

(2020) 01 JH CK 0141
In the Jharkhand High Court
Case No : Writ Petition (C) No.1832 Of 2015

M/S Sri Khatu Shyam Udyog

APPELLANT

Vs

Jharkhand Bijli Vitran Nigam Limitd

RESPONDENT

Date of Decision : 13-01-2020

Acts Referred:

Electricity Act, 2003 — Section 2(39), 42(5)
Constitution Of India, 1950 — Article 12, 226

Citation : (2020) 01 JH CK 0141

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : M.S. Mittal, Naveen Kumar, Varsha Ramsisodia, Zaid Imam, Mukesh Kumar Sinha, Dheeraj Kumar

Final Decision : Disposed Of

Judgement

1. The petitioner has preferred this writ petition for quashing the Bill dated 04.04.2015 whereby the respondents have raised a Bill for Rs.8,24,767/- on

account of B-Phase P.T. connection burnt for a period from 07.06.2014 to 18.03.2015. The further prayer is made for directing the respondents not to

show the above Bill as arrears and subsequently not to charge DPS on the alleged amount in the subsequent bills.

2. Mr. M.S. Mittal, the learned Senior counsel appearing for the petitioner submitted that the Jharkhand Bijli Vitran Nigam Limited (JBVNL) is a

Licensee within the meaning of Section 2(39) of the Electricity Act, 2003. The petitioner had initially taken electrical connection from the respondent-

Board for a sanctioned load of 90 H.P under the LTIS category and from the date of connection, at no point of time any anomaly as against the

petitioner has been alleged. He submitted that time and again meter reading was taken by the authority and after carrying out necessary inspection of

the electrical/electronic equipments, the authorities of the Board has recorded their satisfaction. After the earlier electrical connection, the load of the petitioner was enhanced twice from (a) 90 H.P to 105 H.P and (b) 105 H.P to 210 KVA from Low Tension to High Tension which was sanctioned vide letter dated 07.09.2011. It has been submitted that even after the sanction was granted to the petitioner, the petitioner was not provided High Tension connection and this compelled the petitioner to file the writ petition for a direction upon the respondents to grant High Tension connection and thereafter only High Tension agreement was executed between the petitioner and the J.S.E.B on 25.05.2010 for energizing the H.T Line which was ultimately energized on 09.06.2012. The said agreement was annexed as Annexure-2 and 3 respectively to the writ petition. On 09.06.2012, the H.T connection was granted to the petitioner and on the said date new Modem, meter etc was installed and sealed by the respondents in the premises of the petitioner. It has been submitted that the automatic meter reading worked correctly only for one month and that automatic bill was generated for the month of June, 2012 only. Thereafter, for each month someone from the Department used to come to take manual meter reading and consequently, break the old seal, check the meter, take the meter reading and then put a new seal on the meter. It has been submitted that almost each and every month inspection was carried out by the officials of the respondent-company who came to take the manual reading of the meter and at no point of time anomaly of any nature was alleged whatsoever. It has been submitted that on the repeated requests of the petitioner to rectify the automatic meter reading device, nothing was done. On 22.02.2015, the petitioner wrote a letter to the respondent-authorities requesting to test its meter as power factor was charged from it even when the capacitor was found correct. This request was again repeated on 15.03.2015. On repeated requests of the petitioner, on 18.03.2015 a team of the respondent-company visited the premises of the petitioner to conduct the inspection of the meter installed in the petitioner's premises. After the inspection, it was observed by the officials, which is apparent from the Annexure-7 to the writ petition, that:

â??Observation and work done:- As per instruction of the higher official in the time of the defective modem replacement it is found that one

phase PT (B.Ph) is missing in meter. At first meter reading and MRI of the meter are taken and then accucheck is also done. After the

transformer LV box is opened and found that B.Ph PT connection is burnt and out from the LT Stud then is done due to heating on this

portion. Due to heating CT is also heated and slightly oil leakage from that LT stud gasket. After getting shut down of 11KV line and proper

rectification 11KV line again charged and found all are ok.â??

3. It has been submitted that no anomaly was found in the meter of the petitioner and only the defective meter was changed.

4. Mr. Mittal, the learned Senior counsel for the petitioner submitted that nowhere in the inspection report it was mentioned that the petitioner had

been under-charged etc. All of a sudden on 04.04.2015 the petitioner received a supplementary bill demanding a sum of Rs.8,24,767/- on account of

B-Phase P.T. connection burnt for a period from 07.06.2014 to 18.03.2015.

