

(1999) 09 PAT CK 0160
In the Patna High Court
Case No : C.W.J.C. No. 8939 of 1999

M/s. JMD Alloys Limited

APPELLANT

Vs

Bihar State Electricity Board and others

RESPONDENT

Date of Decision : 27-09-1999

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49

Citation : (1999) 3 PLJR 481

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : M.L. Verma and L.K. Bajla, for the Appellant; Y.V. Giri and D.K. Dubey for the Board, for the Respondent

Judgement

Aftab Alam, J.—The petitioner is a company incorporated under the Indian Companies Act. It has a High Tension Industrial connection of electricity for running induction furnace(s) for manufacturing steel ingots. The officials of the Bihar State Electricity Board ("the Board", hereinafter) inspected the petitioner's factory premises on August 26 and 27, 1999 and following the inspections a F.I.R. was lodged in which it is alleged that the petitioner was engaged in theft of electricity. On the following day, being 28.8.1999 the electricity line of the petitioner was disconnected at about 4 P.M. and three days later it was given the bill, dated 31.8.1999 (Annexure 11) for a sum of Rs. 8,85,77,131.00. This bill is raised on the basis of the penal provisions as contained in Clause 16.9 of the Board's tariff pursuant to the charge of theft of electricity on the basis of the inspection report, seizure memo and some other materials as would be discussed in due time. The petitioner has filed this writ petition challenging the demand made in the bill, dated 31.8.1999 and seeking a direction for restoration of its electricity line which stands disconnected from 28.8.1999.

2. Lately the Board seems to be making surprise checks and inspections of units engaged in the running of induction furnaces and disputes arising from disconnection of electricity lines and raising of bills under the penal provisions of

clause 16.9 of the tariff are coming to this Court. The first such dispute that came to this Court, arising from the recent inspections made by the Board, was in the case of Venky Steels (P) Limited Vs. Bihar State Electricity Board and Others, . In that case this Court took the view that it was essential for the Board to observe the principles of natural justice, at least its basic elements, before arriving at a finding that a consumer was engaged in the theft of electricity and consequently invoking the penal provisions of Clause 16.9 of the tariff for raising demands and disconnecting the consumer's line for theft of electricity and/or non-payment of the demands made under clause 16.9. The bill raised against M/s. Venky Steels under clause 16.9 of the tariff was accordingly set aside with a direction to the Board to give a show cause notice to the company and to take a fresh decision in the matter after taking into consideration the show cause, if any, submitted on its behalf. However, having regard to the facts and circumstances of the case, this Court declined to give any direction for the restoration of the electrical line of M/s. Venky Steels in the mean while.

3. In the second case of M/s. Kamper Concast Limited Vs. The Bihar State Electricity Board and others, this Court, following its own earlier decision in M/s. Venky Steels, set aside the bill raised against M/s. Kamper Concast under clause 16.9 of the tariff, leaving it open to the Board to give a show cause notice to the company and to take a fresh decision on the question whether the company was engaged in the theft of electricity after taking into consideration the show cause, if any, filed on its behalf. However, having regard to the facts of the case a direction was given simultaneously for restoration of the electrical line of M/s. Kamper Concast Limited.

4. In the case in hand, which is the third case of this nature, Mr. M.L. Verma, learned Senior counsel appearing for the petitioner urged the court to follow its decision in Kamper Concast rather than its decision in M/s. Venky Steels. In other words, Mr. Verma not only asked for setting aside the bill raised against the petitioner company under clause 16.9 of the tariff but also prayed for a simultaneous restoration of its electricity connection.

5. On the other hand, Mr. Y.V. Giri, Learned Counsel appearing for the Board took the extreme opposite end and submitted that the petitioner was neither entitled to restoration of its electricity line nor was the impugned bill, dated 31.8.1999 liable to be set aside on the ground of being raised without giving the petitioner an opportunity to show cause. Mr. Giri submitted that the judgment in M/s. Venky Steels was given without noticing Supreme Court decisions, one in M.P. Electricity Board, Jabalpur and others Vs. Harsh Wood Products and another, and another in M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, . On the basis of the two Supreme Court decisions and another decision of this Court in Shiv Shambhu Hard Coke vs. B.S.E.B., 1999 (2) P.L.J.R. 665 Mr. Giri submitted that on detection of theft of electricity the Board was not required to give any show cause notice before disconnecting the line and the principles of natural justice had no application in case of theft of

electricity.

