
(2010) 01 JH CK 0172
In the Jharkhand High Court

Madhu Sudan Mittal

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Citation : (2010) 01 JH CK 0172

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

Bench : Division Bench

Judgement

1. This application has been filed by the respondent-D.V.C. with a prayer that the orders passed by this Court on 13.01.2010 and 19.01.2010 directing the respondent-D.V.C. to make an additional supply of 75 M.W. of electricity to the respondent-JSEB in pursuance to the order dated 01.05.2008, should not be implemented for a period of 15 days. The application has been filed on the averments that: although the respondent-D.V.C. has implemented the order by making an additional supply of 75 MW of electricity in addition to 25 MW of additional supply which was already continuing, the order passed by this Court on 13.01.2010 and 19.01.2010 should be stayed for 15 days as the respondent-D.V.C. shall file a comprehensive application in order to establish that it is not in a position to make the additional supply of 100 MW to the Board under the special circumstance.

2. Learned Counsel for the respondent-D.V.C. who is also assisted by the Director, Finance of the D.V.C. was permitted to address the Court to establish their plea as to why additional supply of electricity be not made to the J.S.E.B. in spite of a consent order passed on 01.05.2008 when the D.V.C. had agreed to make additional supply of 150 MW to the Board. When we permitted, the counsel for the D.V.C. and its officer to state the reason for not making the supply in pursuance to the order dated 01.05.2008 which attained finality upto the Supreme Court, detailed facts and circumstances were related before this Court which clearly led to the conclusion that the D.V.C. was not willing to make additional supply to the J.S.E.B. as huge amount are pending against the J.S.E.B.

for the electricity which has already been supplied.

3. It is stated by the counsel for the D.V.C. that the outstanding dues against the J.S.E.B. is Rs.218.00 Crores as on 02.01.2010 whereas counsel for the J.S.E.B. stated that Rs.79.00 Crores has already been paid to the D.V.C. by way of a Letter of Credit and as there is a dispute between the D.V.C. and the J.S.E.B. in regard to the tariff which is claimed by the D.V.C. and contested by the Board, the accurate figure in regard to the outstanding dues cannot be held to be final. It was further informed by the counsel for the parties that a dispute is pending before the "Appellate Tribunal For Electricity" where the question in regard to the outstanding dues is sub-judice and while the matter is sub-judice before the Tribunal, an order has been passed by the Tribunal directing payment to the D.V.C. at the prevalent, rate effective from September, 2000 which according to the D.V.C. is Rs. 2.77p.

4. From this fact it can reasonably be inferred that there is a dispute between the D.V.C. and the J.S.E.B. in regard to the tariff which is to be charged, for the supply of electricity to the Board and the matter is pending before the Tribunal.

5. Having considered all these aspects of the matter in the light of what has been stated before us, we cannot permit the D.V.C. not to implement the order dated 01.05.2008 merely on account of the fact that a litigation in regard to the rate of electricity is a subject matter of dispute before the Tribunal and this Court is seized of the matter for the time being only to the extent as to whether the order dated 01.05.2008 by which additional supply of 150 MW of electricity was agreed to be supplied by the D.V.C. is fit to be given effect to or not. In this context, after hearing the counsel for the parties, we have arrived at a conclusion that the dispute in regard to the rate of electricity and the outstanding dues of the D.V.C. against the J.S.E.B., is a subject matter of consideration before the Tribunal and, therefore, there is no reason for this Court to enter into that part of the dispute. For the time being the only controversy which is before us is whether the additional supply of 150 MW which was agreed to be supplied by the D.V.C, is fit to be executed or not and we are clearly of the view that the same has to be implemented since it has attained finality. Nevertheless we are conscious of the fact that the respondent-JSEB cannot be permitted to avail the benefit of additional supply without making any payment for the additional supply even if it be at the rate which has been fixed by the Appellate Tribunal as an interim measure indicating that the rate prevalent in September, 2000 shall be applicable and that rate, according to the D.V.C., is Rs.2.77 p.

6. Learned Counsel for the J.S.E.B. stated that the J.S.E.B. is making the payment for the additional supply at the rate of Rs.2.77p. and the bills have been raised taking this rate into account.

7. Thus, there is no reason for the D.V.C. to be unduly anxious about the payment at least in so far as the additional supply is concerned. We are informed that the D.V.C. at this stage is supplying 100 MW from 23.01.2010 and hence we

direct the D.V.C. that a separate account be maintained for the additional supply of 100 MW of electricity to the respondent-JSEB and they are equally permitted to raise the bills from 23.01.2010 in so far as the additional supply of 100 MW of electricity is concerned and the bills would be raised at the rate of Rs.2.77 p. as per the order passed by the appellate Tribunal .until the same is modified or finally decided by the appellate Tribunal. The respondent-D.V.C., therefore, shall continue to supply additional supply of 100 MW and the respondent-JSEB shall also make the payment in so far as the additional supply of electricity is concerned, as already indicted hereinbefore.

8. In that view of the matter, we see no reason to stay the orders dated 13.01.2010 and 19.01.2010 as these orders merely directed the D.V.C. to implement the order dated 01.05.2008 which was upheld upto the Apex Court. Thus, we reject the prayer of the respondent-D.V.C. for granting stay of the aforesaid orders and reiterate the direction to the D.V.C. to comply the orders recorded hereinbefore.

9. However, we appreciate the anxiety of the counsel for the petitioner that under the garb of this order the respondent-D.V.C. may not stop the original quantum/supply of electricity to the Board which they were already making as we are neither seized of the dispute in regard to the previous supply of electricity nor we have dealt with the dispute in regard to the outstanding dues for the previous supply as the same is not for consideration before us and the same is the subject matter of scrutiny and adjudication before the appellate Tribunal.

10. The application(I.A. No .290/2010) is accordingly disposed of.

11. The main petition(CWJC No. 1793/2001) be listed again on 04.02.2010.