
(2014) 08 JH CK 0019
In the Jharkhand High Court
Case No : W.P. (Cr.) No. 422 of 2010

Narsingh Ispat Limited

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Electricity Act, 2003 — Section 126, 135, 138

Citation : (2015) 1 AJR 256 : (2014) 4 JLJR 76

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Advocate : N.K. Pasari, Advocate for the Appellant; Ajit Kumar, Advocate for the Respondent

Judgement

Dhruv Narayan Upadhyay, J.—I.A. No. 3411 of 2014 has been filed with a prayer to allow the writ petitioner to amend the writ petition and add prayer in Para-1 as well as prayer portion of the writ petition.

On being satisfied with the grounds taken in the interlocutory application and the amendment prayed for is based on same factual foundation and the same would not change nature of the writ petition, the interlocutory application is allowed. Amendment prayed for stands allowed.

Accordingly, I.A. No. 3411 of 2014 is disposed of.

W.P. (Cr.) No. 422 of 2010:

This writ petition has been preferred by the petitioner-M/s. Narsingh Ispat Limited, through its Director, namely, Hemant Goyal for quashing the first information report and entire criminal proceeding, arising out of Saraikella-Kharsawan Chowka P.S. Case No. 53 of 2010 dated 16th September, 2010, corresponding to G.R. No. 748 of 2010, registered under Sections 126 and 135 of the Indian Electricity Act, 2003. Further prayer has been made for quashing the order dated 13th September, 2013 passed by Sri S.N. Sinha, learned Judicial Magistrate, Saraikella in connection with G.R. No. 748 of 2010, whereby

cognizance has been taken under Sections 135 and 126 of the Indian Electricity Act, 2003.

2. It is contended that the petitioner is a Company incorporated under the provisions of Companies Act, 1956.

3. The brief facts of the case is that an electric connection from Jharkhand State Electricity Board (for short "JSEB") has been taken by the petitioner for running industry (Blast Furnace) vide Consumer No. HT 60 at 33 KV falling under HTSS Mode of Tariff of 2004 for a contract demand of 1200 KVA. The power supply in the factory premises was commenced from 15th September, 2008.

4. According to the first information report on 16th September, 2010, at about 01:00 p.m., the informant and other officials of JSEB had gone to the factory premises of the petitioner in order to install cubical metering unit and in course of that they found that seal bit of main meter room was broken. When the officials of the JSEB made further inspection, they found that seal bit of meter and meter box were also broken and there was sign of tampering with the meter by using screwdriver; paper seal bit and holography seal were also found cut; check meter was also found damaged after breaking seal bit of meter box. Since there was ample evidence available on record, indicating commission of theft of electricity, inspection report as well as seizure list were prepared in presence of representative(s) of the accused/petitioner-Company. The loss incurred to the JSEB due to illegal abstraction of electric energy was assessed to the tune of Rs. 11,50,000/-.

5. A written report was prepared by the Assistant Electrical Engineer, Electric Supply Sub Division, Chandil and was lodged with Chandil Police Station after which Chowka P.S. Case No. 53 of 2010, as indicated above, was registered.

6. The writ petitioner has challenged the institution of criminal prosecution launched against it on the ground, inter alia, that;

(i) The petitioner has installed a Trivector Energy Meter, which provides High Accuracy and capable of recording even small tripping. Its software quality to detect and report conditions of high tampers like misuse of voltage, CT reversal and current imbalances. In fact, the software security system of securing energy meter virtually eliminates any fraud or tamper attempts on the meter.

(ii) On 1st September, 2010 i.e. before fortnight of the alleged incident, the metering system of the petitioner was inspected for the purpose of monthly meter reading and all the seals associated to metering room/metering unit/metering box/transformer and other instruments were found correct and, accordingly, reading report was submitted (Annexure-1).

(iii) Before lodging of the first information report, meter existing in the factory premises was neither installed nor sent to National Laboratory for verification about the accuracy of the consumption.

(iv) Provisional assessment served upon the petitioner was for 1105 hours i.e. from 28th July, 2010 to 16th September, 2010, but it is to be noted that on 1st September, 2010 when the meter reading report was prepared no anomaly of any nature was recorded, so as to allege offence under Section 135 of the Electricity Act, 2003.

(v) As per sub-clause (vii) of Clause 15.8 of the Electricity Supply Code Amendment Regulation, 2010 (hereinafter to be referred as "Supply Code"), the authorities of the JSEB have been restrained from booking a case of theft of electricity against any consumer only on account of seals on the meter missing or tampered or breakage of glass window unless theft of energy is being corroborated by consumption pattern or any other evidence.

(vi) The authorities of the JSEB did not even bother to look into consumption pattern of the Company, in question. The informant and other officials of the JSEB did not verify other required elements before lodging the first information report.

(vii) Under Sub-clause (x) of Clause 15.8 of the Supply Code, in case of suspected theft of energy, the officer is bound to remove the old meter under a seizure memo and seal the same in presence of the consumer and send it for testing before third party approved by the Commissioner and continue the supply with a new meter.

(viii) The provision of sub-clause (xi) of Clause 15.8 reads as under:

"The report shall be signed by the Authorized officer and each member of the inspection team and the same must be handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of inspection report must be pasted at the conspicuous place in/outside the premises and photographed. Simultaneously, the report shall be sent to the consumer under Registered Post/Speed Post on the day or the next day of the inspection.

Provided that, in case of suspected theft, if the consumption pattern for last one year is reasonably uniform and is not less than 75% of the assessed consumption, no further proceedings shall be taken and the decision shall be communicated to the consumer under proper receipt within three days and connection shall be restored through original meter."

