
(2011) 09 JH CK 0101

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3652 of 2011

Shree Om Metal Limited

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Citation : (2011) 09 JH CK 0101

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—It is the case of the Petitioner that the Petitioner-company incorporated under the Indian Companies Act, 1956 got electrical connection in HTSS category with the Respondent-Jharkhand State Electricity Board for a contract demand of Rs. 3000 KVA against which, according to the case of the Petitioner, monthly consumption used to be about 6-8 lakhs unit on average basis. The meter which has been installed by the licensee is of such nature that it can easily indicate even slightest interference or tampering meant for the purpose of illegal extraction of electric energy. The meter which has been installed always remains in the lock and seal of the licensee. That meter is connected with the CTPT unit which has been mounted on a steel structure at considerable height. It happens so that on 25.8.2010, an inspection team inspected the meter and the metering arrangement installed in the metering room, every seal of the metering unit was found intact. Thereupon, when inspection of CTPT unit was made, one seal it was allegedly found tampered with and when top cover was removed, a spanner suitable to open the nuts and bolts connecting secondary wire or loop of metering unit was found which, according to the officer of the inspecting team, was sufficient to draw inference to have caused interference in the metering unit to record the correct consumption and as such, on the basis of the inspection report, first information report was lodged under Sections 135 and 138 of the Electricity Act for committing theft of the electricity causing loss to the Board to the tune of Rs. 2,83,23,733/-. Thereupon, a proceeding was drawn under 126 of the Electricity Act whereby loss to the

Board was provisionally assessed at Rs. 1,62,78,010/-. On getting the said report, the Petitioner filed an objection on 16.9.2010. Upon it, decision is still to be taken. Meanwhile, the Petitioner has filed this writ application wherein prayer has been made to quash the provisional assessment order; to direct the Respondent to restore the power supply immediately; to quash the inspection report dated 25.8.2010 and also for a direction to the Respondent to call for the record of Nilachal Feeder of Manikui Grid so as to be ascertained about the consumption of the unit by the Petitioner in order to arrive at correct decision as to whether any theft of electric energy has been committed or not.

2. Mr. Mittal, learned Senior counsel appearing for the Petitioner submitted that admittedly inspecting team did not find anything wrong with the metering unit situated in the Petitioner's premises and in fact, nothing was found wrong with the CTPT but unscrupulously it has been shown that one spanner has been found in the unit of CTPT.

3. In this regard it was submitted that demonstratively it can be shown to this Court that No. spanner had been found in the unit of CTPT which gets reflected from the fact that CTPT unit does have many seals and out of it only one was found to be tampered with, which fact, even if it is admitted for the sake of argument, one can not believe that top cover may be removed when others seals are intact and this fact has even been supported by the person of the manufacturing company of the CTPT unit in its letter dated 22.9.2010 which was issued in response to information sought by the Petitioner. It has also been reported that even any spanner was found that would never affect the normal working/performance of the unit.

4. Learned Counsel further submitted that allegation of finding a spanner gets falsified from the fact that spanner which was taken out from the bottom of the CTPT unit filled with the oil never seems to be smeared with oil which fact gets reflected from photograph annexed with the writ petition whereas hand of the person who took it out seems to be drenched with oil.

5. Thus, it was stated that these are the circumstances which completely falsifies the allegation made by the inspection team.

6. It was also stated that usual consumption of electric energy right from the year 2001-02 has remained almost consistent varying between 6 lakhs to 8 lakhs unit every month and as such, if there would have been marked reduction in the consumption of the unit, one could have reason to believe that the Petitioner might have committed the offence of theft. But when there is No. such marked drop out in consumption, one cannot draw conclusion that the Petitioner has indulged himself in the commission of offence of theft.