6. Before proceeding to examine the submissions made by the counsel appearing for the parties, it will be necessary to take note of some of the basic facts and circumstances of the case.

7. The petitioner's unit was inspected by a team of officials of the Board on 26.8.1999. The findings of the inspection are recorded in the inspection report of that date, a copy whereof is at Annexure 4. Some of the relevant findings in the inspection report dated, 26.8.1999 are reproduced below :

5. Capacity of Furnace

2 x 6 MT = 12 M.T. are running (4 crucibles with 2 panels)

1 x 4 MT = 4 M.T. under erection with one panel for which 1970 KVA load is in process of sanction.

6. Capacity in induction furnace in KW i.e. purchase documents to be produced by the consumer as it was reported in head office.

7. Capacity of Transformers

(a) 1 x 3000 KVA = 3000 KVA

(b) 1 x 3600 KVA = 3600 KVA

(c) 1 x 630 KVA = 630 KVA

TOTAL : 7230 KVA

N.B. 3rd furnace transformer of 3000 KVA is seen at site but not yet installed for the new furnace.

Furnace is installed where some piping works are in process.

8. According to the Board, in the inspection held on 26.8.99 it was found that the unit which had a contract demand of 4800 KVA was having two operational induction furnaces, each of 6 metric tons capacity. Thus, the total capacity of the operational induction furnaces in the unit was 12 metric tons. It is further contended on behalf of the Board that it was well established beyond any doubt that a load of 600 KVA was required for running an induction furnace of 1 metric ton capacity. On that basis a load of 7200 KVA would be required for operation of two induction furnaces, each of 6 metric tons capacity. According to the Board, this was also indicated from the total capacity of transformers at the unit being 7230 KVA. It was stated on behalf of the Board that in the light of the above quoted findings from the inspection report it was plain and clear that the company had unauthorisedly exceeded its contract demand and this alone was sufficient to attract the provisions of clause 16.9 of the tariff.

9. It appears that while the inspection being held on 26.8.1999 was yet to be over it started raining around 8.30 in the evening and the inspection team was,

therefore, unable to examine the seals put on the terminal box of the C.T./P.T. unit. In that situation the C.T./P.T. unit, including the terminal box were covered by a plastic wrapper which was sealed so that the C.T./P.T. unit may be examined on the following day in "as it is" condition. In para 11 of the inspection note it was accordingly recorded as under :

11. C.T.P.T. Unit : Seal bit no. 0167673 P signed by EEE/Hq was fixed on terminal of CIPT enclosing there previous seal in Plastic cover to maintain as it is condition and examination.

10. On the following day the inspection team came to examine the C.T./P.T. unit and its terminal box. In respect of the inspection held on 27.8.1999 there is no inspection report but only a seizure memo, (Annexure 5) Para 3 of the seizure memo which describes the seized article is relevant for the present and it is as under :

3. ZABT KIYE GAYE SAMAN M/s. JMD ALLOYS LTD. MAIN LAGA CTPT KE L.T.T. TERMINAL BOX MAIN PURV MAIN LAGAYA GAYA PLASTIC SEAL BIT No. 045660 P JO TAMPERED PAYA GAYA TATHA HASTACCHAR BHI NAHIN PAYA GAYA.

11. The seal bit bearing no. 045660 P which was found tampered with was put on the C.T./P.T. terminal box on 14.5.1999 as appearing from the inspection note of that date (Annexure 2).

12. Mr. Y.V. Giri, with the aid of a plastic model explained to me the construction and main features of the C.T./P.T. box and its terminal. I was told that the C.T./P.T. is the abbreviated form of current transformer--potential transformer. The electric current coming at very high voltage from the main lines of the Board is made to pass through the C.T/P.T unit in order to suitably bring down the voltage at which the current may be used in the factory. Attached to the main C.T./P.T. box is a smaller box called the C.T./P.T. terminal box. It houses the terminals from which wires go to the metering unit for recording both KVA and unit consumption. Both the main C.T./P.T. box and the C.T./P.T. terminal box are to be kept under seals put by the officials of the Board bearing the signature of the official affixing the seal. If the seal on the C.T./P.T. terminal box is removed the terminals become easily accessible to the consumer and by fiddling with those terminals e.g. by removing the wires or putting wires of higher resistance, the flow of energy to the metering unit can be manipulated and if so deired, the C.T./P.T. terminals can be easily fixed so as to show a very low recording of both KVA and unit consumption.

