricity and D.V.C 150 MW. Both the Central Government and the D.V.C would ensure that they, as far as practicable, supply the agreed quantity of electricity. The D.V.C, as mentioned in the report filed by the Advocate General on the basis of the letter of the Chief Engineer, Commercial, and as submitted by the counsel appearing

for D.V.C, will continue supplying 150 MW of electricity to the Board as per the earlier agreement. It is to be noted that only under very very special circumstances, when D.V.C will have no alternative, in that situation, the supply of electricity by D.V.C will be less than 150 MW. Further the D.V.C must be sincere to supply the said quantity of electricity to J.S.E.B as agreed.

5. It is pointed out that neither the D.V.C nor the Central Government had gone up in appeal against this order, although Jharkhand State Rajya Vidyut A.P.K.S. Samity had filed an appeal before the Supreme Court, vide S.L.P (Civil) No. 14996 of 2008 and the learned Judges of the Supreme Court although had granted interim stay in regard to one of the directions regarding bifurcation of the Jharkhand State Electricity Board, it clearly recorded that rest of the directions will be carried out. Thus, it is obvious that the Hon''ble Supreme Court itself had confirmed the direction of this Court quoted hereinbefore which was passed in presence of the counsel for the D.V.C and the D.V.C had been clearly directed to supply 150 MW of electricity to the Board and the Central Government also had agreed to supply 267 MW of electricity to the Board.

6. It is now informed that the Central Government has been supplying only 25 MW of electricity as against its assurance of 267 MW of electricity and the D.V.C is supplying only 25 MW as against its assurance of 150 MW of electricity.

7. When the fact was brought to the notice of the counsel for the D.V.C, it had its own explanation for not supplying the required quantity of electricity which is 150 MW but they do not justify "very very special in circumstance" for non supply.

8. Since the order dated 1.5.2008 passed by this Court incorporating the condition quoted hereinbefore clearly had directed the D.V.C to supply 150 MW of electricity against which they are supplying only 25 MW, we are clearly of the view that the D.V.C ought to increase its supply as it had not filed appeal against the order of this Court. But at the same time, we prefer to take a pragmatic view of the matter and hence, at this stage, we direct the D.V.C for the time being to comply the order of this Court by increasing the supply of electricity to 100 MW to the State of Jharkhand meaning thereby that in addition to 25 MW of electricity which it is now supplying to the Jharkhand State Electricity Board an additional 75 MW shall be supplied to the Jharkhand State Electricity Board.

9. Since the direction to the Central Government was also to the effect that it had agreed to supply additional 267 MW of electricity it is now informed that it is supplying only 220 MW of electricity, there is clearly a deficit supply at the instance of the Central Government also contrary to (sic) assurance.

10. We, therefore, direct the Central Government also to comply the direction recorded hereinbefore by at least increasing additional supply of 100 MW of electricity to the Jharkhand State Electricity Board as it may be reiterated that the aforesaid direction had been upheld upto the Supreme Court and neither the D.V.C nor the Central Government had gone up in appeal against the order and rightly so, as both the parties had themselves agreed to supply the quantity of

electricity referred to hereinbefore to the State of Jharkhand through the Jharkhand State Electricity Board and the order was a consent order. Hence, the additional supply be made as expeditiously as possible.

11. Let the matter be posted in the next week on 19.1.2010.