

(2011) 03 JH CK 0153

In the Jharkhand High Court

Case No : CWJC No. 1793 of 2001 and W.P. (PIL) No. 4611 of 2009

Madhu Sudan Mittal

APPELLANT

Vs

Jharkhand State Electricity Board and Others
 Rohit
Kumar Choudhary Vs State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Citation : (2011) 03 JH CK 0153

Hon'ble Judges : Bhagwati Prasad, C.J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the parties.

2. This is the stand of the Amicus Curiae that there was a hearing in the Commission, and the approach of the Commission so far had been very charitable to the Board and even the stringent orders passed against the Board had not been followed. Another aspect pointed out by the learned Amicus Curiae was that the Board is taking refuse behind the situation that despite special courts created for the purposes of electricity offences, they have not been functioning properly. As against this, learned Amicus Curiae pointed out that u/s 153(4) of the Indian Electricity Act, the proceedings could be disposed of by the District Judge concerned and any other Judicial Officer. Therefore, this aspect that the courts have not been functioning is only an eye wash and the Board is not desirous of proceeding in the matter and it is the irony that there are 15,000 F.I.Rs and there are Rs. 3,500/- Crores or a like amount due against the consumers, which the Board has not been able to realize. This information is given by the learned Counsel appearing for the Commission to the Court.

3. The other aspect pointed out by the learned Amicus Curiae is that the Patratu Generating Stations have been a kind of defence by the State Government and the Board, but the amount so far spent on the renovation of these plants has not resulted into any fruitful consequences. It would have been better, if, instead of going for renovation, the State Government would have gone for establishing

new plants because all these plants are 30 years old and they have lived their life.

4. Learned Amicus Curiae pointed out that there are directions by this Court in the orders dated 1.5.2008 and 21.12.2009 and even when only one of the directions contained in these orders only has been stayed by the Hon'ble Supreme Court, the other directions had not been complied by the Respondent State and the Board and it would be appropriate, if contempt proceedings are initiated against these two authorities for non-compliance of the orders of this Court, which were passed much before.

5. Learned counsel appearing on behalf of the Commission submitted that a hearing had taken place in the Commission on 26.3.2011, in which an order had been passed and the last paragraph of this order shows that the State Government had neglected its responsibility by not appearing before the Commission and in this regard, in the order, the following paragraph has been made by the Commission.

On the last date, the Government's representative was asked to report about the decision of the State Government on the compliance of the direction/order dated 1.5.2008 and 21.12.2009 passed by the Hon'ble Jharkhand High Court in C.W.J.C. No. 1793 of 2001 M.S. Mittal v. JSEB and Ors. We are sorry to note that no compliance report on behalf of the State Government has been submitted nor any representative was present today. As ordered earlier, a fresh notice should be issued to the Government of Jharkhand, Department of Energy directing them to be present on the next date along with the compliance report.

6. Apart from the indifference of the State Government in appearing before the Commission, learned Counsel appearing for the Commission has submitted that the decisions have to be taken on behalf of the State Government and the State Government is not taking considered decisions in this regard and therefore, the Commission is not in a position to proceed with effectively.

7. The learned Counsel appearing for the Board submitted that they are making all endeavours to put the house in order, but since the State Government is not giving them money, they are not in a position to function as properly as they should be. Learned Counsel appearing for the Board says that they have complied with the orders passed by this Court on 1.5.2008 in its major parts and if any part remains non-complied, with that part the State Government has to play. About the repair of the Unit Nos. 9 and 10, learned Counsel for the Board has submitted that since work has been given to Bharat Heavy Electricals Limited and full money have not been paid to them by the State Government, they could not be able to fulfill their commitment before the Court in this regard.

8. No one has appeared on behalf of the State. There are no instructions coming forward from the State Government. Even on the last occasion, there was no instruction pleaded by the counsel appearing for the State and today a junior counsel has appeared on behalf of the State and she stated that she is not in a position to say anything as she has no instruction.