5. Aggrieved with this bill, the petitioner has filed this writ petition.

6. Mr. Mittal, the learned Senior counsel appearing for the petitioner assailed the impugned bill on the ground that the respondents unilaterally and

arbitrarily raised the bill without giving any opportunity of hearing to the petitioner. No show cause notice was served upon the petitioner before raising

the impugned bill. To buttress his argument, Mr. Mittal, the learned Senior counsel had relied in the case of â??Dumraon Textiles Limited v. Bihar

State Electricity Board and Orsâ?? reported in (1993) 2 PLJR 527.

Paragraph no.19 of the said judgment is quoted hereinbelow:

â??19. The Board being a public authority discharge Governmental function. A consumer depends upon the authorities of the Board for its

day to day amenities which are essential for human existence. It is the State within the meaning of Article 12 of the Constitution of India. It

thus require to act fairly, judiciously and in accordance with the principles of natural justice. Its action thus must be fair and conform to the

standards of public morality. Its Officers cannot act arbitrarily or raise demand for substantial amount of money without affording

opportunity of hearing to the consumer.â??

7. Relying on this judgment, Mr. Mittal, the learned Senior counsel submitted that in view of this judgment, case of the petitioner is fully covered on this

point as there is no opportunity of hearing provided and no show cause was issued to the petitioner before the passing of the impugned bill.

8. The next ground of challenge to the bill is that the respondent malafidely acted and without sending the meter for its testing and without assigning

any reason has assumed that the meter was burnt on 07.06.2014, and that too, after a lapse of one year. Mr. Mittal, the learned Senior counsel further

submitted that it was mandatory under the (Electricity Supply Code) Regulations, 2005 under Clause 13.3.1 that if the meter is found to be burnt, lost

or defective and inoperative, it shall be replaced and supply restored to the consumer and in view of the Clause 13.4.2 if the authorize representative

of the Licensee finds the meter defective and not recording accurately on inspection, the meter shall have to be tested for accuracy at a third party

facility approved by the Commission and in view of the Clause 13.4.3 of the above Code, before testing the meter of the consumer, 7(seven)

days notice is mandatory and after the completion of this procedure in view of the Clause 13.4.4 the Distribution Licensee shall issue rectified

bills on the basis of the Test Report with a copy of the Test Report to the consumer within one month of the testing. He further submitted that the

above Supply Code, particularly, Clause 13.3.1, Clause 13.4.2, Clause 13.4.3 and 13.4.4 of the (Electricity Supply Code) Regulations, 2005 which are

mandatory in nature has not been complied with and the impugned bill has been issued without compliance of the (Electricity Supply Code)

Regulations, 2005, which is mandatory in nature. Mr. Mittal, further submitted that no factual statutory presumption can be raised if the seals are

found tempered which is well-settled in view of the judgment rendered in the case of Kamaljeet Singh v. The Bihar State Electricity Board &

Ors. reported in (2010) 3 PLJR 514. He further submitted that Potential Transformer (PT) is also a meter in view of the judgment rendered in the

case of U.P.S.E.B v. Atma Steels & Ors. reported in (1998) 2 SCC 597. On these grounds, he submitted that the impugned bills are not

sustainable in the eye of law and this Court is well within its jurisdiction to exercise its power under Article 226 of the Constitution of India.

9. Per contra, Mr. Mukesh Kumar Sinha, the learned Sr. S.C. assisted by Mr. Dheeraj Kumar, the learned S.C submitted that the impugned bill

amounting to Rs.8,24,767/- was raised on account of actual consumption which was unrecorded due to B-Phase PT missing, was served to the

petitioner vide letter dated 04.04.2015 alongwith the detailed calculation sheet explaining the reason for raising supplementary bill. He submitted that

the Modem replacement and MRI report was done which is apparent from the report dated 18.03.2015. He further submitted that the bill was raised

for actually utilized electric power by the petitioner, which could not be recorded in the meter due to burning of B-Phase PT connection, which cannot

be said to be arbitrary. He submitted that there is no necessity of issuing show cause notice to raise the bill for actual consumption of power as the

petitioner has already executed agreement with the Jharkhand Bijli Vitran Nigam Limited (JBVNL) for taking power supply and also to pay for

energy consumed. By way of referring to paragraph 11 of the counter affidavit, Mr. Sinha, submitted that there was no defect in the meter, so no

question arises to replace the defective meter. He further submitted that the Modem of the petitioner's meter was defective which was replaced

on 18.03.2015 and during the replacement of the Modem it was detected that B-Phase PT connection is isolated from the LT stud of transformer and

due to the isolation of B-Phase PT connection, meter was not recording actual consumption by 1/3rd of total consumption. On this ground, he

submitted that the submission of the learned counsel appearing for the petitioner is not correct and the Licensee has rightly issued the impugned bill.

