(2012) 03 JH CK 0044

In the Jharkhand High Court

Case No : Writ Petition (C) No. 731 of 2012

M/s Sri Khatu Shyam Udyog — APPELLANT

Vs

Jharkhand State Electricity Board and Others — RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:
Electricity Act, 2003 — Section 126, 126(1), 126(3), 135, 138

Citation : (2012) 3 JCR 172 : (2012) 3 JLJR 511

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : M.S. Mittal and Mr. N.K. Pasari, for the Appellant; Anil Kumar Sinha and Mr. Ajit Kumar, for the Respondent

Judgement

Narendra Nath Tiwari

1. In this writ petition the petitioner has prayed for direction on the respondents to restore electrical connection of the petitioner which has been illegally disconnected on 1.2.2012 on the allegation of unauthorised use of electricity. The petitioner has also prayed for direction to the respondents to disclose the mode and method of calculation for arriving at the provisional assessment, as the calculation is contrary to the method prescribed by the Jharkhand State Electricity Regulatory Commission. It has been stated that the petitioner had taken electrical connection from the Board for a sanctioned load of 90 H.P. under LTIS category. There was no allegation of any anomaly at any point of time earlier. Subsequently, load of the petitioner was enhanced from 90 H.P. to 105 H.P. and the load from 105 H.P. to 210 KVA was sanctioned by letter No. 2288 dated 7.9.2011. For the purpose of enhancement of load from LTIS to HTIS category the petitioner has taken necessary steps and has purchased the transformer of 315 KVA. Since the enhancement of load was allowed and necessary steps were to be taken, for the last ten days there were no manufacturing activities in the factory premises. In the meanwhile, on 31.1.2012 an inspection was made by the respondents in the factory premises of the

petitioner in late evening at 9.45 P.M. The inspection team allegedly found unauthorised use of electricity by the petitioner. An F.I.R. was lodged by the respondents which was registered under Sections.135, 138 and 139 of the Electricity Act. The electricity line was also disconnected. The petitioner aggrieved by the arbitrary action of the Board filed this application. It is relevant to mention that in the F.I.R. allegation was made of causing loss to the Board of Rs. 10,39,387/-.

2. During pendency of the writ application, the petitioner was served with a provisional assessment purported to be made u/s 126(1) of the Electricity Act, 2003 (hereinafter to be referred as the Electricity Act) in which the provisional assessment of the loss has been shown as Rs. 51,06,041/-. It has been submitted that on the one hand in the F.I.R. loss caused to the Electricity Board is alleged to be about Rs. 10 lacs, the same has been assessed at more than 51 lacs in the provisional assessment.

3. Mr. M.S. Mittal, learned senior counsel appearing oh behalf of the petitioner submitted that the allegation made against the petitioner is wholly false and baseless. The respondents have arbitrarily disconnected the electrical line of the petitioner on frivolous grounds. The assessment of the alleged loss has been made on the basis of HTIS line, whereas the petitioner is the LTIS consumer. He further submitted that the inspection was made in the late evening in absence of the petitioner. In the F.I.R. loss caused to the respondents was said to be about Rs. 10 lacs, whereas the amount of loss has been assessed at Rs. 51 lacs and odd in the provisional assessment. There is no consistency in the amount and claim of the respondents. Learned counsel further submitted that the alleged inspection, lodging of F.I.R. and making provisional assessment by the respondents are malicious, arbitrary and illegal. The petitioner''s line has been illegally disconnected resulting into closure of the petitioner''s factory and causing enormous loss and injury to the petitioner.

4. The writ petition has been contested by the respondents-Board. In the counter affidavit filed by the respondents serious objection has been taken against the maintainability of the writ petition. It has been stated that on surprise inspection the petitioner was found indulged in theft of energy and consuming power much beyond the sanctioned load. F.I.R. was lodged against the petitioner on the basis of the inspection report. Provisional assessment of loss has been made under the provisions of Section 126 of the said Act. The copy of provisional assessment was, thereafter, served on the petitioner. He was given opportunity to file objection against the. provisional assessment under the provisions of Section 126(3) of the Electricity Act. But without filing any objection before the Assessment authority, the petitioner has filed this writ petition which is not at all maintainable. The petitioner has ample opportunity to take all the points / the grounds against the provisional assessment. He has also got opportunity to defend himself in the case registered on the basis of the F.I.R. lodged by the respondents. This writ petition is, thus, not maintainable and liable to be

dismissed.

5. I have heard learned counsel for the parties and considered the facts and materials on record. It is an admitted fact that in the F.I.R. lodged on the basis of the inspection, the claim of loss caused to the respondents - Board is mentioned as Rs. 10,39,387/-, whereas in the provisional assessment the loss has been alleged to the tune of Rs. 51,06,041/-

6. Mr. Anil Kumar Sinha, learned senior counsel appearing on behalf of the respondents tried to justify the said contradictory claim of the Board by interpreting the scope of Section 126 and 135 of the said Act. According to learned counsel, there may be different assessment of loss for the purpose of the said two Sections. However, without going into the merit of the claim and the counter claim of the parties at this stage and without going into the merit of the genuineness of the assessment made by the Board, a wide inconsistency is apparent between the aforesaid two tentative assessments of loss based on the same document i.e. the alleged inspection report.

7. However, there is substance in the submission of the respondent that the petitioner has got full opportunity to1 take all the points, objections and the grounds before the Assessing Authority.

8. Section 126 of the Electricity Act prescribes an elaborate procedure for the purpose of assessment of loss caused by unauthorised use of electricity. Sub-Section 3 of Section 126 of the Electricity Act provides for giving proper opportunity to the person on whom order of the provisional assessment has been served, for filing objection against such assessment before the Assessing Officer. The said Section also makes it imperative on the Assessing Officer to afford reasonable opportunity of hearing to such person before passing final order of assessment.

9. The petitioner has also got right to defend himself in the case initiated on the basis of the F.l.R. lodged against the petitioner.

10. In view of the said alternative, efficacious and statutory remedy to the petitioner, the points raised here do not warrant adjudication and decision in writ jurisdiction of this - Court.

11. Considering the above, this writ petition is disposed of giving liberty to the petitioner to appear before the Assessing Authority and file objection and raise all relevant points. The petitioner is also at liberty to take appropriate step in the case registered against on the basis of the F.I.R. Since the petitioner is a small scale industry - said to be a Rice Mill and a consumer under the scheme of the respondent-Board, it would not be in the interest of any party if the petitioner-industry remains closed until the final result of the aforesaid proceedings.

12. Keeping in view that the respondents have themselves made first tentative assessment of loss of Rs. 10 lacs and odd. if the petitioner deposits Rs. 5 lacs in one go, the respondents shall restore the electricity connection within two days

thereafter. It is made clear that the petitioner, thereafter, shall go on paying the current consumption charges on the basis of the bill raised by the respondents.