9. This Public Interest Litigation was preferred for direction on the Respondent-Jharkhand State Electricity Board (hereinafter referred to as the "JSEB") to ensure continuous supply of energy in the Ranchi town and other parts of the State. It was alleged that the JSEB is not functioning properly, electricity is not being supplied continuously, load-shedding, in various areas, is common phenomena and proper and constant voltage is not maintained.

10. Time to time different orders were passed by this Court in this respect. This matter is pending since 2001. By order dated 10.5.2001 this Court directed the Chairman of the JSEB to personally ensure that the Junior Engineer in-charge of his territory responsible for ensuring that within his territory there is zero percentage unauthorized illegal tapping of electrical power from any source and by any means. This Junior Engineer, in every area shall be held accountable and responsible to his next higher officer, who, in turn, shall be held accountable and responsible to the next one up in the chain of hierarchy. This system shall be monitored on regular basis.

11. In the order dated 3.9.2003 this Court observed from the additional affidavit filed on behalf of the JSEB that the Board has shortage of funds and huge amounts are due on account of energy consumption from Governmental departments. Considering the above submission this Court directed the Board to file a statement showing the amounts due from each Government department separately. It was also directed that if the bills in that behalf have not been served already, the Board will issue the bills to the concerned departments as well as to other individual consumers who are in default. If the bills have already been served and the payments have not been made, the Board after notice disconnect the supply of energy.

12. When the attention of the Court was drawn regarding huge amount of arrears of electricity dues against certain Government departments, this Court by its order dated 17.12.2003 issued notice to the Secretary, Drinking Water & Sanitation Department and Secretary, Health and the Chief Secretary of the State of Jharkhand to file their show cause.

13. By order dated 24.2.2004 this Court ordered we find that the Secretaries to the Government, who were directed to file affidavits by our order dated 17.12.2003, have not yet filed them. We feel it proper to express our displeasure at their conduct in this regard. We direct them to file affidavits as directed, by the next hearing.

14. It is apparent that the officers of the JSEB, in connivance with the Government departments, are not serious about the realization of the arrears towards electricity dues despite directions issued by this Court. This certainly amounts to defiance of the orders of this Court and simultaneously allowed the arrears to accrue.

15. On 5.11.2004 this Court after hearing the Chairman, JSEB, Ranchi and the Secretary, Energy Department, Government of Jharkhand, Ranchi observed It

appears that the JSEB is not in a position to run its business viz. Generation, Transmission and Supply of electricity without the help of the State Government.

16. On 21.12.2004 this Court quoted the statements made in paragraph 6 of the affidavit filed by the JSEB wherein the following statements have been made:

That it is humbly submitted that a huge amount of Rs. 3,154 crores of energy bills upto 31.3.2004 is lying unpaid against the consumers, which includes private consumers, State Government departments and Central Government departments/ Undertakings, details of which are as follows:

1. State Government - Rs. 675.00 crores 2. H.E.C. - Rs. 505.00 crores 3. Hindustan Copper Limited - Rs. 60.00 crores (to be paid by the State Government) 4. Private consumers - Rs. 1891.00 crores 5. Others - Rs. 23.00 crores?

17. It was further observed that ?It appears that a sum of Rs. 1891.00 crores is payable to the JSEB by Private consumers. The JSEB has even no explanation as to what action has been taken to realize the amount from the private defaulter consumers. It has also not been mentioned as to whether any disciplinary action has been taken against the erring officers and the staff of the JSEB, who failed to realize the amount. There is nothing on the record to suggest that the JSEB has taken any coercive step such as disconnection of electricity for default in payment. The matter is serious and requires enquiry, if necessary, by the Central Bureau of Investigation.

18. I n the order dated on 20.7.2005 there is a mention that the officers of the Board are not cooperating with the CBI; they have failed to provide the list of those consumers against whom there is huge out standing dues.?

