
(1989) 11 PAT CK 0028

In the Patna High Court

Case No : Appeal from Original Order No's. 173, 174, 175, 176 and 177 of 1986

Satayandra Narain Singh

APPELLANT

Vs

The Chairman, Bihar Electricity Board and Others

RESPONDENT

Date of Decision : 01-11-1989

Acts Referred:

Citation : (1990) 38 BLJR 933 : (1991) 1 PLJR 519

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Judgement

Binod Kumar Roy, J.—As the prayers of the different appellants were disposed of in the court below by a common order passed in Title Suit No. 80 of 1986 making the same applicable to other suits refusing to grant injunction in their favour, these five appeals are being disposed of by this common judgment.

2. The portrayal of the relevant facts is short and simple. The plaintiffs-appellants assert that they do their business of stone cursing with the help of supply of electricity on the basis of agreements, but electric meters supplied were inherently defective; which also burnt bills were illegally prepared on the basis of 30% load factor even if supply of electricity was disrupted. The plaintiffs personally met the Executive Engineer and the Sub-divisional Electrical Engineer (Defendant Nos. 2 and 3) and informed them about the burning of the meters who inspected the meters and assured them to change them and told the plaintiffs that till the meters are changed, the charge will be according to the average consumptions of the previous three months. Letters were written to the defendant No. 3, requesting that the average reading of previous three months should be made of such period during which the meters had run correctly. Due to poor and disrupted electric supply, the plaintiffs suffered heavy loss causing set back to their business. Bills were submitted to them all of a sudden on the basis of 30% load factor charge on the basis of an order of E.S.B.B G P D D No. 107 dated 15-4-1986 which are illegal and without jurisdiction. The plaintiffs also filed separate injunction petitions in their suits requesting to want ad interim

injunctions restraining the respondents from disconnecting their electric connections on account of non-payment of the bills in question. The court below issued notices to the respondents who showed cause and waved for rejecting the prayers for grant of injunctions alleging, inter alia therein that the suits are barred; that the bills were issued in accordance with the instructions according to which 30% load factor was to be charged: that the earlier bills were got prepared collusively ; that there is no prima facie case in favour of the plaintiffs ; that the balance of convenience lies in their favour and that it is a settled law that where the relief can be measured in terms of money there should not be any order of injunction.

3. The court below by the impugned orders has been pleased to reject the prayers to grant injunction holding that the plaintiffs have no prima facie case as the authority of the Board has not been challenged; that in term of Section 15-B of the Notification No. Com/TAR-1010/82/358 (which is dated 12-6-82 The Board has full authority to raise wrong charging and further that in terms of Clause-D of Section 15 of the aforesaid notification the consumers may protest but payment has to be made under protest in case of any dispute; S the plaintiffs are not going to suffer any irreparable loss as in the event of their success they can be compensated in terms of money and that the balance of convenience is also not in their favour.

4. Mr. Maitin, learned Counsel appearing for the appellants submits that the decision taken on 12th June, 1982 at the meeting of the General-Manager-cum-Chief-Engineer of the Board having quashed by this Court in C.W.J.C. No. 2250 of 1984, Shree Vishnu Re-Rolling Mills v. The Bihar State Electricity Board and Ors. the issuance of the bills in question on the basis of that decision rendered them a nullity and thus this Court should take notice of the aforementioned declaration of law by the Division Bench and should hold the bills as such. He further submits that the decision in question dated 12th June, 1982 having been set at naught by this Court, the balance of convenience is also in favour of the appellants. He further submits that the words "irreparable injury" should also be considered in the situation now emerging out of declaration of law by this Court more so when the appellants' business shall come to stand still after severance of the electric connection because of non-payment of the illegal and ultra-vires bills,. Mr. Maitin also place reliance on a judgment of this Court in Indu Bhushan Singh v. The Chairman, Bihar State Electricity Board, Patna and Ors. M.A. No. 299 of 1986 disposed of on 15th July, 1987 in which it was categorically held that the stand taken by the Board, in regard to the 30% load factor on the basis of the circular, has do legal legs to stands and injunctions in similar circumstances was granted by this Court.

5. Mr. P.K. Saran, learned Counsel appearing for the respondents, on the other hand, contends that the court below has not committed any illegality and/or impropriety while passing the impugned orders and thus the appeals are liable to be dismissed.

