
(2020) 10 JH CK 0057

In the Jharkhand High Court

Case No : Writ Petition(C) No. 2094 Of 2020

M/s. Dayal Resorts Private Limited

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 15-10-2020

Acts Referred:

Electricity Act, 2003 — Section 108
Constitution Of India, 1950 — Article 226

Citation : (2020) 10 JH CK 0057

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : M.S. Mittal, Rahul Lamba, Rajiv Ranjan, Manoj Kumar

Final Decision : Disposed Of

Judgement

The present writ petition is taken up today through Video conferencing.

The present writ petition has been filed seeking following reliefs:

(a) For declaration that distribution company cannot levy fixed charges during the period when the petitioner's hotel was closed pursuant to the notification no. 40-3/2020- DM-1(A) dated 24.03.2020 (Annexure-2) issued by the MHA and continued by subsequent notifications dated 15.04.2020, 01.05.2020 and 17.05.2020 (Annexure-3 series) and also the subsequent notifications dated 30.05.2020 and 29.06.2020 (Annexure-4 series) issued by the MHA as well as various orders issued by the Home, Prison & Disaster Management Department (Disaster Management Division), Government of Jharkhand dated 01.06.2020 and 26.06.2020 (Annexure-5 series).

(b) For declaration that closure of the petitioner's hotel will come under the ambit of force majeure and as such the fixed/demand charges for the period the petitioner's hotel remained closed cannot be realised from the petitioner's hotel and also to hold that such charges cannot be realised in terms of Clause IX of the Chapter A-14 ("Terms and Conditions of Supply") of the tariff for the financial

year 2019-20 applicable from 01.04.2019;

(c) For issuance of an appropriate writ or a writ in the nature of certiorari for quashing the energy bills for the period when the petitioner's hotel remained closed, raised against the petitioner to the extent that it levies the fixed charge during the months in question when the petitioner's hotel was closed as per the direction of the Central Government as well as the State Government;

(d) For issuance of appropriate direction upon the respondent Company to refund or adjust the proportionate KVA/Demand Charges for the period from 24.03.2020 when the lockdown was imposed in the entire country;

(e) For an appropriate direction upon the respondent Company to keep the electricity bill for the months when the petitioner's hotel was closed, in abeyance during the pendency of the writ application and not to take any coercive action against the petitioner.

2. In course of argument, the Court has the occasion to go through the order dated 21.09.2020 passed by the Jharkhand State Electricity Regulatory Commission, Ranchi in Suo-Moto Case No. 15 of 2020 in the light of letter no. 1384/ACS dated 16.07.2020 issued by the Department of Energy, Government of Jharkhand under Section 108 of the Electricity Act, 2003 for providing relief to the electricity consumers due to lockdown imposed by the Government so as to contain the Covid-19 spike. On going through the said order, this Court finds that the Jharkhand State Electricity Regulatory Commission taking note of the lockdown situation being faced by the electricity consumers due to outbreak of Covid-19 (Coronavirus) pandemic, has given certain respites so as to mitigate the difficulties being faced by the said categories of consumers to some extent. The relevant paragraphs of the aforesaid order passed by the Regulatory Commission are quoted as under:

5. The Commission opines that in the present situation, while some relief have been made available to the DISCOMs under the directions of the State Government, by order dated 24.04.2020, passed in Suo-Moto case no. 06 of 2020, some respite also needs to be given to the electricity consumers who are adversely impacted by the Lock down situation. In order to mitigate to some extent, the difficulties being faced by the electricity consumers, the Commission after careful consideration of the situation at hand, decided to provide following relaxation:

I. Moratorium of three months for payment of electricity bills which were due between 01.04.2020 and 30.06.2020, without levying any Delayed Payment Surcharge (DPS) for all consumers of all the Distribution Licensee in the State of Jharkhand, till current month i.e. September, 2020.

II. Waiver of Demand/Fixed Charges (Provisionally) for the month of April, May and June, 2020 for all Industrial & Commercial consumers of all Distribution Licensee of Jharkhand.

III. The Implementation of the above sub-clauses should not have any adverse effect on the applicable Tariff/rebate and other Terms & Conditions of Supply.

6. If the Licensees have received any amount from the consumers either against DPS or fixed/demand charge (Industrial & Commercial consumers only) for the period from 01.04.2020 to 30.06.2020, the said amount should be allowed as adjustment by way of reduction of said amount in the bills of subsequent month after the issuance of this order.

3. It would thus be evident that Jharkhand State Electricity Regulatory Commission has ordered for waiver of payment of demand/fixed charges (provisionally) for the month of April, May and June, 2020 in relation to all the industrial and commercial consumers of all distribution licensees operating in the State of Jharkhand.

4. Mr. M.S. Mittal, the learned Senior Counsel for the petitioner has, however, submitted that in paragraph-7 of the said order, the learned Commission has clarified that all the costs incurred due to any waiver, remission and moratorium shall necessarily be passed to the beneficiary consumer category equivalent to the cost incurred by the licensees. The learned Senior Counsel thus apprehends that the learned Commission, while framing the distribution tariff of all the DISCOMs for subsequent years including the JBVNL, may take note of the said observation which would adversely affect the interest of industrial and commercial consumers.

5. In my view, so far the said apprehension of the learned Senior Counsel for the petitioner is concerned, the same is a future eventuality and no observation at present can be given by this Court in such a situation. Moreover, this Court while exercising the writ jurisdiction under Article 226 of the Constitution of India is not sitting in appeal against the order dated 21.09.2020 passed by the Jharkhand State Electricity Regulatory Commission in Suo-Moto Case No. 15 of 2020, which otherwise is not under challenge.

6. The other submission of the learned Senior Counsel for the petitioner is that as per the aforesaid order of the learned Commission, waiver from payment of demand/fixed charges has been given only for the month of April, May and June, 2020, whereas the concerned hotel of the petitioner-Company remained closed by the orders of the Government in the wake of Covid-19 pandemic from 24.03.2020 to 28.07.2020. Thus, the petitioner has not got any relief so far as the period from 01.07.2020 to 28.07.2020 is concerned.

7. So far this submission of the learned Senior Counsel for the petitioner is concerned, the petitioner is given liberty to prefer a representation before the respondent no. 4 - the Managing Director, Jharkhand Bijli Vitran Nigam Ltd. On filing of the said representation, the issue of waiver of the bills of demand/fixed charges raised against the petitioner for the month of July 2020, particularly from 01.07.2020 to 28.07.2020, shall be considered sympathetically keeping in view that, according to the petitioner, its hotel remained closed during the said

period. The said decision shall be taken by the respondent no. 4 within a period of four weeks from the date of filing of the said representation by the petitioner.

8. The writ petition is accordingly disposed of with aforesaid observation and direction.

I.A. No. 5057/2020 also stands disposed of.