13. According to Mr. Giri, the seizure memo clearly showed that the seal on the C.T./P.T. terminal box was tampered with. In other words, the petitioner's men had reached the C.T./P.T. terminals. Learned Counsel further submitted that this objective finding, coupled with the fact that in the petitioner's unit there were two induction furnaces with the total capacity of 12 metric tons, requiring energy at 7200 KVA, made it plain and clear that the petitioner's men were engaged in the theft of electricity and in withdrawal of energy at a much higher load than

the contract demand of the company. In support of the inference Mr. Giri also referred to some other circumstantial materials which are not necessary to be stated here.

14. Mr. M.L. Verma, Learned Counsel appearing for the petitioner strongly argued that the inferences being drawn by the Board were in fact quite unfounded. According to Mr. Verma the finding of theft of energy and/or unauthorised withdrawal of energy at a higher load on the basis of the capacity of the induction furnaces was at best an assumption. He disputed the equation that 600 KVA was required for running an induction furnace of 1 metric ton capacity. He also disputed the number of induction furnaces and the capacity of transformers shown in the inspection report, dated 26.8.1999. Mr. Verma submitted that if the Board's contention based on the relationship between KVA and the capacity of the induction furnace were correct then the withdrawal of the higher load would have been shown in the trivector meter at the petitioner's unit. Mr. Verma further submitted that the readings in the trivector meter showed that the operational load of the unit, for each month, remained lower than the contract demand. As regard the seal on the C.T./P.T. terminal box which was said to be tampered with Mr. Verma submitted that there was no inspection report in respect of the so called inspection held on 27.8.1999 and there was only a seizure memo. He denied that the seal bit on the C.T./P.T. terminal box was tampered with by the petitioner's men and made a counter allegation that the seal was in fact broken by one of the members of the inspection team. In this regard he submitted that on the same day a F.I.R. was lodged at R.S. Bihta by an official of the company in which it was alleged that a member of the inspection team tried to force open the C.T./P.T. terminal box with a screw driver and a pair of pliers without first properly removing the seal affixed on the box. He then brought down the seal that was damaged in the process and twisting it further kept it with him. Thereafter, the officials of the Board prepared a seizure memo. Mr Verma thus maintained that there was nothing out of order in the electrical connections and installations at the unit and the allegations against the petitioner were made with malafide intent.

15. I am unable to accept the submission and to my mind the making of the F.I.R. by an official of the petitioner is quite significant. It is to be noted that the inspection team consisted of a number of senior officers of the Board. An Executive Magistrate having no connection with the Board was also one of the members of the team and it is difficult for me to accept that every member of the team had joined in the conspiracy to frame false charges against the petitioner. The making of the F.I.R., therefore, appears to be indicative of the fact that the C.T./P.T. terminal box was in fact found not in order.

16. Mr. Verma then submitted that the seizure memo at best showed that the seal on the C.T./P.T. terminal box being tampered with, the C.T./P.T. terminals were accessible to the petitioner's men. However, there was no finding that the C.T./P.T. terminals were in fact manipulated so as to affect the flow of current to

the metering unit. According to Mr. Verma if that were the position it could be very easily seen and noted in the inspection report.

17. Mr. Giri, on the other hand, submitted that the operational load in the unit and the unit consumption were not being recorded in the metering unit according to the well established equation for the simple reason that the C.T./P.T. terminals were interfered with after tampering with the seal on the C.T./P.T. terminal box.

18. On hearing counsel for the parties and on a consideration of the material facts and circumstances of this case I find and hold that the fact position in this case is quite different from the fact position in the case of Kamper Concast but even before one may consider whether to follow the order in Kamper Concast or the other Order in Venky Steels, Mr. Giri, counsel for the Board tried to raise doubts about the basis on which the orders in the aforesaid two cases were passed.

