
(2025) 01 JH CK 1815
In the Jharkhand High Court
Case No : L.P.A No. 554 of 2015

M/s Usha Martin Limited

APPELLANT

Vs

Jharkhand State Electricity Board

RESPONDENT

Date of Decision : 27-01-2025

Acts Referred:

Citation : (2025) 01 JH CK 1815

Hon'ble Judges : M.S. Ramachandra Rao, CJ;Deepak Roshan, J

Bench : Division Bench

Advocate : Biren Poddar, Piyush Poddar, Manav Poddar, Sachin Kumar

Final Decision : Disposed Of

Judgement

M. S. Ramachandra Rao, C.J. (Oral)

1. The issue raised in this Letters Patent Appeal is covered by the judgment dated 31.08.2024 in L.P.A No. 305 of 2015 to which the appellant herein as well as respondent are also parties. Therefore, for reasons alike, this appeal is allowed in terms of the said order and in particular paragraph nos. 30 to 34 thereof which state as under:

"30. In this regard, we are of the view that Board was never deprived of fuel surcharge. The consumers kept paying at old rate as per direction of this Court. Moreover, in the impugned judgment, there was no direction that bills should be raised along with DPS.

Further, the decision relied on by the Respondents is also inaccurate as this would not be a case where there is no change in the rate of fuel surcharge calculated by the Board. Only if there was any interference / no reduction in the calculation of fuel surcharge made by the Board, it would be justified in levying D.P.S. However, as per the Board's own case, the benefit of Rs. 100 Crores has to be given which would result in downward revision of fuel surcharge. Further, from discussions made hereinabove, it can be seen that calculation of fuel surcharge is

totally inaccurate; accordingly, we hold that the same needs to be revised. Once the rates are revised, the original bill will be deemed to be incorrect and there can be no question of levy of interest/DPS thereupon.

31. Hence, we deem it proper to allow the present batch of appeals. Accordingly, the impugned order passed by the writ court is quashed. Consequently, all the bills which has been impugned in the respective writ applications, are hereby, quashed.

It is ordered that the Bills is to be rework out and the rates of Fuel Surcharge be revised strictly in the line of what has been held by the Patna High Court and the Hon'ble Apex Court and also the finding given by us hereinabove on each and every issue; keeping in mind the fact of Bifurcation of Boards i.e. BSEB and JSEB, amount of Rs.100 Crore received from coal Company and the observation given by us on DPS.

32. For making the revised calculations, we hereby appoint three men committee headed by Hon'ble Mr. Justice Amitabh Kumar Gupta (Retd.), Jharkhand High Court along with two chartered accountants to be nominated by the Chairman of the committee from the names given by both the parties i.e. Board and the Consumers; to examine the calculations.

The committee after coming to the conclusion shall send the calculation to the Board which shall issue fresh Bills to the Consumers for its payment.

The professional fees of the Committee shall be decided by its Chairman and the same will be borne by the appellants.

33. Consequently, all these appeals are disposed of in the manner indicated herein above.

34. Pending I.As, in respective appeals, if any, are also closed."

2. Having regard to the fact that the matter is now left with three men committee to adjudicate, after making calculation and work out the rates of fuel surcharge as well as the liability of the individual consumers to pay such fuel surcharge, only in the event the appellant fails to pay the fuel surcharge as determined by the three men committee, the respondent can deny to the appellant the benefit of the load factor rebate under the provisions of the tariff order 2003-04.

3. This Letters Patent Appeal is disposed of accordingly.

4. Pending I.A, if any, also stands disposed of.