
(2009) 05 JH CK 0132
In the Jharkhand High Court

Sardul Auto Works Pvt. Ltd.

APPELLANT

Vs

The Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Electricity Act, 2003 — Section 126, 127, 135, 138, 56
Penal Code, 1860 (IPC) — Section 379

Citation : (2010) 5 RCR(Civil) 58

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for the following reliefs:

(i) For quashing the Compensatory Bill dated 22.08.2006 issued under the signature of Respondent No. 4, whereby and whereunder the said respondent without resorting to the Provisions and Procedure prescribed u/s 126 or Section 135 of the Electricity Act, 2003 and in utter violation of the Principles of natural justice, raised an arbitrary and exorbitantly inflated amount of Rs. 14,33,340/- against the petitioner,

(ii) For showing-cause the respondents as to whether respondent No. 6, Assistant Engineer has any authority or jurisdiction u/s 135 & Section 126 of the; Electricity Act, 2003 to inspect, search, seize and give his own arbitrary and ex-parte assessment or" alleged loss amount and if not on what basis and authority Respondent No. 4, even without resorting to the concerned Provisions has raised the concerned Impugned bill dated 22.08.2006,

(iii) For quashing the Inspection Report dated 21.08.06, which is without authority or jurisdiction of the respondents under law as well as against the principles laid down by this Hon"ble Court in the case of B.S.E.B. v. Sri Sir Ispat 1999 1 PLJR 466, without presence of the petitioner or any other independent witness,

(iv) For directing the respondents to refund/adjust the amount of the concerned Bill dated 22.08.2006 which the petitioner has been made to pay under coercion and threat of non-supply of power although the proceedings, u/s 126 or 135 is yet to be exercised, if permissible in law.

2. The facts in brief are stated as under:

The petitioner has taken an electric connection bearing Consumer No. HTM-9 for a contract demand of 100 KVA. The power supply of the petitioner was running very smoothly and without any dispute as the officers of the respondents used to make monthly inspection of the meter and the last inspection was made on 01.08.2006 and no dispute was raised. Certain officers of the respondent Board without compliance of the preliminary and mandatory conditions of Chapter-14 of the Electricity Supply (Code) Regulations and also without any jurisdiction or authority u/s 135 of the Electricity Act 2003 claimed to have inspected the premises of the petitioner on 21.08.2006 and prepared an Inspection Report on the same day with a noting that the "Consumer refused to sign".

3. The petitioner further submits that the In-charge, Assistant Electrical Engineer, Mango, prepared a seizure list on the same day and also lodged an F.I.R. against the petitioner which was registered vide Mango P.S. Case No. 323/06 on 22.08.06 u/s 379 of the Indian Penal Code and Sections 135/138 of the Electricity Act, 2003 and it was stated in the F.I.R. that the petitioner had indulged in theft of electricity and has caused a loss to the tune of Rs. 13,79,000/-. On the basis of the said F.I.R. the power supply of the petitioner was disconnected by the respondents without resorting to the provision of Section 126 of the Electricity Act, 2003 without even allowing the Assessing Officer to make a provisional assessment. On 22.08.2006 a Compensatory Bill was served amounting to Rs. 14,33,340/- to the petitioner and the petitioner being constrained due to disconnection without notice was left with no alternative but to deposit the whole amount of the Compensatory Bill on 22.08.2006 itself. The power of the petitioner was restored by the respondent accordingly on the same day,

4. The main contention raised by the learned Counsel for the petitioner is that the action of the respondent was not in conformity and/or in compliance of the provisions of Section 135 & 126 of the Electricity Act, 2003 and Chapter-14 of the Electricity Supply (Code) Regulations. It has further been contended that the respondents had no jurisdiction or authority to raise and realize the Compensatory loss amount at their own sweet will without resorting to the provisions and procedure prescribed for provisional assessment u/s 126 of the Electricity Act, 2003.

5. It has further been submitted that the inspection report dated 21.8.2006 is arbitrary, illegal and against the provisions of Section 135 of the Electricity Act and Chapter-14 of the Electricity Supply (Code) Regulations.

