
(2016) 10 JH CK 0055
In the Jharkhand High Court
Case No : L.P.A. No. 310 of 2016

OMEC Engineers

APPELLANT

Vs

Jharkhand Urja Vikas Nigam Limited

RESPONDENT

Date of Decision : 18-10-2016

Acts Referred:

Citation : (2017) 1 JCR 453

Hon'ble Judges : Mr. Pradip Kumar Mohanty, ACJ. and Mr. Ananda Sen, J.

Bench : Division Bench

Advocate : Mr. M.S. Mittal, Sr. Advocate, for the Appellant; Mr. Anit Kumar, Sr. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

I.A.No.4473 of 2016

This application has been filed for condonation of delay of 296 days in filing the present appeal.

2. There being no deliberate and intentional laches on the part of the appellant in preferring the instant appeal, the delay of 296 days is, hereby, condoned.

3. I.A.No.4473 of 2016 stands disposed of.

L.P.A. No.310 of 2016

4. Heard the parties.

5. Aggrieved by the judgment dated 28.8.2015 passed in C.M.P. No.373 of 2014, the opposite party of Civil Miscellaneous Petition (CMP) has preferred this Letters Patent Appeal.

6. The appellant herein entered into two separate agreements with Jharkhand State Electricity Board. Two separate work orders were issued in favour of the appellant. The appellant claimed that he had completed the work, but in spite of

such completion, his due payment was not made. In spite of assurance given by the Jharkhand State Electricity Board, the amount was not disbursed to this appellant. This appellant had no other alternative, than to approach this Hon'ble Court by filing a writ application, bearing W.P. (C) No.4482 of 2012. The said writ application was heard and disposed of by a the learned Single Judge of this Court on 23.7.2013. Learned Single Judge disposed of the writ application without going into the merit of the case, by giving a direction to the Chairman, Jharkhand State Electricity Board to consider the representation of the petitioner and pass a reasoned order on the claim of the petitioner within twelve weeks. It was further ordered that if the claim of the petitioner is found to be genuine and legally admissible and if there is no legal impediment, the payment should be made within a period of eight weeks.

7. For better appreciation, the operative portion of the order is quoted herein below.

" In such circumstances, the writ petition is being disposed of without commenting anything on the merits of the case with liberty to the petitioner to approach the Chairman of the Jharkhand State Electricity Board with a fresh representation containing all necessary facts and documents in support of his claim for payment of outstanding dues against the execution of work under the work orders issued under A.P.D.R.P. Scheme within a period of three weeks. On receipt of such representation, the Chairman, Jharkhand State Electricity Board shall consider the same in accordance with law and, on due verification of records, pass a reasoned and speaking order in respect of claim of the petitioner within a period of 12 weeks thereafter, which shall also be communicated to the petitioner. If the claims of the petitioner are found to be genuine and legally admissible and there is no legal impediment in the same, payments in lieu thereof shall also be made within a period of 8 weeks thereafter."

8. After more than a year of passing the said order, the respondent in the said writ application, Jharkhand State Electricity Board filed Civil Miscellaneous Petition (C.M.P) bearing C.M.P.No.373 of 2014 praying therein to modify the order dated 23.7.2013 passed in W.P.(S) No.4482 of 2012. The Jharkhand State Electricity Board contended that it came to the notice of the Department concerned that the amount involved is nearly 27.09 crores which do not come under the financial competency of the Chairman and besides other important aspect, this matter has to be considered by the Board and it is the Board which is competent to pass an order. It was further contended that during the entire process, Jharkhand State Electricity Board was unbundled and divided into four companies as such, in the changed circumstances, it is the Board of Directors of Jharkhand Urja Vikas Nigam Limited, who is empowered to take decision in the matter and the Chairman alone is not competent to pass any order. In this background, Civil Miscellaneous Petition was filed with a limited prayer to the extent that in the last paragraph of the order dated 23.7.2013 in place of the Chairman, Jharkhand State Electricity Board, direction may be given to the Board

of Directors, Jharkhand Urja Vikas Nigam Limited to take a decision in accordance with law or permission may be granted to the Board of Directors, Jharkhand Urja Vikas Nigam Limited to take a decision.

9. It is pertinent to mention here that before filing C.M.P.No.373 of 2014, in compliance with the direction of the learned Single Judge in W.P.(C) No.4482 of 2012, a reasoned order by the Chairman, Jharkhand State Electricity Board was already passed on 27.10.2013.

10. Hon"ble Single Judge after hearing the parties held that the petition seeking modification has been filed after more than one year of the said judgment. It was further held that modification sought for, does not fall within the scope of Civil Miscellaneous Petition. Ultimately, it was held that the order dated 23.7.2013 passed in W.P.(C) No.4482 of 2012 requires no modification.

11. Being aggrieved by the said order, this Letters Patent Appeal has been filed by the original writ petitioner, who was the opposite party in C.M.P.No.373 of 2014.

12. The appellant herein assails the order passed in the Civil Miscellaneous Petition on the ground that learned Single Judge while disposing the Civil Miscellaneous Petition has held that the direction given to the Chairman, Jharkhand State Electricity Board to dispose of the representation does not mean that any legal requirement of procedural formality are to be waived or by-passed while taking any such decision.

13. He further submitted that he is aggrieved by the observation of the Court to the effect that the learned Single Judge has not gone into the contention of the Jharkhand State Electricity Board, where the matter requires to be placed before the Board of Directors or not. He further submitted that by taking shelter of this observation, respondent is placing the final decision of the Chairman, Jharkhand State Electricity Board before its Board of Directors for reconsideration and denying payment of the genuine and legally payable dues.

14. Counsel for the Jharkhand State Electricity Board submitted that the appellant cannot be said to be aggrieved by the impugned order as no specific direction has been given to any of the authorities. The order passed in C.M.P.No.373 of 2014 does not modify the final order passed in W.P.(C) No.4482 of 2012. Thus, this appeal is misconceived and is liable to be dismissed.

15. After going through the records of the case, we find that it is Jharkhand State Electricity Board who had filed Civil Miscellaneous Petition for modification of the order/judgment passed in W.P.(C) No.4482 of 2012 on 23.7.2013. Learned Single Judge while hearing Civil Miscellaneous Petition has categorically held that there is no reason to modify the order. It has also been held that modification sought for also does not fall within the scope of Civil Miscellaneous Petition. Thus, Civil Miscellaneous Petition was disposed of without any modification in the original order and the modification petition filed by the Jharkhand State

Electricity Board was not entertained. Neither any direction has been issued favouring the Board nor there is any observation or direction which prejudices the appellant or hamper its interest.

16. Since the final order passed in the writ application was not modified, we hold that this appellant cannot be said to be aggrieved by the impugned order, by which, the petition filed by the Jharkhand State Electricity Board was dismissed.

17. Thus, the appeal, at the instance of the appellant, who was opposite party in Civil Miscellaneous Petition no.373 of 2014, is misconceived and is dismissed.