

(2002) 02 JH CK 0044
In the Jharkhand High Court
Case No : C.W.J.C. No. 267 of 2001

Sahu Gupta Industries Mahilong, Ranchi	APPELLANT
Vs	
Bihar State Electricity Board and Others	RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Citation : (2002) 02 JH CK 0044

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : A.K. Sinha, A. Sen and Rahul Gupta, for the Appellant; V.P. Singh and Mukesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for quashing the decision dated 11.11.99 of respondent No. 2 General Manager-cum-Chief Engineer. Chhotanagpur Area Electricity Board, whereby and whereunder he has held that no letter dated 2.7.92 for determination of agreement was ever served by the petitioner and in fact line was disconnected due to non-payment of electric dues existing on the date of disconnection.

2. Petitioner entered into a H.T. Agreement with the respondent-Board in 1967 and supplementary agreement on 3.12.1970 for supply of electricity having contract demand of 200 KVA. In 1974 another supplementary agreement was entered into for additional demand of 135 KVA. Petitioner's case is that there had never been continuous supply of electricity and due to total failure of the Board to supply electricity continuously at a contract demand the petitioner was forced to close down its factory. Accordingly as per Clause 4 of the supplementary agreement petitioner, gave 12 months notice to the respondent-Board to determine the agreement and in the notice dated 2.7.92 sent under registered post it was clearly mentioned that due to non-availability of power and frequent load-shedding, petitioner was unable to run the Unit and as such it was decided to stop production activities from October. 1993. It is alleged that

pursuant to aforesaid notice dated 2.7.92 petitioner closed down the production activities from 27.10.93 and the electricity line of the petitioner was disconnected by the concerned respondent on 28.10.1993 and the meter was removed on 9.5.1994. However, utter surprise to the petitioner, the petitioner received a bill dated 12.10-1994 as final bill for a sum of Rs. 19,96,312/- which inter alia included the Annual Minimum Guarantee Charges for the period from 1993-94 and April 1994 to October, 1994. The bill also included current arrear upto October, 1993 amounting to Rs. 4,38,441/- and a further sum of Rs. 1,62,420/- As excess interest on security deposit. Petitioner challenged the said bill dated 12.10.1994 and the notice dated 12.10.1994 for the initiation of certificate proceeding for the recovery of amount in CWJC No. 1964/95(R). In the said writ application the respondent-Board denied and disputed the receipt of notice of termination of agreement dated 2.7.92 alleged to have been sent by the petitioner.

3. The case of the respondent-Board was that the bill dated 12.10.94 was raised according to the tariff and as per the consumption of electricity in the factory premises of the petitioner. The aforementioned writ application was disposed of on 26.8.96. The relevant portion of the order dated 26.8.96 is quoted herein below :

"Learned Counsel for the petitioner contended that from the bill, Annexure-3, itself it will appear that line was disconnected on 28.10.93. The respondents, however, accepting the said date of disconnection as termination of agreement have raised bill till 28.10.94 i.e. one year thereafter. He also says that raising bill up to 28.10.1994 is bad in law as the notice to terminate the agreement dated 2.7.1992. Annexure-2, was received by respondent No. 3. Learned Counsel, however, accepts that he is required to pay Rs. 4,38,441/- for the electric consumed till 28.10.1994.

Learned Counsel for the respondents says that since notice dated 2.7.92 was not received, the demand has been made till the period 28.10.1994 though the line was disconnected on 28.10.1993,

Having considered the submission made by the learned Counsel for the parties this much is obvious that the line of the petitioner was disconnected in 28.10.1993. Nothing has been pointed out in the counter-affidavit any circumstance for disconnection of the line on that date. If the line has been disconnected on 28.10.1993 there was no occasion for raising bill till 28.10.1994. However, this is a question of fact which requires to be determined by the respondents,

Accordingly, petitioner is directed to pay Rs. 4,38,441/- within one month from today. The petitioner is also permitted to file detailed claim as indicated above and other claims, if any before respondent No. 2 within the same time. In case such claim is filed, respondent No. 2 shall dispose of the same by a reasoned order in accordance with law disclosing the occasion for disconnection of line on

28.10.1993.

This application is. accordingly, disposed of."

4. Pursuant to the aforesaid order petitioner filed representation reiterating that the notice dated 2.7.92 was duly sent to the respondent-Board by registered post and therefore raising bill dated 12.10.1994 and demanding Annual Minimum Guarantee Charges for the year 1993-94 and for the period April. 1994 to October, 1994 is illegal and arbitrary. The respondent-Board also represented its case before the General Manager-cum-Chief Engineer and reiterated that notice dated 2.7.92 was never sent by the petitioner or received by the respondent-Board and the petitioner in fact consumed electricity till 36.10.1993.

