

(2010) 05 JH CK 0091
In the Jharkhand High Court

Madhu Sudan Mittal

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 17-05-2010

Acts Referred:

Citation : (2010) 05 JH CK 0091

Hon'ble Judges : M.Y. Eqbal, Acting C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Judgement

M.Y. Eqbal, A.C.J.

1. This Public Interest Litigation has a chequered history.

2. In the year 2001, the petitioner, who is a practicing Advocate of this Court, took the cause of general people who were suffering for the last so many years because of load shedding non-supply and interrupted supply of electricity in Ranchi town as also in the entire State of Jharkhand. There had been theft of electricity, pilferage in course of transmission and unauthorized tapping of electric power. Since 2001, this Court time to time issued directions on the basis of affidavits filed by the authorities of the Electricity Board. The orders passed by this Court since 2001 can be summarized as under:

10.5.2001: By this order, the Chairman of the Jharkhand State Electricity Board (in short "the Board") was directed to personally ensure that he shall hold the Junior Engineer in-charge of his jurisdiction for ensuring that there is 0% unauthorized tapping of electric power from any source and by any means and in the event of the failure, the Junior Engineers shall be held responsible.

02.4.2001: The Chairman of the Electricity Board was directed to file affidavit informing the Court as to whether it is a fact that there are regular disruption in the power supply to Ranchi town, regular unannounced and unscheduled power cuts. If these are the facts, then what remedial measures the Board intends to take and in how much time.

03.7.2002: Chairman of the Board was directed to file fresh affidavit informing the Court the timeframe within which the work relating to underground cabling on major roads of Ranchi Town shall be completed. The Board undertook before the Court that it shall be done within a reasonable time and would take steps on top priority to ensure that the Board modernizes the repair/maintenance structure and apparatus for continued supply of electricity.

03.9.2002: On that day, the Court by its order accused the Board of not taking decision in time and not making available the fund and not providing additional material and other facilities for complying the earlier order.

06.8.2003: On that day it was brought to the notice of the Court that there was absolutely no improvement in the supply position of electrical power even in the capital town of Ranchi, though time and again the State Government and the Board promised to take drastic steps to improve the present position so as to ensure proper and uninterrupted supply of power to the consumers. The Chairman of the Board was directed to file affidavit reporting the progress in the work of underground cabling in the town of Ranchi.

03.9.2003: On that day, the Board indicated that it has shortage of fund and huge amount of dues on account of energy consumption from government departments. The Court directed that the Board will issue bills to the concerned departments and take action under the Electricity Act, 2003.

17.12.2003: The Court directed the Board to take necessary steps for reducing the transmission loss which according to the Board was 47%. The Board was asked to explain what steps it has taken for reducing the transmission loss.

07.10.2004: By order of the Court petitioner was permitted to implead the Union of India through Secretary, Energy Department, New Delhi as party-respondent. The Chairman of the Board and the Secretary, Energy Department, Govt. of Jharkhand were directed to file affidavit furnishing the detailed information about the requirement of electricity in Ranchi Township and in the State of Jharkhand, the general capacity of the Thermal Power Station/Hydel Power Stations of Jharkhand, the actual generation made by such Thermal Power Stations, which are the companies from which the Board purchases electricity such as D.V.C., etc.

05.11.2004: The Court observed that the Board is not in a position to run its business viz, generation, transmission and supply of electricity without the help of State Government. It was found that generation, transmission of supply of electricity were to be separated by March, 2005.

10.12.2004: The Secretary, Energy Department, Jharkhand was directed to file and state the steps to be taken for reorganization of Jharkhand State Electricity Board. All the heads of the Departments were directed to appear in person.

21.12.2004: On that day, high official of the Board and Energy Department appeared and various suggestions were given. The Member (Generation), J.S.E.B. informed the Court about the entitlement of the Board to draw electricity

upto 379 MW per day from the Eastern Grid and 107 MW per day from Hydel Stations, but it was not allowed to draw its share of electricity. He further informed that the Board was drawing only 120MW per day upto 2002 from Eastern Grid which was raised to 220 MW per day and other in 2004, further increased to 305 MW per day.

