

(2010) 01 JH CK 0003
In the Jharkhand High Court

Sartaj Hotel

APPELLANT

Vs

Jharkhand State Electricity Board

RESPONDENT

Date of Decision : 06-01-2010

Acts Referred:

Electricity Act, 2003 — Section 126

Citation : (2010) 01 JH CK 0003

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

D.G.R. Patnaik, J.—Heard counsel for the parties.

2. The main grievance of the petitioner in this writ application is that the respondents have raised the impugned Bill without complying with the provisions of Section 126 of the Electricity Act, 2003 in as much as, no prior notice as required u/s 126 of the Electricity Act, 2003 was served upon him, nor any provisional Bill was raised against the petitioner calling upon him to explain as to why the amount should not be realized from him.

3. It appears from the pleadings in the writ application that the petitioner's premises was inspected by the concerned authorities of the respondents on 20.1.2004. A report of inspection was prepared in which the findings were recorded to suggest that instead of 45 KW, the petitioner has been found consuming more than 60 KW. Accordingly, a demand notice for payment of a sum of Rs. 70,308/- on the purported basis of 66 KW was raised and a notice was issued to the petitioner accordingly, directing him to deposit the amount, failing which electric connection to his premises would be withdrawn.

4. Shri M.S. Mittal, learned Counsel for the petitioner, would submit that as per the provisions of Section 126 of the Electricity Act, 2003, if upon inspection, the concerned officer is of the opinion that any unauthorized use of electricity has been made, then he is required to make provisional assessment of the electricity charges payable by the consumer and the same shall have to be served upon the

consumer to enable him to file his objection to the provisional assessment, but no such compliance has been made. Learned Counsel explains that the notice dated 30.1.2004 issued to the petitioner, cannot be deemed to be compliance of the provisions of law as because, the same is a direct demand calling upon the petitioner to pay the amount stated therein and it cannot be deemed to be a provisional assessment. Furthermore, the purported notice does not indicate that any opportunity has been given to the petitioner to file his objection to the demand made.

Learned Counsel adds further that subsequent to the date of inspection made by the concerned authorities of the respondents and on being convinced that the inspection report is totally perverse and misconceived, the petitioner had called upon the concerned authorities of the respondents to conduct a fresh inspection and, on their failure to respond, the petitioner had got the inspection done by an authorized private agency namely, the Electrical Engineer and Government Contractor and their report (Annexure-7) would confirm that the actual load utilized by the petitioner was only 22 KW. Learned Counsel argues that had the petitioner been given an opportunity to file his objection and to explain the matter, the demand, as indicated in the notice, would not have been raised.

5. Learned Counsel for the respondent Electricity Board, on the other hand, would contend that the notice dated 30.1.2004 (Annexure-10) is in fact, in compliance with the requirement of the provisions u/s 126 of the Electricity Act, 2003 and furthermore, the inspection at the petitioner's premises was carried out in presence of the petitioner's representative and no objection at the relevant time was raised by the representative.

6. Be that as it may, from the rival submissions and from the pleadings, I am satisfied that before raising the demand for payment of Rs. 70,308/-, as per the impugned Bill, notice as required under the provisions of Section 126 of the Electricity Act, 2003 has not been issued and neither has any provisional Bill been raised and served upon the petitioner calling upon him to submit his objection, if any, within a stipulated period.

7. In the light of the above facts and circumstances, the impugned Bill (Annexure-3) is quashed. Respondents are directed to issue a fresh notice in terms of requirement as contained in Section 126 of the Electricity Act, 2003 and give a reasonable opportunity to the petitioner to submit his objection and thereafter, prepare the final Bill and serve upon the petitioner accordingly. This exercise must be carried out within two months from the date of receipt/production of a copy of this order. The petitioner, in his objection, may raise all such grounds as raised in the present writ application as well as other grounds and may also claim refund of the 50% deposit made by him which the respondents shall consider and dispose of in accordance with law.

With these observations, this writ application is disposed of.

Let a copy of this order be given to the counsel for the respondent Electricity

Board.