(2010) 09 JH CK 0153

In the Jharkhand High Court

Case No : L.P.A. No. 293 of 2010

Sailesh Kumar Prasad APPELLANT

Vs

Jharkhand State Electricity Board and Others RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Citation : (2011) 1 JCR 593

Hon'ble Judges : Sushil Harkauli, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Judgement

1. After hearing the parties, that a detailed order was passed in this case on 26.7.2010, after which a counter-affidavit has been filed on 30.8.2010. For ready reference the said order is quoted below:

The Appellant is a domestic consumer of electricity. The connection stands in his wife''s name. We may have refused to entertain this appeal on the ground that it has not been filed by the wife, but for the fact that this objection was either not taken before or not accepted by the learned single Judge who has disposed of the writ petition of the Appellant finally.

It is not clear why the officers of the Electricity Board conducted an inspection into his house in June. 2008. It is alleged by the officers of the Electricity Board that at that inspection, excess load (7 KW) was found to be connected, whereas the sanctioned load was 3 KW. Consequent assessment was made for Rs. 38,478/- later made payable by installments, of which only first installment has been paid.

According to the Appellant, there is no fixed charge per KW in respect of domestic connections, as distinguished from industrial connections where there is a fixed charge/minimum charge per KVA. Therefore, it is submitted by the Appellant that on a practical level, it would have made no difference to the domestic consumer if he had applied for a higher KW connection. The payment would always be for the number of units consumed as per meter reading. The allegation of excess connected load has to be viewed and appreciated with that background.

The most important fact is that at the time of such inspection in June 2008, the Petitioner''s meter was found running properly without any tampering. The Petitioner was paying the bills regularly according to the meter reading.

In such circumstances, prima facie, unless strong justification is given for the above conduct on the part of the officer of the Electricity Board, it would appear to be a case of unscrupulous harassment of a domestic consumer by officers of the JSEB.

To continue with the facts, the domestic consumer took the matter to District Consumer Forum by way of Consumer Complaint 172/2008. By order dated 27.11.2009, the Consumer Forum quashed the demand/assessment and imposed cost of Rs. 30,000/-(rupees thirty thousand) on the Electricity Board.

The Appellant alleges that his meter went defective in January, 2009, intimation of which was given to the JSEB but nothing was done in that behalf by JSEB and the power continued to be supplied. Power was disconnected on 22.8.2009 after the FIR referred to in the next paragraph.

In the meantime, while the matter was pending before the District Consumer Forum, the Electricity Department conducted another raid on 21.8.2009 at the premises of the consumer and allegedly found theft of power by illegal tapping of the main power line, resulting in loss of Rs. 5300/-. An FIR was lodged and under that threat the sum of Rs. 5,300/- was paid by the Petitioner. To say the least, coming in the midst of the pending dispute before the District Consumer Forum, this action of the electricity department raises suspicion. Moreover why should the consumer indulge in illegal tapping when power supply has not been disconnected and the meter is not recording the power consumed.

In view of what has been stated above, the matter deserves to be probed thoroughly by this Court, so that small domestic consumers are not left at the complete mercy of the officials of the Electricity Board, by refusal of interference by the Court, or by imposing of onerous conditions, as imposed by the impugned order.

We therefore, require the Respondents to file, within one month, their detailed reply explaining the conduct of the officials of the Electricity Board at every stage, substantively and not merely technically. For example it will have to be shown in a convincing manner why the Petitioner''s house was inspected in June, 2009 although he was a private domestic consumer. The dangers of allowing to the Respondents arbitrary and whimsical powers to pick out any domestic consumer at any time for a raid, are too obvious.

In the meantime, as an interim measure, the power connection of the Appellant will be restored forthwith, subject to an undertaking being given by him or his wife, upon affidavit in this appeal within twenty four hours, a copy of which will be served before filing upon the learned Counsel for the Electricity Board, that in case any amount is found due in this proceedings, the Appellant will pay the same within two months of the same being found due. Obviously all bills for the period after restoration of supply will be issued to the Petitioner, who will continue to pay the same.

(emphasis supplied)

2. The detailed reasoned interim order made it quite clear that it was in the larger public interest as also in the interest of the Appellant before us, that the counter-affidavit was directed to explain certain things, which have been underlined/highlighted in the order quoted above. The order having been passed in the presence of the learned Counsel for the Respondents, and the counter-affidavit having been filed more than a month after the Court''s order, it can reasonably be assumed that the person swearing the counter-affidavit was aware of the Court''s order. That person claims himself to be a law officer of JSEB. Yet we find the counter-affidavit to be wholly evasive on the issues which the Court required to be explained. In fact there seems to be a deliberate attempt to distract the Court from those issues which are vital in the larger public interest. For example the counter-affidavit merely says that the inspection of the Appellant was as a random check, without specifying the criteria of determining who will be subject to random checking, and more precisely why the Appellant was picked out for the random check, that two in the backdrop of the pending litigation between the Appellant and the Board, before the Consumer Court. A counter-affidavit filed in writ petitions must be fair and should make an honest and full disclosure, more so when it is filed by the ''State''. It must state not only the ''truth'', but the ''complete truth''.

3. Therefore, a supplementary counter-affidavit will now be filed by the same Law Officer of the Respondent-Electricity Board disclosing properly and completely with supporting documents and circulars, as to what is the policy regarding random inspections of domestic consumers, and at what level it is decided which domestic consumer should be inspected by way of the random inspection, because it has direct nexus with right of privacy of citizens, especially of ladies, who are alone in the house, as happened in the facts of the present case. The inspection made in this case during the pendency of the matter before the Consumer Court will also be explained in complete detail so as to satisfy this Court that it was not a pressure tactics by the Board''s Officers or a vindictive action.

4. Because it prima facie appears that the Law Officer of the Respondent-Electricity Board has been deliberately evasive in the counter-affidavit and has tried to mislead this Court, therefore, before taking appropriate action against him for such conduct, we further direct him to treat this order as a notice for furnishing whatever explanation he may want to give in his defence.

5. Let a copy of this order be issued to the learned Counsel for the parties, on

completion of the requisite formalities by them, within 2 days.

6. As prayed by the learned Counsel for the Respondent Board, list immediately after two weeks.

