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**(2011) 06 JH CK 0093**

**In the Jharkhand High Court**

**Case No :** C.W.J.C. No. 1793 of 2001 and W.P. (P.I.L.) No. 4611 of 2009

Madhu Sudan Mittal

APPELLANT

Vs

Jharkhand State Electricity Board and Others <BR> Rohit  
Kumar Choudhary Vs State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 20-06-2011

**Acts Referred:**

Electricity Act, 2003 — Section 172, 180, 181, 182, 183

**Citation :** (2011) 06 JH CK 0093

**Hon'ble Judges :** Jaya Roy, J

**Bench :** Single Bench

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**Judgement**

Jaya Roy, J.—Heard learned Counsel for the parties on the prayer made by the Jharkhand State Electricity Board as well as the D.V.C praying that in pursuance to the order of this Court passed on 18.5.2011, the Officers of Jharkhand State Electricity Board (JSEB) and Damodar Valley Corporation (DVC) have convened the meeting at Kolkata on 17.6.2011 to discuss the situation and found that presently the power position out side the command area which is under the D.V.C. is controlled by the Jharkhand State Electricity Board (JSEB) is smooth if

- (i) T.V.N.L./S both units are under operation making 380 M.W. to 400 M.W. power,
- (ii) generation from Patratu Thermal Power Station (PTPS) is 70 M.W. 100 M.W. and
- (iii) Central allocation arrangement between 350 M.W. to 400 M.W.

2. According to the minutes of the meeting under the above circumstances, the Jharkhand State Electricity Board (JSEB) can meet its power requirement without having any utilization of 100 M.W. power given by D.V.C. It is also indicated that during rainy season Hidle Power Generation gains optimum level, whereas during the winter season it steps down to low as low as around 1520 % of the capacity. According to the Central allocation power to J.S.E.B. including Hyde Power falls down as low as around 200 225 M.W., then it has been observed that in the

given situation of uncertainty of availability of power, the J.S.E.B. and D.V.C mutually agreed to the following, subject to approval of the Hon''ble Jharkhand High Court:

1. When there will be surplus power in J.S.E.B. system, J.S.E.B. will inform D.V.C. on day ahead basis as per Short Term Open Access Regulation of Central Commission (CERC) that it will not draw 100 M.W. or such quantum as may be surplus in J.S.E.B. system. D.V.C. will prepare scheduling accordingly.

2. In case J.S.E.B. is in need of power during contingency on such days when J.S.E.B. did not make any requisition on day ahead basis, D.V.C. will start scheduling of the quantum of power limited up to 100 M.W. effective from 6th Block from the time of such requisition made by J.S.E.B. as per Indian Electricity Grid Code (IEGC).

3. J.S.E.B. will keep the letter of credit alive as per existing value for payment of energy bill under STOA as per order of the Hon''ble Jharkhand High Court. D.V.C. will realize the amount as per actual bill from the I.C.

3. Learned Amicus Curiae drew our attention to the order of this Court dated 13.1.2010 by which after considering the entire facts as well as in consonance to the several earlier orders passed in this respect, directed the D.V.C. to supply additional 100 M.W. power to Jharkhand State Electricity Board and observed that such direction of this Court has already been upheld by the Supreme Court. The D.V.C. on earlier occasion submitted its prayer for reducing the supply of the electricity to the Jharkhand State Electricity Board from 100 M.W. to lower level. But, that has been rejected by this Court specifically.

4. Today, learned Counsel appearing for the Jharkhand State Electricity Board also submitted that sometimes due to availability of full power supply from other sources, there remain No. requirement of total 100 M.W. power from the D.V.C. and in view of the orders of this Court, the D.V.C. is under obligation to supply 100 M.W. electricity to the Jharkhand State Electricity Board and when Jharkhand State Electricity Board remain it surplus that electricity cannot be utilized, then this electricity cannot be stored and it goes waste and ultimately it is a national waste and that too at the cost which is to be incurred by the Jharkhand State Electricity Board.

5. The contention of the learned Counsel for the Jharkhand State Electricity Board as well as the D.V.C may be apparently quite attractive, but we may take note of the fact that even before this Court on 13.1.2010 an issue with respect to quantum of electricity to be supplied to the Jharkhand State Electricity Board was under consideration and the contention of the D.V.C. for various reasons was that it cannot supply electricity to the extent of 100 M.W. but, that has been considered and rejected and the D.V.C. was directed to supply the 100 M.W. of electricity to the Jharkhand State Electricity Board for supply it to the public ultimately and this Court in the order dated 13.1.2010 and thereafter in a detailed order dated 28.1.2010, clearly observed that the said direction of this

Court has already been directed to be followed by the D.V.C. in view of the order passed by the Hon''ble Supreme Court on 10.8.2009 passed in Special Leave to Appeal (Civil) No. 17558/2007. A copy of the order given by the learned Counsel for the Jharkhand State Electricity Board which is kept on record.