6. The counsel for the petitioner further submits that the Compensatory Bills

were issued as per Clause 16.9 (B) of the Bihar State Electricity Board Tariff 1993 and the F.I.R. was lodged by Incharge Assistant Electrical Engineer, Mango and both were devoid of jurisdiction in view of the fact that Clause: 16.9 of the Bihar State Electricity Board Tariff was no more applicable and instead Section 126 of the Electricity Act should have been applied.

7. The learned Counsel for the petitioner has further referred to and relied upon certain judgements on the issue of assessment u/s 126 and realization of bills. It has also referred to a judgement passed by Calcutta High Court reported in AIR 2006 Calcutta page - 59 in the case of Kawsar Ali alias Kawsar Sk. V. State of West Bengal and Ors. to support the contention that the petitioner was entitled to recover the excess payment if the compensatory bill was paid under the element of threat that until payment was made, supply of electricity would not be restored. He has also referred to and relied upon Kawsar Ali alias Kawsar Sk. Vs. State of West Bengal and Others, to support his contention that without making a provisional assessment order of final assessment is arbitrary and liable to be set aside. The learned Counsel has further referred to and relied upon Harvinder Motors Vs. B.S.E.S. Rajdhani Power Ltd., , wherein it was held that the consumer is liable to pay statutorily determined amounts for indulging in wrongful action and thus the consumer has to be given notice and reasonable opportunity of hearing. He has further referred to and relied upon a judgment passed by this Court in W.P. (C) No. 109/07 to support his contention wherein it was held that the disconnection of the electric supply line without making any assessment in accordance to the provision of Section 126 for unauthorized use of electricity and without taking recourse of the provisions of Section - 56 of the said Act and without complying with the cardinal principles of natural justice was bad in law accordingly a direction was issued to restore the electric supply forthwith with liberty to proceed u/s 126 of the Electricity Act.

8. The learned Counsel has referred to a Division Bench judgement preferred against the judgement passed by the learned Single Judge in W.P.(C) No. 109 of 2007, wherein it has referred to and relied upon Clause 15.3 of the Electricity Supply Code introduced by Jharkhand State Regulatory Commission while dismissing the L.P.A.

9. The learned Counsel for the respondent has submitted that the petitioner has already paid the entire! amount unconditionally and without any objection on 22.8.2006 itself and thus the entire claim is unsustainable. He has further referred to Section 126(4) of the Electricity Act 2003 to suggest that the deposit has to be made based on the assessed amount with the licensee within seven days of service of such provisional assessment. He has further submitted that only because the bill was raised under a wrong nomenclature the same cannot be said to be illegal.

10. I have considered the rival submissions and the pleadings. Even u/s 56 of the Electricity Act:, 2003 which deals with the provision of disconnection of electric: supply on default of payment it is clearly provided that the licensee or the

generating company shall give a notice of not less than 15 clear days in writing to cut off the supply of electricity. Section -56 of the Electricity Act, 2003 is quoted as under:

56. Disconnection of supply in default of payment:

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days" notice in writing, to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits under protest-

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

whichever is less, pending disposal of any dispute between him and the licensee.

11. Section-126 of the Electricity Act, 2003 provides for assessment by the Assessing Officer if a person is found to have indulged in theft or unauthorized use of electricity but the same clearly provides thereto for a provisional assessment first which shall be served upon the consumer and notice has to be issued entitling him to file objection.

12. Section 126 of the Electricity Act, 2003 is quoted as under:

126. Assessment-(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any persons, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom a notice has been served under Sub-section (2), shall

be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

Provided that in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever.

(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is resulted by the person, occupier or possessor of such premises or place.

(6) The assessment under this Section shall be made at a rate equal to one-and-half times the tariff applicable for the relevant category of services specified in Sub-section (5)

Explanation- For the purpose of this Section-

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorized use of electricity" means the usage of electricity-

(i) by any artificial means; or

(ii) by a means not authorized by the concerned person or authority or licensee, or

(iii) through a tampered meter: or

(iv) for the purpose of other than for which the usage of electricity was authorized.