By referring the above provision and Annexure-4 (energy bill), it was submitted that consumption was consistent and it was more than 75% and no evidence with regard to change in the consumption pattern was noticed, therefore, no prosecution of the petitioner for committing theft of energy under Section 135 of the Electricity Act, 2003 should have been launched.

(ix) Only with the allegation of tampering of seals of the meter, meter room and check meter assuming that theft of energy has been committed, the first

information report was lodged.

(x) The meter was not found truncated by any artificial means nor any electric wire was inserted to divert the consumption nor any foreign device was attached to suggest dishonest abstraction/consumption or use of electrical energy.

7. Learned counsel for the petitioner, in support of the said contentions, relied upon the judgments reported in Ram Chander Prasad Sharma Vs. State of Bihar and Another, ; Harvinder Motors Vs. B.S.E.S. Rajdhani Power Ltd., ; and Kamaljeet Singh Vs. The Bihar State Electricity Board, ; and submitted that in worst case admitting all the allegations to be true, the petitioner can only be prosecuted for the offence punishable under Section 138 of the Electricity Act.

8. Needless to mention here that the petitioner had immediately deposited the loss assessed by the authorities of JSEB. The investigation done is perfunctory and the Investigating Officer has not collected cogent evidence in accordance with Supply Code and the Electricity Act, 2003 and by doing only table work has submitted charge sheet. Learned Court has also taken cognizance in a routine manner without appreciating or considering the law required to be gone through.

9. Counsel appearing for the Respondent-State as well as informant-JSEB have vehemently opposed the argument advanced by learned counsel for the petitioner. It is contended that there was ample evidence available at the time of inspection, suggestive to a fact that theft of energy was going on. It is not a case in which only paper seals attached to the meter and other instruments were removed, but overwhelming evidence was available that seal of lock of meter room was removed; meter room was opened; seal bit of main meter as well as check meter were found broken; holography seal was also removed; and sign of using screwdriver for the purpose of opening the meter was detected, but the representative(s) of the accused-Company, who was/were present at the time of inspection, failed to justify such illegality committed.

10. It was contended by Respondent No. 2 (informant) that the provision of Clause-15.8(vii) has been made to protect the bona fide consumers, assuming that on account of any reason seal associated with the meter may get missing or may be tampered by any other reason without being any ill motive on the part of the consumer, but the consumer like the petitioner may not take help of the provision of Clause 15.8(vii) where almost all the seals of meter, meter room as well as check meter have been found tampered. No justification was given by the consumer or its representative(s) present at the time of inspection. The evidence available at the time of inspection clearly indicates commission of theft of energy.

11. Learned counsel appearing for the JSEB has submitted that the bill (Annexure-4) has been referred by the petitioner, but it is not properly assessed in accordance with correct provision. By giving example he has contended that it should have been 1127100 units instead of 845325 units. If the correct formula is considered, the consumption pattern would also indicate that it was much below 75% of regular consumption. Learned counsel for the JSEB has further

submitted that nowadays meters having advance technology are being installed and, therefore, availability of foreign device or any other means or connecting wire to divert the consumption is not required. Evidence available at the time of inspection had been loudly suggesting that dishonest abstraction/consumption of electric energy was going on. There is, thus, no merit in this writ petition and the same is liable to be dismissed.

12. I have gone through the materials placed before me and the relevant provisions of law. Evidences collected in the case diary and facts indicated in the first information report roarily suggest men ceria of the petitioner. There was removal of paper seal from all the meters and the locks; there was breakage of seal bit of the meter, meter room and check meter; there was sign of use of screwdriver on the screw of meter and check meter, suggesting that the same were opened for the purpose suitable to the petitioner. Facts and circumstances, which were available at the time of inspection, were not justified by any answer and, therefore, the representative(s) of the accused-Company kept himself/ themselves mum in course of inspection. Certainly, the provisions of Supply Code created by the Jharkhand State Electricity Regulatory Commission have been notified to supplement the provision contained in the Indian Electricity Act, 2003. It would not have any overriding effect on the enactment. I do agree with the submission advanced by counsel for the JSEB and the contentions made in the counter affidavit filed by the Respondent No. 2 that Sub-clause (vii) of Clause 15.8 of the Supply Code is to protect the genuine consumers and not to those who have crossed all norms intentionally for the purpose of committing theft of energy.

13. The facts and circumstances indicated in the judgments cited above by the petitioner are not available in the case at hand. Again, it is reiterated that it is not a case of simple tampering of the seal of the mater, but it is a case in which all possible steps have been taken to commit energy theft by breaking seal bit attached with the meter, check meter and other instruments. The evidence available in the first information report itself is sufficient to distinguish the case of the petitioner from the facts of the judgments cited above.

14. After due investigation, the occurrence has been found true and charge sheet has been submitted and, accordingly, cognizance has also been taken against the accused persons. The petitioner by highlighting technical aspects has tried to demolish the case of the prosecution, but in the writ petition filed for quashing the first information report those technicalities are not required to be considered and this Court has to consider, whether the evidence available in the first information report, prima facie, constitutes an offence or not?

15. In the case at hand, the proceeding has gone to the extent of taking cognizance and, therefore, in view of the discussions made above, I do not feel inclined to allow this writ petition.

16. Accordingly, the writ application stands dismissed with a liberty to the

petitioner to raise its grievance before the Trial Court at appropriate stage.

17. Interim protection granted to the petitioner by order dated 26th November, 2010 stands vacated.