19. A notification No. 1493 dated 28.7.2005 was produced before this Court on 3.8.2005 whereby the State of Jharkhand has reconstituted the Jharkhand State Electricity Board consisting of the Chief Secretary as a Chairman, Health Secretary as Member (Revenue), Principal Secretary (Finance) and Secretary, Energy Department as Members. Besides, Shri Gopi Nath Munda was Member (Technical) of the Board. From the reconstitution, it is evident that the senior most officers of the State of Jharkhand were in the helms of affair of the JSEB, but no improvement took place in the functioning of JSEB. In this context it is pertinent to mention that this Court by its order dated 3.8.2005 directed the officers of the CBI, who had submitted a part list of the officers of JSEB who failed to recover the dues and/or failed to ensure any lawful action against the defaulting consumers, ?to handover a copy of the said list to the Chief Secretary, Government of Jharkhand-cum-Chairman, JSEB, who in turn, may take up the matter of the Board for taking action against the erring officers.

20. In this context order dated 10.5.2010 is worth to refer whereby this Court passed an order to the effect that since several directions were not complied with, therefore, instead of initiating a contempt proceeding, directed the

Chairman, JSEB to appear in person and to file an affidavit.

21. From the perusal of the orders, directions and observations passed by this Court on various occasion, it is manifest that since the creation of State of Jharkhand and the Jharkhand State Electricity Board, they have totally failed to perform their duties towards the supply of electricity to the public. On each and every date the State of Jharkhand and the Board has been taking different stand to justify their inability and in competency to run the Electricity Board. The JSEB mainly took the stand of non-cooperation of the State Government, Energy Department and Central Government. On the other hand, the State of Jharkhand accepted that the Board is not functioning properly and they are not in a position to generate, transmit and supply electricity to its consumers. Undisputedly, it is the statutory duty of the State of Jharkhand and the Board to generate and/or purchase electricity and ensure uninterrupted supply to the consumers. From the affidavit filed by the Petitioner on 13.5.2010, it transpires that the JSEB has received a sum of Rs. 1000 crores under Rajiv Gandhi Gramin Vidyutikaran Yojna (RGGVY) during 2008-09 for rural electrification of six districts. Two other agencies namely DVC and NTPC also received Rs. 1000 crores for doing rural electrification. A further sum of Rs. 600 crores has been given by the Central Government under Accelerated Power Development Reforms Programme (APDRP) to the JSEB from 2006 onwards to strengthen the transmission system. But the object of reducing the Transmission and Distribution losses has not been achieved despite receipt of huge amount. Under transmission network scheme a further sum of Rs. 400 crores was given by the Central Government to the JSEB after 2005 for the purpose of strengthening and expanding transmission network. In addition to these, the State Government released a sum of Rs. 1000 crores to the JSEB for purchase of power from DVC and TVNL. From time to time the State Government also provides several crores as resource gap to the Board. It is very shocking and unfortunate that despite release of sufficient fund, the JSEB does not have any single piece of transformer for replacement in its Headquarter at Ranchi. This fact has been admitted by the Secretary, Energy Department, Government of Jharkhand, who was Chairman (incharge), JSEB. Neither the Board is in a position to increase at least a single Megawatt generation from its generating stations. IA No. 2894 of 2010 was filed by the Respondent-JSEB on 2.8.2010. The statement made in paragraph 9 of the aforesaid I.A. reads as under:

...However, there is some system constraints and non-connectivity in absence of transmission network and the JSEB has not been able to fully utilized all the electricity available at its command....

22. Patratu Thermal Power Station is another shocking story. There has always been one plea taken by the JSEB that the generating units of PTPS are either under repair and there is breakdown/fire in the generating plant. As per the affidavit filed on 2.12.2010 by the JSEB it transpires that a sum of Rs. 404.00 crores was received from the Government of Jharkhand from 2001 till date for

renovation and upgradation of units of PTPS, out of which Rs. 269.57 crores stated to have been spent on PTPS. This Court feels that neither improvement nor any increase in generation has taken place in the PTPS particularly in view of the fact that the Board has chosen to spend the huge amount to outlived plant. The Board has not considered, while spending this huge amount, the fact of the establishment cost having more than 1300 employees whereas the generation is merely 9-10%. The Board has not justified the remaining amount received from the Government in their account for the purpose as there are no audited Accounts available with the JSEB.

