
(2012) 09 JH CK 0035

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5052 of 2007

Metaldyne Industries Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Electricity Act, 2003 — Section 126, 126(5), 127, 135, 135(b)

Citation : AIR 2013 Jhar 22

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : D.K. Pathak and Saket Upadhyay, for the Appellant; Ravi Singh, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. The petitioner has challenged the order as contained in Memo No. 1712 dated 25.8.2007 issued by the respondent no. 4, the Electrical Superintending Engineer, Electric Supply Circle, Jamshedpur, whereby a sum of Rs. 13,00,432/- has been assessed as liability of the petitioner in the light of Section 135(b) of the Electricity Act, 2003.

2. According to the petitioner, the petitioner's premises were raided by a team constituting of engineers and technicians on 4th August, 2007 it is stated that the seals of old meter were found tampered by the petitioner and an FIR was lodged against the company, which is the predecessor in interest of the petitioner, on 4th August, 2007 in Adityapur P.S. under the relevant provisions of Indian Penal Code and Indian Electricity Act for theft of energy. It is submitted that the electric connection was disconnected on 4th August, 2007 itself. Thereafter on 6th August, 2007 the petitioner was asked to pay a lump sum amount of Rs. 20.00 lacs as fine by giving opportunity to show cause by 7th August, 2007 before the Electrical Superintending Engineer, Jamshedpur,

respondent no. 4. Thereafter, the impugned order dated 25.8.2007 has been passed assessing a liability of Rs. 13.00,432/- in the light of Section 135(b) of the Electricity Act, 2003. Learned counsel for the petitioner submits that the impugned order suffers from serious illegality as the respondents cannot raise a bill u/s 135 of the Electricity Act, 2003 for the alleged theft and FIR against the same, it is submitted that under the provisions of Section 135 of the Electricity Act, 2003 it is the competent court having criminal jurisdiction, which upon conclusion of the trial and conviction of the consumer can impose a sentence in the nature of imprisonment and also fine. It is submitted that any assessment in respect of unauthorized use of electricity or alleged theft of electricity can only be made under the provisions of Section 126 of the Act, 2003. Learned counsel for the petitioner has relied upon a judgment delivered by a Division Bench of the Patna High Court in the case of Mosmat Swaran @ Swaran Manraw Vs. State of Bihar and Another, , Learned counsel for the petitioner submits that the issue relating to raising of bill upon detection of theft and lodging of FIR in terms of Section 135 of the Act of 2003 has been discussed and well settled by the aforesaid judgment which deals with unauthorized use of electricity or theft of electricity. Further it has been held that in terms of Section 135 the criminal court while imposing sentence can impose a fine to be determined under the procedure prescribed in the Act itself and if the consumer is found to have paid less amount in final settlement, the said excess amount has to be recovered. In any case it is submitted that the impugned order suffers from complete non-application of mind and such a drastic power of imposing punitive bill can only be raised in the manner in which the legislature has mandated and in no other method.

3. Counsel for the respondents, on the other hand, submits that upon detection of theft an FIR was lodged against the petitioner and in the show cause he gave an undertaking to deposit part of the amount for restoration of electric connection but failed to do so, although the line was restored and thereafter the impugned order has been passed raising the aforesaid punitive bill. Learned counsel for the respondents also relied upon a notification as contained in the counter affidavit and submits that the concerned officials were duly authorized to conduct the raid as well as raise the impugned bill.

4. However, counsel for the partitioner disputed the same on the basis of the Notification dated 26 August, 2004, according to which the assessing authority can only be the Executive Engineer of the concerned Division.

5. Be that as it may, the impugned order appears to have been passed in purported exercise of power u/s 135 of the Electricity Act, 2003 on assumption of such power.

