

(2014) 07 JH CK 0128
In the Jharkhand High Court
Case No : WP(C) No. 3358 of 2014

Ranchi Power Distribution Company Limited and Others	APPELLANT
Vs	
Jharkhand Bijli Vitran Nigam Limited and Others	RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Electricity Act, 2003 — Section 131

Citation : (2015) 2 JLJR 90

Hon'ble Judges : Rakesh Ranjan Prasad, J.

Bench : Single Bench

Advocate : Ananda Sen, for the Appellant; R.R. Mishra, for the Respondent

Judgement

Rakesh Ranjan Prasad, J.

I.A. No. 3531 of 2014 Order

1. The facts giving rise to this case and also the interlocutory application bearing no. 3531 of 2014 are that after decision was taken for unbundling of the erstwhile Jharkhand State Electricity Board, the Board issued notice inviting tender for appointment of distribution franchisee for Ranchi, Jamshedpur and Dhanbad. Pursuant to that, Direct Media Distribution Ventures Pvt. Ltd., Tata Power Supply Limited as well as Calcutta Electric Supply Corporation (CESC) submitted their bid papers. In the process of finalization of the matter relating to the aforesaid tender, Direct Media Distribution Ventures Pvt. Ltd. was found to be non-responsive whereas other two aforesaid concerns were found to be responsive and thereby Tata Power Supply Limited entered into an agreement with the JSEB for distributing electricity in the area of Jamshedpur whereas CESC entered into an agreement for distributing electricity in the area of Ranchi. Being aggrieved with the decision taken by the authority of JSEB, Direct Media Distribution Ventures Pvt. Ltd. and others filed a writ application bearing W.P. (C) No. 5524/2012 challenging the decision of the authority to be mala fide. In the writ application, Tata Power Supply Limited as well as CESC were impleaded as

respondents. In course of time, the Government having taken decision to cancel the tender referred the matter before the Board now Jharkhand Bijli Vitran Nigam Limited for taking decision in the matter. Thereupon this writ application was filed wherein prayer has been made to direct the respondents to forebear from interfering with the distribution franchisee agreement dated 5.12.2012 entered into in between the petitioner and the erstwhile JSEB. Subsequently, as per the case of the petitioner, when the petitioner did get hold of that letter dated 3.7.2014 issued by Under Secretary, Department of Energy addressed to the Chairman-cum-Managing Director of the Board, an interlocutory application bearing no. 3531 of 2014 was filed for quashing of the letter dated 3.7.2014.

2. Further prayer which has been made in the interlocutory application is that the operation of the impugned decision be stayed or the respondent be restrained from giving effect to the impugned decision.

3. Heard learned counsel appearing for the petitioner and learned counsel appearing for the State and also learned counsel appearing for the Jharkhand Bijli Vitran Nigam Limited as well as learned counsel appearing for the petitioner in W.P. (C) No. 5524 of 2012 on the matter of stay.

4. Mr. S. Pal, learned Sr. Counsel appearing for the petitioner submits that by virtue of the provision as contained in Section 131 of the Electricity Act, 2003, the State Government has come forward with a transfer scheme under which the assets, interest, rights and liabilities of the Board stood transferred to the undertakings of the Board, such as, generation, distribution, transmission undertakings and holding undertaking by virtue of the provision as contained in clause 4 read with clause 5 of the Jharkhand State Electricity Reforms Transfer Scheme, 2013. In the event of such transfer, respective transferees in term of clause 5.5 of the said scheme would be responsible for all functions, contracts, rights, deeds, scheme, bond, agreement, proceeding etc. Further clause 7 of the scheme does stipulate that upon transfer being effected under the scheme, the rights and obligations of all persons shall be restricted to the transferees to whom they are assigned to and thereby such persons shall not claim any right, title or interest against the State Government or the Board.

5. Thus, it is submitted that under the scheme when all the rights as contracts, obligations have been vested with the undertakings, the State Government will have no business to intervene or interfere with the matter relating to contracts or any other business of the undertaking but the State Government without having any authority has taken decision for rescinding the contract as contained in letter dated 3.7.2014 and as such, it is nullity and is fit to be set aside.

6. Further it was submitted that even if such decision of the State Government of rescinding the agreement is nullity, still the respondents the Jharkhand Bijli Vitran Nigam Limited would be influenced by that decision and would be acting in accordance with wish expressed by the State Government and therefore, the petitioner being apprehensive of that has been making prayer to stay operation

of the decision as contained in letter dated 3.7.2014.

7. As against this, Mr. Rajesh Shankar, learned counsel appearing for the State submits that in spite of unbundling of the Board into four entities and also the schemes being framed, the State Government will not be losing its administrative or financial control of those undertakings as those undertakings after all is creation of the State which proposition would be evident from the amendment made in the Articles of Association.

8. In this regard it was pointed out that clauses 77 and 78 of the Articles of Association related to the power of the Governor in the matter of appointment of Directors. Other clauses of the Articles of Association do stipulate about different role to be played by the Governor in the matter of functioning of the Company. Subsequently, by making amendment it has been clarified that whenever word Governor is there it be read as State Government.

9. Thus, it was submitted that overall control relating to administrative or financial over the undertaking is of the Government and in exercise of such power, if the decision has been taken, upon grave fault being found in awarding the contract to the petitioner, for recommending the matter before the Board for taking decision in this regard, nothing wrong has been committed and thereby the petitioner is not entitled to the prayer as has been made.

10. Mr. Kapoor, learned Sr. Counsel by supporting the stand taken on behalf of the State, would submit that undertakings are the Government Companies in terms of Section 617 of the Companies Act and thereby the Company never ceases to be instrumentality or agency of the State. If the undertaking is the instrumentality or agency of the State, the State would never be losing its administrative control or financial control of the new undertakings and thereby no illegality lies with the decision of the State Government.

11. Mr. Mishra, learned counsel appearing for the Jharkhand Bijli Vitran Nigam Limited submits that immediately after filing of this writ application, the case has been taken up and therefore, he did not get any opportunity to take any instruction and unless and until, he would be taking instruction or would be filing counter affidavit in this regard, he will have little to say in the matter but this much is clear that the Vitran Nigam has still not taken any decision over the matter relating to said agreement and as such, this writ application is premature.

12. No doubt it is true that the undertaking can be said to be a Government Company in terms of Section 617 of the Companies Act and that the amended Articles of the Company does speak of the power of the State Government to be exercised in the matter relating to affairs of the Company. But that power would always relate to the affairs of the Company, i.e. to say the power to give direction as to how the companies should function, the power to appoint Director and even the power to determine the wages and salaries payable by the Company to its employees. All these powers are derived from the Memorandum of Association and the Articles of Association of the Company and not by reason

of the Company being agent of the State Government. Whatever power does the Government derive from the Memorandum of Association or Articles of Association that would not be related to the matter relating to contract, agreement etc. as has been enumerated under Clause 5.5 of the scheme as after the formulation of the scheme all the properties of the State Government/Board vested in the undertaking and it is only the undertaking who would be responsible for all functions relating to rights, deeds, schemes, bonds, agreement etc. Further in terms of Clause 7, the rights and obligations of the third parties would always lie with the undertaking and not with the State Government or the Board.

13. However, I need not to go further in the matter as still the parties have to place its case on the merit but prima facie it does appear that it is the undertaking who would be responsible for all functions relating to contract, rights, etc. of the third parties whose rights and obligation has been restricted to the undertaking and not to the Board or the State Government. Therefore, it is recorded that if the Jharkhand Bijli Vitran Nigam Limited is contemplating to take any decision in the matter of agreement in question, it shall not be influenced by the decision of the Government.