23. The Board is always taking a plea of financial crunches. This Court by its order dated 10.7.2007 directed the Jharkhand State Electricity Regulatory Commission (hereinafter referred to as "JSERC") to file a detailed report in this regard. From the perusal of the report submitted by JSERC the following facts emerges.

24. The Annual Statement of Accounts for the year 2005-06 which has been prepared indicates in their Balance Sheet "Cash and Bank balance Rs. 6233.72 crores as on 31.3.2006 whereas on 31.3.2005 it was Rs. 6130.80 crores and the same was Rs. 5940.22 crores on 31.3.2001". It is a fact that the total consumption by HT & others in the State of Jharkhand was 62.19% and its corresponding revenue was 72.51%. The bulk of this revenue comes from HT consumers who are approximately around 900 only. Therefore, non-realization of dues from the HT consumers sufficiently indicates that there is connivance between the officials of the Board and the HT consumers.

25. Another aspect of the matter is that more than 15000 FIRs have been lodged by the JSEB which involves about Rs. 82.00 crores revenue of JSEB.

26. Non-maintenance of Accounts by the JSEB coupled with receipt of huge amount from several quarters sufficiently indicates that there is a gross embezzlement and misappropriation of the public money. Above all, the activities of the JSEB is more shocking when the senior most IAS officers are/were entrusted to carry on the function of the JSEB since its inception, this Court cannot ignore the fact that three of the erstwhile Chairmen of the JSEB were put under investigation by the Vigilance. It seems that the State Police is not in a position to conduct fair and impartial investigation as very influential and senior bureaucrats of the State may be involved may have nexus with big industrialists. It is more than a prima facie case and in view of the above facts and figures, this Court feels that it is appropriate to handover the investigation in this regard to the special investigating agency (CBI) in the public interest.

27. This Court by its order dated 17.7.2010 directed the JSEB and the State of Jharkhand to disclose their policies, plans of action and method of working with regard to Generation and Distribution but no such policy, plan of action has been placed before this Court. Thus it is felt that neither the officials of the JSEB nor the State Government have any regard to the orders and directions passed by

this Court from time to time. Moreover, the directions issued by this Court on 1.5.2008 and 21.12.2009 have already been affirmed by the Hon^{ble} Supreme Court, except one direction i.e. regarding restructuring. Therefore, the officers of the JSEB and the State Government are liable to be proceeded for willful and deliberate violation of the orders of the Court.

28. Having considered the aforesaid submissions, this Court is of the considered opinion that the directions contained in the orders dated 1.5.2008 and 21.12.2009 having not been complied by the Board and the State Government, it requires that contempt proceedings should be initiated against the State Government and the Board.

29. Notices be issued as to why necessary punishment be not awarded to the Board and the State Government for willfully flouting the orders of this Court dated 1.5.2008 and 21.12.2009 referred to hereinabove.

30. Proceedings were initiated as far back as in the year 2001. Various assurances have been made on behalf of the State Government and the Board but none of them had ever been fulfilled. The kind of approach which is obtaining on record requires a thorough investigation. Therefore, it is ordered that an investigation by Central Investigating Agency be made in the affairs of the Jharkhand State Electricity Board and the Government officials who have handled the issue and have not been able to bring up a utility service Board to its expectation even with the interference of this Court which had started as far back as in the year 2001.

31. In this regard, the Registrar General of this Court will forward a letter to the Director, Central Bureau of Investigation, New Delhi, to look into the affairs of the Jharkhand State Electricity Board and other concerned officers of the State Government who have not made any necessary efforts to make the supply of electricity convenient. If need be and if it is found by the C.B.I that criminality is involved, they will register proper F.I.R against the concerned. C.B.I may involve with it a technical expert and a financial expert, who will do the necessary technical support to the Investigating Agency.

32. Awaiting the report of the C.B.I, the matter will be taken up on 25th April, 2011.

33. Notices of contempt issued hereinabove are returnable on 8th April, 2011.