6. The Division Bench judgment of the Patna High Court in the case of Mosmat Swaran (supra), dealing the aforesaid contention unequivocally, held that in case of unauthorized using of electricity or theft, the legislative policy is clear that the liability of a person can be determined only by the statutorily authority or the

Assessing Officer u/s 126 of the Act and/or Section 154 by the special court. The relevant paragraphs 22 to 26 of the judgment are quoted herein-

below:

22. Here, wish to point out that the legislative policy and the mandate is that the liability of a person in default either by way of unauthorized use of electricity or by way of theft of electricity is to be determined only by the statutory authorities or the assessing officer u/s 126 of the Act and/or Section 154 by the special court. Any ipse dixit calculation or averment made in the F.I.R. has not legal sanctity at all because it is well established principle of law that when the Legislature has prescribed a mode for performance of an act then the act can only be performed in the manner prescribed and all other modes are impliedly prohibited.

23. In this connection, we may refer to the decision of the Constitution Bench of the Apex Court in the case of *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, and, in particular, what is stated in paragraph-18 thereof, the relevant part whereof is quoted hereunder: -

18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature....

24. We may also notice one another important change brought by the amendment in the year 2007 which is to be found in Section 126 and Section 135. As noticed earlier, as originally enacted sub-section (4) of Section 126 had a proviso which provided that if a person deposits the amount as assessed u/s 126 then he would be not subjected to any further liability or any action by any authority whatsoever but this proviso has been deleted by the 2007 Amendment Act and instead a proviso has been introduced along with sub-section (1-A) to Section 135 providing that if a person deposits the assessed amount then without prejudice to the persecution the electric supply would be restored within 48 hours of such deposit. Here, we would like to point out that again the amount of deposit has to be as per assessment u/s 126 and not on any ipse dixit figure mentioned in the F.I.R. or in the criminal complaint

25. Thus seen, the scheme of the Act as it now stands is that, where unauthorized user of electricity, within the Section 126 of the Act is detected an assessment is to be made and to be paid by the consumer, subject to appellate remedy as provided u/s 127 of the Act. If it is coupled with dishonest intention which would make it an offence u/s 135 of the Act, being theft of electricity, then again the person would be liable to pay the assessed amount as is required to be assessed u/s 126 of the Act and in the trial before the Special Court, the Special Court has to be determine the amount on the same basis that is the same rate and period upon evidence and if the assessment is less than what is assessed u/s 126 of the Act, the consumer is entitled to a refund otherwise he is liable to pay

it as a civil liability.

26. The provision of compounding as contained in Section 154 is difference and distinct from the liabilities as contemplated u/s 126 of or for that matter Section 154. This is an independent liability to compound the offence and is a fixed liability irrespective of the quantum of assessment. The only difference is between the Act as enacted and as it now stands after 2007 Amendment is that if earlier assessment was made and it was paid in full then no further action including criminal prosecution could be taken by virtue of the then proviso to subsection (4) of Section 126 which now stands deleted. Further, now after the 2007 Amendment once even if there is a criminal prosecution and the fine has been disconnected upon payment of the assessed amount by virtue of the third proviso to sub-section (1-A) of Section 135, the supply has to be restored. Further under the Act, as originally enacted, the basis of calculation for an assessment u/s 126 and Section 154 was different. In respect of Section 126 it was 1-1/2 times the tariff rate for a maximum period of six months [section 126(5) & (6)], whereas u/s 154(5) it was two times the tariff for a period of 12 months or less as the case may be. But, now under the amended provisions both the calculations are on the same basis of twice the tariff rate and for a period of 12 months subject to consumer providing a shorter period.

7. It is apparent that the impugned order suffers from non-application of mind and it has been passed in exercise of power which is not available to the Respondent No. 4 rather the competent criminal court, by passing the order of conviction and sentence, can exercise such power while imposing the sentence and fine upon the consumer, against whom the theft of electricity is established. The exercise contemplated for the provisional and final assessment in cases of unauthorized use of electricity and/or theft of energy can be done only in terms of the provisions of Section 126 of the Act, for which the consumer also have a remedy of appeal u/s 127 of the Act.

8. In these circumstances the impugned order cannot be sustained in law and it is, accordingly, quashed. However, it is made clear that it will be open to the respondents to make a fresh assessment for the alleged act of unauthorized use of electricity or theft of energy in terms of Section 126 of the Act of 2003, in accordance with law. With the aforesaid observation and direction, this writ petition stands allowed.