

(2016) 11 JH CK 0036
In the Jharkhand High Court
Case No : W.P. (C) No. 6476 of 2016

M/s Blue Star Melleable Pvt. Ltd.	Vs	APPELLANT
Jharkhand Urja Vikash Nigam Limited		RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:

Electricity Act, 2003 — Section 126
Electricity Regulations, 2015 — Regulation 11.9

Citation : (2017) 2 AIRJharR 109

Hon'ble Judges : Mr. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. R.P. Bhatt, Sr. Advocate, Mr. Dhananjay Kr. Pathak, Ms. Sweta Rani and Mr. Shashi Kant Mishra, Advocates, for the Petitioner; Mr. Ajit Kumar, Sr. Advocate and Mr. Navin Kumar, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Shree Chandrashekhar, J.—In the morning, the matter was mentioned by the learned counsel for the petitioner and at the request of vice counsel for Mr. Ajit Kumar, learned Senior counsel appearing for the respondent Jharkhand Urja Vikas Nigam Limited, the matter was ordered to be posted at 02.15pm.

2. Alleging illegal and wrongful disconnection of electric supply on 26.10.2016, the petitioner, a company registered under the Companies Act, 1956, seeks a direction upon the respondent-Jharkhand Urja Vikas Nigam Limited for restoration of electric supply to its unit.

3. Heard.

4. Mr. R.P. Bhatt, the learned Senior counsel for the petitioner submits that the Inspection Report dated 26.10.2016 does not indicate that Metering unit, HT Bushing and LV Box were tampered with, and only on the ground that seals of Meter room door, Meter box and Metering unit room door were found tampered electric supply at the petitioner's unit has been disconnected on an allegation of

theft of electricity. The learned Senior counsel contends that the circumstances which have been taken against the petitioner Company, at best, may indicate a case of suspected theft, which has to be dealt with under Regulation 11.12 of 2015 Regulations where under, disconnection of electric supply to the consumer is not warranted before a third party report is received on the question of tempering of the Metering unit. The learned Senior counsel prays for an interim order.

5. Opposing the prayer for restoration of electric supply, Mr. Ajit Kumar, the learned Senior counsel for the respondent-Jharkhand Urja Vikas Nigam Limited, referring to decision in "M/s Shyam Lal Iron & Steel Company v. Jharkhand State Electricity Board and Others" reported in 2013 (3) JLJR 435 and Section 135(1A) of the Electricity Act, 2003, submits that in all cases of theft of electricity the consumer must pay the entire amount of provisional assessment before the electric supply can be restored. It is contended that merely because the respondent no.4 has issued a notice purportedly under Section 126 of the Electricity Act, 2003 r/w Regulation 11.9 of 2015 Regulations, the petitioner, cannot wriggle out of the mandate under 2003 Act to pay the amount under provisional assessment.

6. Considered.

7. The petitioner was granted electrical connection under HTSS Tariff for a contract demand of 2000 KVA on 01.09.2011. It is pleaded that there was power break down at petitioner's unit due to damage to incoming cable and on intimation, Nigam officials visited the petitioner's unit on 18.06.2016 and restored the power supply. They sealed the Meter and Metering unit room door. They again visited petitioner's unit on 26.08.2016 for meter reading when they conducted MRI of meter also. Report prepared on 26.08.2016 does not disclose any tempering. On 07.09.2016, Nigam officials again visited petitioner's unit for changing the incoming cable connected to the Metering unit. Learned Senior counsel for the petitioner has referred to report prepared on 07.09.2016 to contend that everything was found in order and no tempering of any kind was reported by Nigam officials.

8. Mr. Ajit Kumar, the learned Senior counsel for the respondent-Nigam has taken me through the Inspection Report dated 26.10.2016. I have carefully perused the said report. I find that except, tempering of seals on Meter room door, Meter box and Metering unit room door, the report dated 26.10.2016 does not disclose any other kind of tempering. Obviously, the aforesaid tempering of seals cannot lead to a conclusion of theft of electricity. However, while making observation on the affairs at the petitioner's unit, it is asserted that the consumer had forcibly moulded L.V. covering of the Metering unit to make the passage for shorting the CTS, from time to time. It has also been asserted that the consumption pattern and the loadgraph clearly indicate that there has been regular interference with the metering system by adopting the aforesaid method.

9. At this stage, without commenting upon the merits of the matter, lest it may cause prejudice to either party, it needs to be recorded that insofar as, allegation of tempering is concerned, report prepared on 26.10.2016 does not disclose tempering with Metering unit, LV Box Glass or HT Bushing. Reports indicate that prior to 07.09.2016 tempering of seal or theft of electricity was not reported by the Nigam officials, when they had visited petitioner's unit at least on three occasions. The calculation sheet annexed along with show-cause notice issued to the petitioner on 28.10.2016 discloses provisional assessment for Rs. 2,94,07,232/-. The aforesaid calculation is based on an assumption that the petitioner indulged in theft of electricity for 128 days, that is, for the period between 18.06.2016 to 26.10.2016. Whether the petitioner is liable for theft of electricity from 18.06.2016 or not, whether it is a case of theft or suspected theft and whether the petitioner is liable or not liable, are the contentious issues which would be decided at the final hearing. It is stated that the petitioner-Company has engaged about Five hundred employees, who on account of disconnection of electricity are sitting idle. Petitioner's unit, which was granted electric supply connection with contract demand of 2000 KVA, is engaged in manufacturing of Grinding Media Balls which are supplied to the power plants. Learned counsel for the petitioner states that the manufacturing unit has been established by investing about Rs. 25 crores. Disconnection at petitioner's unit, obviously, would not serve any cause. The learned Senior counsel for the respondent-Nigam has tried to impress upon the Court that the petitioner must pay the entire amount of provisional assessment. However, in view of the facts noticed herein above, I am of the opinion that it would serve the cause of justice, if the petitioner is directed to pay 50 per cent of the amount, provisionally calculated for the period between 07.09.2016 and 26.10.2016 in the manner indicated in the chart appended to notice dated 28.10.2016. At this stage, the learned Senior counsel for the petitioner, on instructions, states that the petitioner would deposit Rs. 50 Lacs, by tomorrow.

10. Subject to final calculation of the aforesaid amount, it is hereby ordered that on deposit of Rs.50 Lacs (Fifty Lacs) in favour of Jharkhand Urja Vikas Nigam Limited-Respondent No.1 through demand draft or RTGS, electricity connection at the petitioner's unit shall be restored, forthwith. It is made clear that the payment made by the petitioner shall be subject to final outcome of the case.

11. The respondents are directed to file counter-affidavit, within four weeks.

12. Post the matter on 17.01.2017 under the heading "Admission".