13. Thus, Section 126 provides for assessment if on inspection any person is found guilty of unauthorized use of electricity. It further provides for making provisional assessment and service of such provisional assessment on the person in occupation or possession or in charge of the place or premises giving the concerned person an opportunity to file objections or give a reasonable opportunity of hearing before passing the final order of assessment of the electricity charges payable by such person. In explanation the unauthorized use of electricity has been defined which includes usage of electricity by means not authorized by the concerned person or authority or licensee or through a tampered meter etc. Section 127 of the said Act provides for appeal to the

appellate authority if a person is aggrieved by the final order made u/s 126.

14. Part XIV of the said Act provides for offences and penalties. Section 135 deals with theft of electricity and prescribes punishment: for theft of electricity in the form of imprisonment etc, It does not speak about disconnection of electric supply line.

15. None of the said provisions of the Electricity Act, 2003 gives power to the Board to disconnect the electric supply without informing the reason and giving notice regarding the allegations and without providing opportunity of hearing to the concerned persons.

Even the amendment vide Act 26 of 2007 was brought w.e.f. 15.6.07 and Section 135(1A) which provides for disconnection on detection of theft of electricity was not there in 2006 and has been introduced only from 15.6.07.

16. Further, Clause 16.9(A) of the B.S.E.B. Tariff, 1993 prescribes the mode of estimating the value of the electrical energy on detection of unauthorized load which according to the respondents also provides for the power to disconnect of the supply of electricity without notice. The Hon'ble Supreme Court in J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, , while considering Clause 16.9 (A) of the Bihar State Electricity Board laid down the method of computation based on the prescribed formula for calculating the value of estimated electrical energy extracted on detection of unauthorized load.

17. In any case the tariff regulations are subject to the provisions of the Electricity Act, 2003 which have been framed under the provisions of Section 61. Such regulations cannot over ride the express provisions of the Act. Even in Clause 16.9, no power has been given to the Board to disconnect the electric supply in a case of detection of unauthorized load exceeding the contractual load without the permission of the Board.

18. As regards the issue of waiver and the contention that the payment has already been made by the petitioner without any protest or objection and thus he is estopped from challenging that cannot be sustained in the eyes of law. The Hon'ble Supreme Court in (2004) 13 SCC 792 (A.P. Srtc and Ors. v. S. Jayaram) while considering a similar issue held as under:

To constitute waiver there must be an intentional relinquishment of a known right or the voluntary relinquishment or abandonment of a known existing legal right or conduct such as warrants an inference of the relinquishment of a known right or privilege.

In the instant case there is no voluntary or intentional relinquishment and the payment: for compensatory bill was made under threat and coercion.

19. It will be clear on reading the aforesaid facts that no notice was given nor any opportunity was given to explain and the entire order was passed without authority of law and without jurisdiction and even though the petitioner having

deposited the said amount on the same day under threat of disconnection he has a right to be heard and file its objection at least for the determination of correct and final assessment of the ex-parte compensatory bill raised illegally under Clause 16.9(4) and paid for getting the electric connection restored.

20. One of the cardinal rules of fair play is that the person likely to face adverse consequences of an administrative or quasi-judicial order, has to be given notice, and adequate opportunity. Notice is not a ritualistic formality; the person requiring to show cause has to be precisely informed, may be briefly, the allegations upon which action is; proposed. This cardinal rule becomes critical, if the consequences are drastic; fair play becomes a casualty if the aggrieved person is not even issued notice or called upon to answer the notice.

Thus, precise and unambiguous facts or allegations have to be mentioned by J.S.E.B. in the notice indicating all the grounds for its tentative opinion to which the petitioner shall furnish its reply followed by a reasonable opportunity of hearing.

21. Considering the aforesaid facts and circumstance of the case, it will be in the interest of justice to remit the matter to the General Manager-cum-Chief Engineer, Jamshedpur Electric Supply Area, Jharkhand State Electricity Board, Bank Building, to consider the matter afresh within a period of four months. In the instant case the petitioner has already paid the compensatory bill as raised by the respondent but it goes without saying that the same will be subject to final assessment. A fresh bill may be issued, if need be, based on the outcome of the speaking order.

22. This writ petition is accordingly disposed of with the aforesaid direction.