

(2015) 04 JH CK 0012
In the Jharkhand High Court
Case No : Writ Petition (C) No. 1175 of 2015

Pearl Regency

APPELLANT

Vs

Jharkhand Urja Vikas Nigam Limited and Others

RESPONDENT

Date of Decision : 04-04-2015

Acts Referred:

Electricity Act, 2003 — Section 126, 135, 135(1-A), 153, 154

Citation : (2015) 04 JH CK 0012

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : D.K. Pathak and N. Prakash, for the Appellant; Rupesh Kumar and Amarendra Pradhan, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Assailing order dated 12.03.2015 passed under Section 135(1-A) of the Electricity Act, 2003 on the ground that without supplying a copy of inspection report and without affording an opportunity to raise objection, the learned counsel for the petitioner submits that order dated 12.03.2015 has been passed in gross violation of the rules of natural justice. Relying on a decision in Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another, , the learned counsel for the petitioner submits that even in cases where there is no requirement under the statute for providing hearing, before passing an order which entails civil and evil consequences, the authority is under a duty to afford opportunity of hearing. Referring to provision contained in 3rd proviso to Section 135(1-A) of the Electricity Act, 2003, it is contended that the respondent-Jharkhand Urja Vikas Nigam Limited is required to follow the procedure prescribed under Section 126 of the 2003 Act, whereas, the respondent- Jharkhand Urja Vikas Nigam Limited has resorted to the Supply Code Regulation framed under Section 181 of the Electricity Act, 2003 r/w Section 50 of the 2003 Act. It is thus, submitted that the respondent- Jharkhand Urja Vikas Nigam Limited has raised a demand of Rs. 71,12,545/-, arbitrarily, in purported exercise of power under Section 135(1-A) of the Act, which is liable to be quashed.

2. Reiterating the stand of the Jharkhand Urja Vikas Nigam Limited in W.P.(C) No. 247 of 2010, Mr. Rupesh Kumar, the learned counsel for the respondent-Jharkhand Urja Vikas Nigam Limited submits that the issue involved in the present writ petition is concluded by a decision of this Court in "Harihar Cold Storage v. Jharkhand State Electricity Board and Ors.", [W.P. (C) No. 247 of 2010] wherein, a learned Single Judge of this Court has held that, "The next submission in my view against the order of said assessment, the consumer has right to file application before the Special Court under Section 154(5) of the Act, which has power to make final assessment. It is worth mentioning that against the order of Special Court an appeal lie before the High Court under Section 156 of the Act".

3. Relying on decision in The Executive Engineer and Another Vs. Sri Seetaram Rice Mill, , the learned counsel for the respondent-Jharkhand Urja Vikas Nigam Limited submits that the provisions under Section 126 and under Section 135(1-A) of the Electricity Act, 2003 are different and distinct and therefore, the contention raised on behalf of the petitioner that even though criminal case has been lodged, the demand in terms of Section 135(1-A) of the Act can be raised only by following procedure under Section 126, is untenable.

4. It is submitted that in M/s. Shyam Lal Iron and Steel Company Vs. Jharkhand State Electricity Board and Others, , the Hon"ble Division Bench of this Court has held as under:

35. "However, we are of the opinion that against this order, statutory remedy is available to the appellant under Section 154(5) and (6) of the Act. Therefore, we are of the considered opinion that it is not a fit case where we should interfere in the order of assessment which was passed after giving opportunity to the appellant and can be subject matter before the Special Court where the case is pending." 5. The learned counsel for the respondent-Jharkhand Urja Vikas Nigam Limited further submits that under Section 135 there is no provision of appeal because a separate procedure has been prescribed under Sub-section (5) and (6) of Section 154 whereunder, the Special Court constituted under Section 153 of the Act determines the civil liability. It is submitted that the petitioner has not pleaded prejudice caused to it by non-supply of inspection report. The inspection was carried in presence of the authorised representative of the petitioner who has signed the inspection report and therefore, the petitioner was made aware of the contents of the inspection report.