5. In the background of the case of the parties, the main question that falls for consideration is "whether the finding recorded by the General Manager-cum-Chief Engineer in his order dated 11.11.99 to the effect that no letter dt. 2.7.92 for determination of agreement was ever served upon the Board, is perverse in law." As noticed above, this Court in the order dated 16.8.96 passed in CWJC No. 1964/95(R) held that whether such notice dated 2.7.92 was served upon the Board is a question of fact which requires to be determined by the respondent-Board. The authority of the respondent-Board pursuant to the aforesaid order considered the representation of the petitioner and the evidence brought on record and after giving opportunity of hearing to both the parties has recorded a finding of fact. This Court normally should not interfere with the finding of fact unless it is prima facie proved that such finding is perverse in law or not in accordance with law.

6. The General Manager-cum-Chief Engineer has recorded a finding that from the evidence produced by the respondent-Board it is proved that such letter dated 2.7.92 was never received by the Board. The General Manager-cum-Chief Engineer considered the diary register maintained by the office of the concerned department during the relevant period in which there is no entry of receipt of such letter although there are entries of other letters sent by the petitioner. The General Manager further found that neither acknowledgment receipt in support of the aforesaid letter was produced by the petitioner nor Post Master. Old Commissioner Compound. Ranchi sent any certificate with regard to delivery of the said letter dated 2.7.92 to the officers of the Board. The finding recorded by the General Manager therefore cannot be said to be perverse in law.

7. The agreement dated 9.6.67, copy of which has been produced by the Board was sent by the Electrical Superintending Engineer. Ranchi Electrical Circle, Ranchi on behalf of Bihar State Electricity Board. It appears that termination letter dated 2.7.92 was addressed to Electrical Executive Engineer, Electric Supply Sub-Division, Ranchi. Surprisingly, the copy of the said letter was endorsed to the same Electrical Executive Engineer, Electric Supply Sub-Division. Ranchi and the Assistant Electrical Engineer. Electric Supply Sub-Division, Tantisilwai. Ranchi. These circumstances also lead to the conclusion that the

finding recorded by the General Manager about non-service of termination notice is in accordance with law.

8. Mr. A.K. Sinha, learned Senior Counsel appearing for the petitioner submitted that termination letter dated 2.7.92 was sent by registered post which is evident from the registration receipt. Copy of the letter dated 2.7.92 alongwith registration receipt has been annexed as Annexure-2 to the writ application. Learned Counsel further submitted that when the said letter dated 2.7.92 was sent by registered post then. It shall be presumed that the letter was received by the respondent-Board and the Court has to draw presumption to that effect.

9. u/s 27 of the General Clauses Act, 1897 a presumption arises regarding service of notice when it is proved that registered letter with pre-paid stamp containing documents has been posted at a proper address of the addressee. Similar is the provision u/s 31 of the Bihar and Orissa General Clauses Act, 1917 as also Section 114(g) of the Evidence Act. Such presumption is however, rebuttable. Clause 4 of the H.T. Agreement entered into by and between the petitioner and the respondent-Board provided that a consumer can determine the agreement before expiration of three years by giving 12 calendar months' previous notice in writing to the Board in that behalf and upon the expiration of such notice, the Agreement ceases to have any effect.

10. From the cause title of the writ application, it appears that the factory of the petitioner is situated at Tantisilwai, Ranchi. One of the partners of the petitioner's firm resides at Baralal Street, Upper Bazar, P.S. Kotwali, Dist. Ranchi. Learned Counsels of the parties have not disputed the fact that G.P.O. Ranchi is located in Main Road, which is near to Upper Bazar, Ranchi and further that there is a post office in Tantisilwai. However, Surprisingly the letter dated 2.7.92 appears to have been posted from Old Commissioner Compound Post-office.

11. Besides above, it further appears that line was disconnected on 28.10.1993 and admittedly before disconnection petitioner did not pay electricity charges for consumption of electricity till August, 1993. Disconnection of line on 28.10.1993 was pursuant to notice dated 21.10.93 issued from the office of the Electrical Superintending Engineer, Ranchi Electric Supply Circle, Ranchi. The General Manager therefore rightly came to the conclusion that electric line was disconnected due to non-payment of electricity dues existing on the date of disconnection.

12. In the facts and circumstances of the case, I do not find any strong reason to interfere with the finding recorded by the General Manager-cum-Chief Engineer, Chhotanagpur Area Electricity Board Kusai Colony, Ranchi. No relief can be granted to the petitioner. The instant writ application is accordingly dismissed.