19. Mr. Giri submitted that on detecting theft of electricity, it was open to the Board to disconnect the electricity line without giving any notice to the consumer and to raise demands under clause 16.9 of the tariff and that in a case of theft of electricity, principles of natural justice had no application. In support of his submission, he relied upon two Supreme Court decisions, one in M.P. Electricity Board, Jabalpur and others Vs. Harsh Wood Products and another, and another in M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, . He also relied upon a decision of this Court in Shiv Shambhu Hard Coke vs. B.S.E.B., 1999 (2) P.L.J.R. 665.

20. It is true that the decision in M.P. Electricity Board apparently seems to support the view advocated by Mr. Giri but there are sufficient indications in the judgment that it was rendered on the facts of that case. The facts in that case were such that the theft of electricity by the consumer (Harsh Wood Products) was established beyond doubt and no two opinions in that regard were possible. A representative of the consumer was present during the inspection and he also put his signature on the inspection note. After the disconnection of line even the request for its restoration was made on humanitarian grounds. In those facts, the Supreme Court held that in view of ". . . and also the prima facie conclusion reached by the authorities, it was not necessary to give further hearing to the respondents". But in a case where on the basis of the objective findings of inspection it is not possible to hold with certainty that the consumer was engaged in theft of electricity and where such a finding is sought to be arrived at on facts and circumstances of a circumstantial nature, collected behind the back of the petitioner and other than those found in course of inspection (as was the case in Kamper Concast), an opportunity to show cause can not perhaps be denied before holding the consumer guilty of theft of electricity on the basis of the decision in M.P. Electricity Board.

21. In Hyderabad Vanaspathi Limited, the Supreme Court was considering clause 39 of the Terms and Conditions of Supply of Electricity to Consumers framed by

A.P.S.E.B. in exercise of powers u/s 49 of the Electricity Supply Act. The Supreme Court upheld the provisions contained in clause 39 and rejected all challenges aimed at those provisions. But it is important to note here that clause 39 of the A.P. Board's Terms and Conditions is quite different from clause 16.9 of the Bihar Board's Tariff. And from clause 39 of the A.P. Board's Terms and Conditions (as quoted in the Supreme Court decision) it is evident that in those provisions full play is allowed to the principles of natural justice. In my view, therefore, the decision in Hyderabad Vanaspathi Limited also does not support the view advocated by Mr. Giri.

22. Mr. Giri lastly relied upon a decision by a Hon'ble Judge of this Court, sitting singly, in Shiv Shambhu Hard Coke vs. Bihar State Electricity Board and others. The decision in Shiv Shambhu Hard Coke did not notice some other Supreme court decisions as also a decision by a division bench of this Court, to which I will presently refer. Moreover, in Shiv Shambhu Hrad Coke it was only said that in a case where it was found that the consumer was drawing energy beyond the sanctioned load it was open to the Board to disconnect the line without any notice. In the case in hand (and in other cases arising from the recent inspection by Board) the main issue is not what are the Board's rights and what are the courses open to it in a case where theft of electricity is established. The main issue before this Court is whether the Board is obliged to give an opportunity to show cause to the consumer before holding it engaged in theft of electricity and or withdrawal of energy at a higher load than the contract demand on the basis of objective findings and materials which may not necessarily lead to the inescapable conclusion of pilferage of electricity and in a case where the issue of theft of electricity is the subject of bona fide dispute between the consumer and the Board. The decision in Shiv Shambhu Hard Coke, thus to my mind, does not help Mr. Giri.

23. On the other hand Mr. Verma brought to my notice another Supreme Court decision in Municipal Corporation of Delhi Vs. M/s. Ajanta Iron and Steel Company (Pvt.) Ltd., . In para 4 of that decision it was held as follows:

4. The Learned Counsel for the appellant has contended that in view of the conduct of the plaintiff in stealing electricity, the Court should in its discretion refuse to issue a direction for restroration of the electric supply. We are afraid, it is not possible to agree with the appellant for more reasons than one. The plaintiff is seriously denying the allegation of theft and it is not possible to assume the accusation as correct without a full-fledged trial on this issue. The case of Jagarnath Singh Vs. B.S. Ramaswamy, ; relied upon on behalf of the appellant is clearly distinguishable inasmuch as the consumer in that case was convicted under the Indian Penal Code, and the conviction was being maintained in appeal. Besides, the service of notice is a prerequisite for disconnection, and the appellant cannot be allowed to go back upon its words and refuse the consumer the benefit of notice as contemplated by the agreement. The Learned Counsel for the appellant urged that the Delhi Electric Supply Undertaking will