6. It is a settled law that an appeal is a continuation of a Us and that an appellate court, in order to do complete justice between the parties, can take into account subsequent events.

7. In these cases, the subsequent event is a pure declaration of law. It is a settled law that no sooner a law is declared; it becomes operative from the very inception.

8. Following statement of law occurs in paragraph-966 of Volume 24 of the 4th Edition of Halsbury "s laws of England:

A public body incorporated by statute is a Corporation only for the purposes for which it has been established, and whatever it does beyond the scope of those purposes is ultra vires and void and may be restrained by injunction.

In paragraph-967 it has been further stated as follows;

...an injunction may be directed against a company in relation to its powers or the conduct of its affairs as a Corporation regulated by statute. If a Company attempts to act ultra vires, it may be restrained by injunction at the instance of the shareholder.

If the acts of a company amount to an injury or wrong to an independent member of the company, that member has ought of action against the company, and in a proper case may obtain an injunction against the company in aid to his right.

In paragraph-969 it has been further stated that:

There is nothing in the statutes relating to the local authorities to exclude the courts"s ordinary jurisdiction to restrain ultra vires acts or nuisance or to prevent breaches of trust.

9. Keeping in view the aforementioned statements of law the moot question in these appeals is as to whether the preventive remedy in the form of injunction is necessary to be granted in the suits during their pendency.

10. The finding recorded by the court below that the defendants had city bill s on the basis of the aforementioned ultravires decision cannot be given

11. Such was also the view of this Court in Indu Bhusan Singh"s case (supra) wherein it was held as follows:

6. As it would appear from the stand taken by the Board in she court below the basis torn contesting the application filed by the plaintiff ton injuring the defendant was the earlier circular, referred to above. As already stated above the earlier Circular dated 12-6-82 on which the charges were made on the basis of 30% load factor has already been quashed by this Court in the aforesaid writ case thus, the stand taken by the Board in the Court below was obviously on some circular which had no legal legs to stand.

However, the learned Counsel for the plaintiff appellant admits that there has been a subsequent Tariff Notification dated 16-2-87 which is numbered as Notification No. Com/Tar/1030/86-87 and the learned Counsel for the plaintiff appellant states that the Board, in pursuance of the subsequent notification dated 16-2-87 may take such an action as it pleases and that will give fresh cause of action to the plaintiff. The learned Counsel for the defendant (Board) fairly submitted that the Board may be allowed to give fresh notice to the Plaintiff and on receipt of which the plaintiff may file representation which will be considered by the competent authority in accordance with law.

12. In the aforementioned view of the matter, I am further of the view that the balance of convenience is in favour of the plaintiffs-appellants.

13. The disconnection of the electricity, which is an essential service would ipso facto lead to disruption of the business of the plaintiffs rendering them and also a number of workers jobless blocking the Industrial growth of the country which in my view cannot be compensated in terms of money. For the reasons aforementioned. I am of the view that the plaintiffs, would suffer irreparable injury if the injunction, prayed for by them, is refused,

14. Before I part, I must take into account a subsequent development of law also as pointed out by Sri Shiv Kirti Singh, who was good enough to appear amicus to assist me. After the passing of the judgment in M/s. Shree Vishnu Re-Rolling Mills (supra), another notification was issued by the Board laying down the guidelines for charging the electricity bills making the same retrospective with effect from the year 1982. The validity of the aforementioned notification was also challenged in this Court in Kirit Kumar Somalal Jani Vs. Regional Provident Fund Commissioner and Another, This Court in its judgment aforesaid declared the aforementioned notification to be bad in so far as it relates to its retrospective operation. I am further informed that the matter has been carried by the respondents to the Supreme Court in Civil Appeal No. 1944 of 1989 and the operation of the judgment of this Court has also been said. It goes without saying that once the operation of the judgment has been stayed by the Supreme Court its legal effect is that the respondents can proceed to withdraw the bills in question and issue fresh bills to the appellants subject to the decision by the apex court.

15. For the reasons aforementioned, I am also of the view that it is a fit case in which this Court should grant ad interim injunctions, subject to the appellants' furnishing security in cash or kind to the satisfaction of the trial court equivalent to the amount mentioned in the bills in question, and accordingly, these appeals are allowed on terms aforementioned but in the peculiar facts and circumstances of these cases, there shall be no order as to cost.