

(2010) 03 PAT CK 0149
In the Patna High Court
Case No : C.W.J.C. No. 1730 of 2009

Nandita Poultry Integrator Pvt. Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 22-03-2010

Acts Referred:

Constitution of India, 1950 — Article 12
Electricity Act, 2003 — Section 56

Citation : AIR 2010 Patna 174 : (2011) 59 BLJR 2046 : (2011) 4 PLJR 863

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—The Petitioner for his duly established industry at Hajipur Industrial Area has sought electric connection from the Respondent-Bihar State Electricity Board. Upon energizing, it was found that the meter, as supplied by the Board, was defective. The Petitioner, notwithstanding, the defective meter, was billed on monthly minimum guarantee basis, which, for a consumer like the Petitioner, who is high tension consumer, is in regard to energy charges and demand charges. Petitioner, because of defective meter, was reluctant to start industry and ultimately with the help of the generator, after about three months of the connection it started commercial production. Board took eight months to replace the meter all along billing on MMG. Petitioner protested on two counts. Firstly, being a new industrial unit to bill on basis of MMG/AMG could be raised against him for a period of five years along and was entitled to other incentives. The second was that having been supplied electricity through a defective meter and the meter not having replaced for almost eight months, the billing itself was impermissible. In the meantime, Petitioner went to Consumer Forum under the Electricity Act and the Consumer Forum directed that till the dispute is resolved, Petitioner's line should not be disconnected. As Petitioner's bills were not revised, Petitioner came to this Court as by then the Consumer Forum, as aforesaid, had become defunct. This Court directed that if bills are raised on

monthly consumption basis, Petitioner would continue to pay them. So far as the period when the meter was defective is concerned, that matter was kept pending decision by the Consumer Forum. Now, the bills not having revised and the Petitioner threatened with disconnection, Petitioner once again approached this Court by the present writ petition. In this writ petition, interim order was passed and it was directed that if payment is made on current consumption basis, the electricity would not be disconnected. The matter was adjourned for seeking instruction and filing a counter affidavit.

2. Petitioner sought revised bill, as had been earlier ordered to be prepared. What to talk of supply with revised bills, totally ignoring the order of this Court and notwithstanding the Petitioner's ad hoc deposits, Petitioner's electricity was disconnected. This was in utter violation of order of this Court. Bank draft which Petitioner wanted to deposit was not accepted on the plea that unless entire dues are cleared the connection would be disconnected. This Court took suo motu notice of this belligerent conduct of the Respondent where they even chose to ignore rather than define the order of this Court and disconnected the electricity.

3. Now a show cause has been filed, in which it is stated that concerned Respondent could not appreciate and follow the import of the order of this Court and as such electricity was disconnected. This is an apology for a reason. Defiance of Court's order is writ large. Petitioner was being made to pay the price for having approached the Court rather than the officers. Now, revised calculations are being submitted to the Court, which were required to be submitted to the consumer before any action was taken. Having disconnected and this Court having initiated suo motu proceeding, plea of not comprehending the order of this Court is being taken but the Petitioner industry has suffered illegal disconnection for over a week solely because the Respondent could not understand the order. Thus, for failure of Respondent-engineers to comprehend/understand the order of this Court, the Petitioner had to pay the price. This is the attitude of the officers of the Respondent-Board, which Board is undisputedly State instrumentality and State within the meaning of Article 12 of the Constitution.

4. Here I may note the legislative provision in regard to exercise of power of disconnection. The provision is contained in Section 56 of the Electricity Act, 2003. A reference of the said section would show that the extreme power to disconnection, which is conferred on the Board, is limited to cases where a consumer "neglects" to pay. Unfortunately, the officials of the Board are in habit of neglecting to read the word "neglect" in the section. They read the section as if whoever default in making payment would suffer the consequence. There cannot be any greater absurd interpretation. The legislature has used expression "neglect" and as commonly understood the expression "neglect" means a conscious and deliberate disregard of legal obligation and not mere default.

5. Here every one was aware that there was litigation pending before the consumer forum. There was writ petition pending in this High Court. There was a

bona fide dispute with regard to liability to pay. Under these circumstances can it be said that mere was "neglect" to pay? Both the consumer forum and this Court had upon certain conditions restrained the Respondents from disconnecting the electricity supply (sic) a clearly in the case there was a dispute which required adjudication. Thus, there being a bona fide dispute, could the Respondent-Board assume jurisdiction u/s 56 of the Act to take a drastic action? Again, in my view, the answer has to be in the negative. Once, there is bona fide dispute, as in the present case, then there is no neglect to pay. There may be default in payment but default simplicitor does not invest the Board with jurisdiction to disconnect. The jurisdiction to disconnection rests only upon neglect to pay. In such circumstances, I cannot hold the disconnection to be legal and valid.

6. As unqualified apology has been tendered clearly stating the inability of the officers of the Board to appreciate the order of this Court, I accept the apology upon conditions that the contempt would be purged at the first instance and on the condition that the electricity of the Petitioner be restored forthwith. That disposes of the contempt matter.

7. As detailed calculation has now been supplied to the Petitioner, learned Counsel for the Petitioner seeks time and is granted time to consider the same and file an appropriate response, so that the matter may be finally concluded by this Court without extending the agony of Petitioner or the other party.

8. Put up the writ petition under the same heading on 5-4-2010.