seriously suffer if this view is upheld. We do not understand as to what is the difficulty in the way of the appellant to serve a notice on the consumer before disconnecting the supply. It has to be appreciated that the licensee undertaking is performing a public duty and is governed by a special statute and the law also contemplates service of a notice before disconnection of supply of electricity. The courts below have made it clear that they have not examined the case on merits. The question whether, the allegation of theft are true or not has to be examined and decided in an appropriate proceeding, and the appellant will not therefore, be prejudiced by the present judgment in its claim. In the result, the appeal is dismissed but, without costs

24. The decision in Municipal Corporation of Delhi was unfortunately not brought to the notice of the court in M.P. Electricity Board vs. Harsh Wood Product.

25. In Bihar State Electricity Board and Others Vs. Sri Bir Ispat, , a bench of this Court in para 19 of the judgment held and observed as follows:

The second submission also deserves the same fate. No person can be declared as a thief unless such a question has been determined after giving him a reasonable opportunity of being heard. But that has not been done so far in the present case. The Court can neither presume a person to be a thief nor can punish him on such a presumption. If after due notice the Board comes to the conclusion that a consumer is guilty of theft of electricity or any other malpractice it is open to it to take action against it in accordance with law.

26. Following the Division Bench decision in the case of M/s. Sri Bir Ispat two Hon"ble Judges of this Court, sitting singly, passed similar orders in two cases, one being CWJC No. 3189/1998 (R) (B.L. Steel Pvt Limited vs. Bihar State Electricity Board and others: date of disposal 23.2.1999) and another being CWJC No. 2290/1999 (R) (M/s. Shiv Shakti Cement Industry vs. Bihar State Electricity Board and others: date of disposal 2.9.1999).

27. Earlier another division Bench in Md.Iqbal vs. State of Bihar, 1994 (1) R.L.J.R. 267 made the following observations in para 17 of the judgment:

There cannot be any doubt that the respondent Board has jurisdiction to disconnect the electrical energy, once it is found that the consumer have consumed the electrical energy beyond its sanctioned load. However, even in such a case, it is incumbent upon the Bihar State Electricity Board to come to a definite finding, if any dispute is raised in this regard. However, I may add that such dispute must be bonafide one. I am further of the opinion that even in relation to the dispute the Board should apply the principles of natural justice.

28. Thus, on hearing counsel for the parties and on a careful consideration of the earlier decisions on this point, I feel satisfied that the view taken by me on this issue and as expressed in paras 11 to 14 of the decision in M/s. Venky Steels was correct and this Court stands by that view.

29. Following the decision in Venky Steels and M/s. Kamper Concast Limited, the

impugned bill dated 31.8.99 (Annexure 11) is set aside.

30. The question now remains regarding restoration of the petitioner's electric line. On this issue, I am unable to accept the contentions of Mr. Verma and I find that on facts the case of the present petitioner is closer to that of Venky Steels rather than the case of Kamper Concast Limited. Therefore, following the decision in M/s. Venky Steels, I would refrain from making any direction for restoration of the petitioner's line. Instead I propose to issue directions similar to those given in M/s. Venky Steels.

31. I accordingly direct that a show cause notice in the light of this judgment be given to the petitioner within a week from today. It will be open to the petitioner to raise all his defences against the charge of committing theft of electrical energy and/or drawing electrical energy at a load much higher than its contract demand. The notice will be given by the General Manager-cum-Chief Engineer, Central Bihar Area Electricity Board, Patna or by any other officer of the Board of an equal or higher rank. The officer issuing notice will consider the petitioner's show cause, if any, filed within a week from the date of service of the notice. He will then pass a final order after giving the petitioner an opportunity of hearing if so requested. The final order will be passed within seven days from the date of receipt of the show cause filed on behalf of the petitioner. The liabilities of the petitioner will be determined on the basis of the final order passed in this matter and it will be open to the Board to raise a fresh bill on the basis of that order. Needless to say that in case the officer considering the petitioner's show cause rejects the pleas raised on behalf of the petitioner, he will pass a speaking order, briefly assigning reasons. This writ petition thus stands disposed of with the aforesaid observations and directions.