

(2002) 09 JH CK 0035
In the Jharkhand High Court
Case No : Writ Petition (C) No. 3553 of 2002

Sheo Shakti Cement Industries

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 30-09-2002

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34

Citation : AIR 2002 Jhar 109 : (2001) 1 JLJR(Jhar) 242 : (2003) 1 JCR 482

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Joy Saha, M.S. Mittal and A.R. Choudhary, for the Appellant; V.P. Singh Mukesh Kumar and Rajesh Shankar, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—The writ petition was preferred by petitioner for issuance of appropriate writ directing the respondents to immediately restore the electricity line of the petitioner disconnected on 14th June, 2002 for non-payment of alleged dues arising out of Arbitral Award dated 30th March, 2002.

2. On 28th June, 2002, learned counsel for the Jharkhand State Electricity Board (J.S.E.B. for short) was directed to seek instruction and file counter affidavit. In the meantime, it was ordered to restore the electrical connection for three weeks to enable the petitioner to move for interim relief before the Court where the application to set aside the Award has been preferred and pending. In view of aforesaid interim order of this Court, the electrical connection of petitioner has been restored for the present.

3. It appears that in pursuance of inspection made by an anti- power theft team of the State Electricity Board, one FIR was lodged against the petitioner on 25th July, 1999 under Sections 379, 39/44 of the IPC. A penal energy bill was also raised. At that stage, the petitioner moved against the penal bill in CWJC No. 2290 of 1999(R), wherein this Court vide its order dated 2nd September, 1999 set aside the bill and remanded the matter to the General Manager-cum-Chief Engineer, Area Electricity Board, Dhanbad with a direction to afford reasonable

opportunity to the petitioner to take defence against the inspection report and the energy bill.

4. The electrical connection having not restored, a writ petition CWJC No. 3062 of 1999(R) was preferred by petitioner which was allowed on 19th October, 1999 with direction to the Board to restore supply of electricity, if there is no other dues. The State Electricity Board, thereafter, preferred LPA No. 476 of 1999(R) wherein a Division Bench of this Court taking into consideration the petitioner's stand that it will pay a sum of Rs. 3 lacs immediately, ordered to restore electric supply. The General Manager was directed to look into the matter and decide the claim. Thereafter the claim was decided and a fresh bill was issued. The petitioner again challenged the fresh bill in CWJC No. 1380 of 2000 (R), which was dismissed. Against the said order, the petitioner preferred LPA No. 381 of 2001. In the said letters patent appeal, this Court referred the matter to an Arbitrator, Hon'ble Mr. Justice S.K. Choudhary, a retired Judge of the Patna High Court and directed the petitioner to deposit a sum of Rs. 30 lacs with stipulation that if the arbitrator ultimately set aside the entire bill, the Board shall refund the entire amount to the petitioner with an interest @ 12% per annum.

5. Thereafter the petitioner deposited a sum of Rs. 30 lacs within time. The criminal case was also decided in favour of petitioner. The Electricity Board has moved in criminal revision before this Court against the decision of competent criminal Court which is pending. Learned Arbitrator on hearing the parties passed an Award reducing the energy bill from Rs. 1,18,39,891/- (one crore eighteen lacs thirty nine thousand eight hundred ninety one) to Rs. 57,89,630/- (fifty seven lacs eighty nine thousand six hundred thirty).

6. The petitioner being not satisfied, filed a petition u/s 34 of the Arbitration and Conciliation Act, 1996 before the learned Sub-Judge, Hazaribagh to set aside the Arbitral Award along with an application u/s 9 of the Act for interim relief.

7. The grievance of the petitioner is that though the court below passed interim order of injunction but in the meantime, the respondents having disconnected the electrical connection, the petitioner has been forced to prefer this writ petition.

8. Mr. Jay Saha, counsel for the petitioner initially argued the case on merit. It was submitted that the Award has not reached its finality having not made enforceable as per Chapter VIII of the Arbitration and Conciliation Act, 1996. However, on 13th September, 2002, Mr. Saha requested to dispose of the writ petition with liberty to petitioner to raise all the questions before the court below instead of deciding the case on merit by this Court.

9. Mr. V.P. Singh, learned senior counsel for the Board opposed the prayer to give liberty to the petitioner and to raise the question before the learned Sub-Judge, Hazaribagh where the petition u/s 34 of the Act to set aside the Arbitral Award is pending. According to him, the petition u/s 34 of the Act is not maintainable before the learned Sub-Judge, Hazaribagh, the Arbitrator having appointed by

this Court and not by the Chief Justice of the Court as per the Scheme 1996. It was also submitted that the present writ petition is not maintainable before this Court for interim relief. He relied on the decision of the Supreme Court in *State of Karnataka and ors Vs. Siddaiah, Union of India v. Aradhana Trading Company*, reported in AIR 2002 SC 1539 and *West Bengal State Wire Housing Corporation v. Sushil Kumar Kayan*, reported in AIR 2002 SC 2280.

10. In reply, counsel for the petitioner relied on the decisions of the Supreme Court in *D.K. Basu Vs. State of West Bengal*, and *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, and highlighted the principle of *abijus, ibi remedium*. "There is no wrong with a remedy. The law wills that in every case where a man is wronged and undamaged he must have a remedy".

11. Admittedly, a petition u/s 34 of the Arbitration and Conciliation Act, 1996 is pending before the learned Sub- Judge, Hazaribagh for setting aside the Arbitral Award. Therein the petitioner has preferred an application under Section 9 of the Act for interim relief. Admittedly, some interim order has been passed therein. The respondent-State Electricity Board has not challenged the Arbitral Award and has been noticed by the Court below. There is nothing on the record to suggest that the State Electricity Board has raised objection relating to maintainability of petition u/s 34 of the Act before the learned Sub-Judge, Hazaribagh. The electricity Board is not the petitioner in the present case, who can raise the question of maintainability of petition u/s 34 of the Act in the present case.

12. In the aforesaid background, it is not desirable for this Court to answer any of the question as raised in the present writ petition wherein the petitioner merely prayed for restoration of electrical line. This Court having already restored the electrical connection of petitioner temporarily to enable the petitioner to move before the learned Sub-Judge, Hazaribagh for further interim relief, I am not inclined to decide the case on merit, nor inclined to give any finding in respect to the questions raised by the parties.

13. The petitioner may move before the learned Sub-Judge, Hazaribagh before whom the petition u/s 34 of the Act is pending for appropriate interim order, if permissible under the law. The respondent-State Electricity Board may also raise all the questions as raised in the present case before the court below.

14. The Court before whom the petition u/s 34 of the Act is pending on hearing the parties is expected to determine the questions as may be raised and pass appropriate order, including interim order, in accordance with law.

15. The writ petition stands disposed of, with the aforesaid observations.