
(2015) 02 JH CK 0087

In the Jharkhand High Court

Case No : Writ Petition(C) Nos. 6252, 6260, 6264, 6281, 6286 and 6309 of 2010

Rajiv Ranjan and Others

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 06-02-2015

Acts Referred:

Electricity Act, 2003 — Section 126, 50

Citation : (2015) 02 JH CK 0087

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Dhananjay Kumar Pathak and Sweta Rani, for the Appellant;
Sahjanand Sharma, Advocates for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—These writ application are heard together and disposed of by this order as a common question of law arose in these cases.

2. In these applications, petitioners have challenged the assessment orders, passed on different dates by the respondent - Jharkhand State Electricity Board on the basis of inspection held on different dates in the premises of petitioners. Details of impugned orders are as under:

3. The main contention of Sri Dhananjay Kumar Pathak, learned counsel for the petitioners, in all the writ applications is that the assessment orders have been made on the basis of Circular No. 531, dated 29.01.2009, issued by the Secretary, Jharkhand State Electricity Board. It is submitted that after coming into force of The Electricity Act, 2003, Jharkhand State Electricity Board has no power to issue Circular prescribing the method of assessment, in cases of unauthorized use of electricity. It is submitted that the said assessment can only be made on the basis of procedure prescribed under Section 126 of the The Electricity Act, 2003. It is further submitted that it is clear from para-8(d) of the counter affidavit, filed on behalf of the Jharkhand State Electricity Board, that the

assessment in these cases have been made on the basis of aforesaid Circular dated 29.01.2009. It is submitted that since the said Circular itself is illegal and without jurisdiction, therefore, any assessment made on the basis of method prescribed in the Circular is not sustainable. It is, however, admitted by both the parties that later on, after issuance of Electricity Supply Code, 2010, aforesaid Circular withdrawn by the Board.

4. On the other hand, Sri Sahjanand Sharma, learned counsel appearing for the Jharkhand State Electricity Board/Company submits that in these cases, petitioners have been given opportunity of hearing and after hearing them, the said assessment orders have been passed. It is further submitted that earlier petitioners have not raised this point before the assessing authority, therefore, they are not entitled to raise this point for the first time in this Court. Accordingly, it is submitted that the order passed by the assessing authority cannot be interfered in these writ applications.

5. Having heard the submissions, I have gone through the record of these cases. From perusal of counter affidavit of the Jharkhand State Electricity Board-Company in W.P.(C) No. 6281 of 2010, it is clear that the final assessment were made on the basis of Circular dated 29.1.2009, which prescribes the method of assessment in case of unauthorized use of electricity by a non-domestic consumer.

6. From perusal of annexure-5, it appears that the same has been issued on 29.01.2009 by the Secretary, Jharkhand State Electricity Board, whereby he prescribed method for assessment in case of unauthorized use of electricity. From perusal of the aforesaid Circular, it is not clear under which provision of law it was issued by the Secretary. It is worth mentioning that Section 126 of the Electricity Act, 2003 has prescribed a procedure for assessment in case of unauthorized use of electricity. It is also worth mentioning that Section 50 of the Electricity Act, 2003 gives power to the Jharkhand State Electricity Regulatory Commission to promulgate Electricity Supply Code for recovery of electricity charges etc. It is not out of place to mention that Jharkhand State Electricity Regulatory Commission had issued Electricity Supply Code Regulation, 2005, which prescribes the method of assessment in case of unauthorized use of electricity. Thus, it is clear that procedure of assessment has already been prescribed under Section 126 of The Electricity Act, 2003, and Electricity Supply Code, thus it is not open for the Secretary, Jharkhand State Electricity Board to issue another Circular in that connection.

7. In view of the aforesaid finding that the Secretary, Jharkhand State Electricity Board has no power to issue Circular prescribing the method and mode of assessment, I am of the view that Circular No. 531, dated 29.01.2009 is wholly without jurisdiction, therefore, the same is non est in the eye of law. Thus, any act done on the basis of aforesaid Circular is also without jurisdiction, hence, not sustainable.

Accordingly, I allow these writ applications and quash all the assessment orders and bills issued on that basis. However, I give liberty to the Electricity Board or successor Company to make final assessment on the basis of procedure prescribed under Section 126 of The Electricity Act, 2003 as well as The Electricity Supply Code, 2005 as amended in the year 2010 and raise bills to all the petitioners.

8. It appears that in compliance of interim order passed in these writ applications, petitioners already paid 35% of the bills raised by Jharkhand State Electricity Board. Thus, in the event of issuance of fresh bills, petitioners are entitled to get adjustment of the amount already paid by them.