04.2.2005: On this day, in the affidavit State of Jharkhand accepted that J.S.E.B is not functioning properly and they are not in a position to generate, transmit and supply of electricity to its consumers. The Chairman of the Board complained that the State of Jharkhand was not helping it. On that day it was found that Rs. 1,89,100/- crores was payable to the Board by private consumers but no explanation was given by the Board as to what action has been taken to realize the amount from the defaulter/ consumers and that no step so far was taken for initiating disciplinary action against the erring officers and staff of the Board, who failed to realize the amount. On that day, Court observed that the matter needs to be investigated by the C.B.I.

(Emphasis given)

The Member Secretary of the State Electricity Board and Central Electricity Board, Ministry of Power filed affidavit stating that J.S.E.B has not been utilizing its own generation capacity fully. The poor performance of State owned generating station is one of the measure factor affecting power evaluating in the State. The Court observed that it was high time the Board is to be dissolved in terms Electricity Act, 2003.

07.7.2005: The Court noticed the affidavit filed by the J.S.E.B. accepting that the Board was not in a position to run its business viz. Generation, Transmission and supply of electricity without the help of the State Government.

11.8.2006: On that day, special directions were issued to the J.S.E.B. for improvement of generation of electricity in Jharkhand as also for electrification in the rural areas.

08.5.2007: On that day the Court noticed the details of the quantum of the electricity generated by the Board and the approximate electricity requirement to Ranchi town the State of Jharkhand.

09.1.2008: On that day the following directions were issued:

(i) J.S.E.B. should ensure that it gets additional 150 MW electricity from DVC and DVC should also see that the agreed 150 MW of electricity is supplied to J.S.E.B.

(ii) J.S.E.B. should ensure that it gets 268 MW of electricity from the Central Sector as agreed earlier. It is quite unfortunate that though this Court by the order dated 3.12.2007, directed the Central Government Counsel to seek and ensure that the agreed energy of 267 MW is supplied to J.S.E.B. without any delay, the same is not supplied. Therefore, this Court, is constrained to reiterate and direct the Central Government afresh to see that the agreed 267 MW of

electricity is supplied to J.S.E.B. If any violation to this direction is made, it will be viewed seriously.

(iii) Jharkhand State Regulatory Commission should publish notice in the newspapers inviting other licensees to apply for supply of electricity in the town of Ranchi without there being any objection from the side of J.S.E.B.

(iv) The Chairman, J.S.E.B., who is newly appointed, should take up the matter, consider the earlier directions passed by this Court and see that the condition of electricity in the State is improved.

(v) The State Government is directed to see that the Second Unit of Tenughat Vidyut Nigam Limited is repaired and made functional without any further delay.

24.01.2008: On that day the Court having noticed its earlier direction issued to the Board to get additional 150 MW electricity from DVC directed the DVC to see that the agreed 150 MW of electricity is supplied to J.S.E.B. In the affidavit filed by the Central Government through the Under Secretary Ministry of Power, Government of India, no reason was given for non-supplying of the agreed electricity to the Board. However, counsel appearing for the Central Government ensured that the agreed energy will be supplied to J.S.E.B.

14.02.2008: On that day, the Central Government and the State of Jharkhand assured that they will do their best for reducing the power crisis in the State of Jharkhand by way of maximization of generation from the available resources and that the DVC agreed to continue supply of additional 150 MW even after the expiry of period of agreement.

13.01.2010: On that day, the Court issued direction to the Central Government to comply the earlier direction by atleast increasing the additional supply of 100 MW electricity to the Jharkhand State Electricity Board as the earlier direction was upheld by the Supreme Court.

28.01.2010: On that day, the Court observed that DVC cannot be permitted to refuse implementation of the order 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. The DVC was directed not to stop the supply of electricity to the Board.

10.05.2010: On that day, the Court observed that since 2001 several orders and directions were issued to the Board to improve the generation but there had been no improvement in the generation of electricity by the Electricity Board. The Board totally failed in constructing new power sub-station for the urban area and reorientation of existing 33 KV and 11 KV line, installation of distribution transformer in area where low voltage problem exists and strengthening the L.T. Lines.