6. The procedure and power of the Special Court has been provided under Section 154 of the Electricity Act, 2003. Section 154(3) provides for maximum sentence of 5 years in a summary trial contemplated under Section 154 of the Act. Section 154(5) provides that the Special Court shall determine the civil liability against the consumer or the person in terms of money for theft of energy. It further provides that the amount of civil liability so determined shall be recovered as if it were a decree of the civil court. Section 154(6) of the Act contains the expression "finally".

7. To my understanding the Hon"ble Division Bench in "M/s. Shyam Lal Iron and Steel Company" has not held that against an order passed under Section 135(1-A) of the Electricity Act, 2003, the consumer has remedy of challenging the order of provisional assessment before the Special Court, during the pendency of the criminal case. Prima-facie, I am of the opinion that the observation of the Hon"ble Division Bench that "an order of assessment can be subject matter before the Special Court where the case is pending" would not mean that notwithstanding pendency of the criminal case, the consumer can approach the Special Court challenging the order of provisional assessment under Section 135(1-A). In fact, there is no provision under the Act for challenging the provisional bill issued under Section 135(1-A). Only an objection can be filed by the consumer at the time of determination of civil liability by the Special Court. Section 154(6) makes it abundantly clear. However, relying on decision in "M/s. Shyam Lal Iron and Steel Company v. Jharkhand State Electricity Board", in W.P. (C) No. 247 of 2010 the learned Single Judge has held that the consumer has a right to file application before the Special Court under Section 154(5) of the Act, which has power to make final assessment. The learned counsel for the respondent-Jharkhand Urja Vikas Nigam Limited has urged that the learned Single Judge has held that the consumer has a right to challenge the order of provisional assessment even during the pendency of the criminal case. Prima-facie, I am of the opinion the Special Court would assume power to determine the civil liability only on conclusion of the criminal case and not before that. Under Section 154(5) and (6), the Special Court has been clothed with jurisdiction to determine the civil liability however, the Special Court assumes jurisdiction under Sub-section (5) and (6) of Section 154 of the Act only after conclusion of the criminal case and it is only at the stage, after conclusion of the criminal case, when the Special Court proceeds to determine the civil liability, a consumer can put its objection to the order of provisional assessment. The power of the Special Court to try the criminal case and to determine the civil liability are two different and distinct powers which cannot be exercised simultaneously. The power to determine civil liability can be exercised only on conclusion of the criminal case, is also apparent from the fact that the provisional bill is issued under Section 135(1-A) of the Act. Therefore, I am of the opinion that the consumer has no occasion to approach Special Court to challenge the demand raised under Section 135(1-A) of the Act however, in view of the order passed by the learned Single Judge of this Hon"ble Court in W.P.(C) No. 247 of 2010, I am of the opinion that the issue, "whether a consumer, even before conclusion of the criminal case, can approach the Special Court for challenging the demand raised under Section 135(1-A) of the 2003 Act or not?", requires to be authoritatively pronounced by the Hon"ble Division Bench of this Court.

8. Issue notice.

9. Mr. Rupesh Kumar, the learned counsel appears and waives service of notice on behalf of the respondent-Jharkhand Urja Vikas Nigam Limited and is permitted to file counter-affidavit within two weeks.

10. The learned counsel for the petitioner submits that on 11.03.2015 the electric connection to the petitioner's unit has been disconnected, due to which the petitioner is incurring huge liability. The learned counsel prays for restoration of the electric connection, which is vehemently opposed by the learned counsel for the respondent-Jharkhand urja Vikas Nigam Limited.

11. From the materials brought on record and the aforesaid contentions raised on behalf of the petitioner, I find a prima-facie case in favour of the petitioner. The petitioner is running a residential hotel business and if the electric connection to the petitioner's unit is not restored, the petitioner would suffer loss. However, keeping in view the nature of allegation against the petitioner and the interest of the respondent-Jharkhand Urja Vikas Nigam Limited, it is ordered that on making payment of 50% of the demand raised on 12.03.2015, the electric connection to the petitioner's unit shall be restored.

12. Let this writ petition be placed before a Hon''ble Division Bench of this Court.

13. The Registrar General of this Court is directed to seek necessary order from the Hon''ble Chief Justice of the High Court of Jharkhand.