10. In view of the above facts and submissions of the learned counsel appearing for the parties, this Court finds that there is disputed question of fact

involved in this writ petition. Sub-section 5 of Section 42 of the Electricity Act, 2003 provides for alternative remedy and for ready reference, it is

quoted hereinbelow:

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a

forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

11. It is settled provision of law that the High Court would not normally interfere in exercise of its jurisdiction under Article 226 of the Constitution of

India where statutory alternative remedy is available. It is also well-settled that the High Court in exercise of its extraordinary jurisdiction under Article

226 of the Constitution of India can entertain writ or appropriate proceedings despite availability of an alternative remedy, but this principle applies in

the facts of the each case. Reference in this regard may be made to the case of
Executive Engineer, Southern Electricity Supply Company of

Orissa Limited (SOUTHCO) & Anr. v. Sri Seetaram Rice Mill reported in (2012)
2 SCC 10. 8 Paragraph nos. 80, 81 and 82 of the said judgment is

reproduced hereinbelow:

80. It is a settled canon of law that the High Court would not normally
interfere in exercise of its jurisdiction under Article 226 of the

Constitution of India where statutory alternative remedy is available. It is equally
settled that this canon of law is not free of exceptions. The

courts, including this Court, have taken the view that the statutory remedy, if
provided under a specific law, would impliedly oust the

jurisdiction of the civil courts. The High Court in exercise of its extraordinary
jurisdiction under Article 226 of the Constitution of India can

entertain writ or appropriate proceedings despite availability of an alternative
remedy. This jurisdiction, the High Court would exercise with

some circumspection in exceptional cases, particularly, where the cases involve a
pure question of law or vires of an Act are challenged.

This class of cases we are mentioning by way of illustration and should not be
understood to be an exhaustive exposition of law which, in

our opinion, is neither practical nor possible to state with precision. The
availability of alternative statutory or other remedy by itself may

not operate as an absolute bar for exercise of jurisdiction by the courts. It will
normally depend upon the facts and circumstances of a

given case. The further question that would inevitably come up for consideration
before the Court even in such cases would be as to what

extent the jurisdiction has to be exercised.

81. Should the courts determine on merits of the case or should they preferably
answer the preliminary issue or jurisdictional issue arising

in the facts of the case and remit the matter for consideration on merits by the
competent authority? Again, it is somewhat difficult to state

with absolute clarity any principle governing such exercise of jurisdiction. It
always will depend upon the facts of a given case. We are of

the considered view that interest of administration of justice shall be better
subserved if the cases of the present kind are heard by the

courts only where they involve primary questions of jurisdiction or the matters

which go to the very root of jurisdiction and where the authorities have acted beyond the provisions of the Act. However, it should only be for the specialised tribunal or the appellate authorities to examine the merits of assessment or even the factual matrix of the case.

82. It is argued and to some extent correctly that the High Court should not decline to exercise its jurisdiction merely for the reason that

there is a statutory alternative remedy available even when the case falls in the abovementioned class of cases. It is a settled principle that the

courts/tribunal will not exercise jurisdiction in futility. The law will not itself attempt to do an act which would be vain, *lex nil frustra facit*,

nor to enforce one which would be frivolous."lex neminem cogit ad vana seu inutilia"the law will not force anyone to do a thing vain

and fruitless. In other words, if exercise of jurisdiction by the tribunal *ex facie* appears to be an exercise of jurisdiction in futility for any of

the stated reasons, then it will be permissible for the High Court to interfere in exercise of its jurisdiction. This issue is no longer *res integra*

and has been settled by a catena of judgments of this Court, which we find entirely unnecessary to refer to in detail. Suffice it to make a

reference to the judgment of this Court in *Whirlpool Corpn. v. Registrar of Trade Marks* where this Court was concerned with the powers of

the Registrar of Trade Marks and the Tribunal under the Trade and Merchandise Marks Act, 1958 and exercise of jurisdiction by the High

Court in the face of availability of a remedy under the Act.â??

12. The intention behind the self-imposed rule is clear. If the High Court has to exercise its writ jurisdiction so widely as to regularly override statutory

procedures, the High Court would become overloaded with a vast number of cases to the detriment of the litigants and this will defeat the

legislature's intention in enacting statutory appeal mechanisms to ensure speedy disposal of the cases.

13. The Licensee has already constituted a Forum under Sub-section 5 of Section 42 of the Electricity Act, 2003. Keeping in view the availability of

statutory alternative remedy available, it would not be proper for this Court to exercise its jurisdiction under Article 226 of the Constitution of India.

The determination of dispute in this case and validity of the demand which squarely fall within the domain of the specialized authority, in that view of

the matter, this Court is not inclined to exercise its writ jurisdiction under Article 226 of the Constitution of India and accordingly, the writ petition being

W.P.(C) No.1832 of 2015 stands dismissed with liberty to the petitioner to approach the appropriate Forum by way of filing its objection/grounds for

determination in accordance with law.

14. I.A.No.2967 of 2015 stands disposed of.