6. In view of the above reasons, when the matter is pending before the Hon''ble Supreme Court for consideration as also there is interim order dated 13.4.2011 passed by the Hon''ble Supreme Court, we are not inclined to entertain any prayer, which may be contrary to the orders passed by this Court on earlier occasion and the Hon''ble Supreme Court has already directed the D.V.C. and the Jharkhand State Electricity Board to comply with the rest of the directions made in the order passed by the Court.

7. Learned Counsel for the D.V.C. pointed out that this Court on 13.1.2010 passed the order specifically mentioning it "at this stage" and this indicates that arrangement was made for the time being in view of the facts and situation available at the particular point of time. These facts also can be brought to the notice of the Hon''ble Supreme Court where the matter is pending.

8. Learned Counsel for the C.B.I. Mr. Mokhtar Khan has submitted the second C.B.I. Inquiry report against the officers of Jharkhand State Electricity Board bringing on record the facts relating to the company namely M/s Lemos Cement Limited "Khiladi", a cement manufacturing company, having its registered office at Kolkata, with Shri R.S. Rungta as Chairman of the company, and when after default in payment being due to the Jharkhand State Electricity Board, and there are allegations against the then Chief Minister of Jharkhand, Sri Madhu Kora, in rehabilitation of the said company, and the electricity of the company was restored when total dues in the company was Rs. 8.16 Crores and in view of the understanding the part of dues were taken over as liability of the State. The learned Counsel for the Petitioner submitted that the said company changed its name as "Khelari Cement Company" and has preferred a writ petition being W.P. (C) No. 4347 of 2009, wherein this Court vide interim order dated 16.9.2009 directed the Electricity Board to restore the electricity supply to the said company after taking note of the fact that a prima facie case of promissory estoppel has been made out by the company regarding State's contribution towards the electricity dues. Learned Counsel for the C.B.I. submitted that the C.B.I. has to placed on record these facts with a request that the matter may be clarified that the interim order dated 16.9.2009 was in relation to the dispute of civil nature and is nothing to do with the criminality of any of the parties so that the C.B.I. may proceed to investigate into the criminality in the affairs and if found any criminal action, then to proceed further by registering a case, filing challan and prosecuting the criminals.

9. We have perused the order dated 16.9.2009, a copy of which is taken on record, and we are of the opinion that the dispute in the W.P.(C) No. 4347 of 2009 was pertaining to civil dispute and by order dated 16.9.2009 not only interim arrangement has been made and further it has nothing to do with the

criminality in the action of any person in any transaction in relation to the affairs of the Jharkhand State Electricity Board with the said company. Therefore, the C.B.I. will be free to inquire, investigate and proceed in the matter. I

10. In this report, the C.B.I. also has drew our attention towards the alleged misdeeds of one Sri Sanjiv Kumar, the then Deputy Director (Accounts), J.S.E.B. and Sri Vikram Ram, Chief Engineer (Stores & Purchase), J.S.E.B. Headquarters. Both were flouted the company, wherein their wives and brothers were also directly involved in the affairs of the company and also drew out attention towards the other relevant facts in the report.

11. The C.B.I. is proceeding in the matter and, therefore, the C.B.I. may take action in accordance with law against the guilty persons as early as possible.

12. The report submitted by the C.B.I. is returned to the learned Counsel for the C.B.I. to maintain secrecy.

13. Learned Advocate General as well as learned Counsel appearing for the Jharkhand State Electricity Board submitted that in pursuance to the order dated 25.4.2011, the Chief Secretary has already been apprised with the matter and since the Jharkhand State Electricity Board is an autonomous body and is capable of taking departmental action against the erring officers and the State Government itself cannot take any action directly against the officers and employees of the Jharkhand State Electricity Board, therefore, the matter has been forwarded to the competent authority of the Jharkhand State Electricity Board.

14. It may be true that the State Electricity Board is autonomous body in the State and at the same time, we cannot ignore the fact that the State Electricity Board is discharging the function of the State and not doing private business of the Corporation or of a company and it is having some connection with the State Government and as indicated by learned Advocate General that under the Electricity Act, 2003, there are various powers given to the State Government to deal with situation u/s 172 and also to make rules and Regulations as provided u/s 180 and 181 of the Act of 2003 and Section 182 which requires rules and Regulations which requires to be made by State Legislature and Section 183 deals with power to remove difficulties.

15. Be that as it may, it is not a legal issue at this stage. The C.B.I. is taking care of the situation and that proceeding and C.B.I.'s action is required to be continued without interference by any other authority, and therefore, the information which was required to be sent to the Chief Secretary, Jharkhand was aimed with object to see that the State may also be aware as to what is going on in the affairs of the State Electricity Board.

16. Put up this case for further orders on 1st August, 2011.

17. Let a copy of this order be handed over to the learned Counsel for the parties.