3. From perusal of orders, directions and observations briefly summarized herein above, it is manifest that since the creation of State of Jharkhand and the Jharkhand State Electricity Board, they have totally failed in regulating the

generation, transmission and supply of electricity to the public of the State of Jharkhand more particularly in the capital town. On each and every date, the State of Jharkhand and the Board has been taking different stand to justify of the reason their inability and incompetency to run the Electricity Board. The Board mainly took the stand of non-cooperation of State Government and the Energy Department, Central Government to provide sufficient fund for purchase of electricity. On the other hand, the State of Jharkhand accepted that Board is not functioning properly and they are not in a position to generate, transmit and supply electricity to its consumers. The moot question that needs immediate consideration is as to what would be the solution in order to ensure that people of Jharkhand may not suffer anymore because of non-availability of electricity. Undisputedly, it is the statutory duty of the State of Jharkhand and the Jharkhand State Electricity Board to generate and/or purchase electricity and supply uninterrupted electricity to the consumers.

4. On 13.5.2010 it has been brought to the notice of this Court by the petitioner on affidavit that the Jharkhand State Electricity Board under the scheme of Rajiv Gandhi Gramin Vidyut Yojna, received a sum of Rs. 1000 crores during the period 2008-09 for rural electrification of six districts. It cannot be denied by the State or the Board that very nominal rural electrification work has been done. It has also come to our notice that two other agencies namely D.V.C. and N.T.P.C. also received Rs. 1000 crores for doing rural electrification. Under another scheme, namely, Accelerated Power Development Reforms Programme (APDR), a sum of Rs. 600 crores has been given by the Central Government to the Board from 2005 onwards for change of transformers and conductors and installation of meters for reducing the distribution losses. But the object of reducing commercial loss has not been achieved despite spending the money. Under another scheme namely Transmission Network Scheme, a further sum of Rs. 400 crores were given by the Central Government to the Board after 2005 for purchase and strengthening and expanding transmission network. Not only that the State Government has always been releasing money for power purchase. It is not disputed that the State Government released a sum of Rs. 1000 crores to the Board for purchase of power from D.V.C. and T.V.N.L. It is very shocking and unfortunate that despite release of sufficient fund, the Jharkhand State Electricity Board does not have any single piece of transformer for replacement in its Head Quarter at Ranchi when there is regular requirement of transformer. This fact has been admitted by the Secretary, Energy Department, Govt. of Jharkhand who is presently Incharge Chairman of the Board. It is rather more shocking that despite all these release of funds, the Board is not in a position to increase at least 1 MW generation from its Thermal Power Station. There has always been one plea taken by the Board that its generation Stations like P.T.P.S. and T.V.N.L. are under repair or there is breakdown in the generating plant.

5. From the affidavit and counter affidavit filed by the parties and also after hearing them the facts, which emerge, is that the total requirement of electricity excluding the command area is presently 900 MW. Out of that the own

generation of the Board from P.T.P.S. (Patratu Thermal Power Station) is about 150 MW. The generating capacity of the DVC is 3000 MW which has however been denied by the council appearing for the DVC. According to the DVC presently it is generating about 1800 MW electricity. Out of that, DVC is giving to the Board only 397 MW + 100 MW (total 497 MW). The Central Government already agreed to supply 267 MW of electricity. The Central Government was earlier directed by order dated 13.01.2010 to ensure the supply of agreed quantity of 267 MW of electricity. Similarly, by the said order DVC was directed to supply additional 150 MW electricity to the Board as per the earlier agreement. It has come in the affidavit that second unit of TVNL started functioning and there shall be increase in generating capacity of electricity by the said power station. In these backgrounds we issue the following directions:

(I) As against total requirement of 1000MW, DVC is directed to continue to supply 397 + 100 additional MW of electricity to the Board. Needless to say that the Board shall continue submitting letter of credit and also make payment to the electricity charges. On the basis of assurance and undertaking given by the Energy Department Central Government to supply 265MW, it is directed that a minimum of 200 MW of electricity shall be supplied by the Central Government without default.

(II) The balance quantity of electricity shall be procured by the Board from its own generation or purchase from different grid but in no circumstances Board shall be allowed to take any plea for non-generation or non-purchase of the remaining quantity of electricity.

6. We hope and trust that the Central Government, State Government, Electricity Board and the D.V.C. shall strictly comply the aforesaid directions forthwith so that there shall not be shortage or dearth of electricity and the consumers may not suffer any more in the peak summer season and, thereafter.

7. The case shall be taken up after Summer Vacation. The petitioner is given liberty to move this Court in the event the Central Government, State Government including the Board and DVC fails to comply the direction.