7. In this regard it was further pointed out that factum of theft or No. theft can be ascertained by having relevant document relating to supply of the power to the Petitioner's unit by Nilachal Feeder of Manikui Grid from which supply is made to the Petitioner's unit and to one M/s. Nilachal Iron and Power Limited

only and hence if the unit consumed by M/s. Nilachal Iron and Power Limited is deducted, it could easily be ascertained about the unit supplied to the Petitioner by the feeder and the consumption made by the Petitioner if transmission loss is deducted but the request made in this regard by the Petitioner before several authorities was never acceded to and under this situation, the Petitioner has filed this writ application as he does have every apprehension that he may not get justice by the authority of the Board. Therefore, prayers made in the writ application are fit to be allowed.

8. As against this, learned Counsel appearing for the Board submitted that when inspection team found a spanner in the unit of the CTPT, he had every reason to believe that there has been commission of offence of theft and, therefore, first information report has been lodged which is under investigation.

9. At the same time, provisional assessment of the amount payable by the Petitioner was made which was communicated to the Petitioner, upon which an objection was taken and the matter relating to proceeding u/s 126 of the Electricity Act is pending before the authority, still the Petitioner has moved to this Court, though No. writ lies against the order relating to assessment of provisional amount payable and on this score only, this writ application is fit to be dismissed.

10. Learned Counsel further submitted that a spanner was found in course of investigation which had been kept in the CTPT unit, obviously for the reason to cause interfere with the proper or accurate metering of electricity and as such, a case has been lodged of theft of electricity and therefore, on the one hand, the matter relating to theft is still under investigation and on the other hand, the matter relating to proceeding u/s 126 of the Electricity Act is going on, this Court would always be declining to make any roving enquiry of the fact which is under investigation and hence, this writ application is fit to be dismissed.

11. Having heard learned Counsel appearing for the parties and on perusal of the record, it does appear that during inspection of the metering unit, inspecting team did find one of the seals of the CTPT unit being tampered with. When top cover was removed, a spanner was found lying inside the CTPT unit which, according to the inspection report, was to suppress the actual recording of the energy parameter in the meter which amounts to theft. On such allegation, first information report was lodged. At the same time, on account of alleged unauthorized use of electricity, provisional amount payable was assessed in terms of Section 126 of the Electricity Act. On service of order of provisional assessment, an objection was filed on behalf of the Petitioner, upon which decision is still to be taken. During pendency of that proceeding, this writ application has been filed wherein prayer has been made to quash the inspection report and to direct the authority to restore the electric connection on the ground that case of theft never gets attracted even if it is assumed that spanner was found inside the CTPT unit, as nothing has been shown that putting spanner in the CTPT unit itself will cause interference with proper or accurate metering of

the electricity. That apart, attempt was made to demonstrate that spanner had never been recovered from the CTPT unit as spanner was never found smeared with oil but any finding as to whether the case of theft get attracted or not would not be warranted to be given at this stage when criminal case is under investigation and at the same time, decision is still to be taken in terms of Section 126(5) of the Electricity Act where it will be open for the Petitioner to take all these grounds which, according to the Petitioner, would go to show the innocence of the Petitioner.

12. One of the arguments which was advanced on behalf of the Petitioner is that it is simply a presumption on the part of the Electricity Board that the Petitioner indulged itself in the act of theft of electricity as interference was made in the metering unit by spanner but inspection report is silent as to how presence of spanner in the CTPT unit interfered with the recording of accurate metering of the electricity and in such situation, it would be proper and appropriate to call for the record of Manikui Grid of Nilachal Feeder so as to be ascertained how much unit was consumed by this Petitioner during the relevant period and how much unit was consumed by other unit, namely, Nilachal Iron and Power Limited and to have relevant statement regarding transmission loss so that it be ascertained as to whether the Petitioner has consumed less electric energy than what it was supplied by Nilachal Feeder of Manikui Grid.

13. In the context of the aforesaid prayer one is tempted to look to the provision relating to theft of electricity which is there in Section 135 of the Electricity Act which reads as under:

135. Theft of electricity - (1) Whoever, dishonestly, -

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be, or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorized, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Provided that in a case where the load abstracted, consumed, or used or

attempted abstraction or attempted consumption or attempted use -

14. On perusal of sub Clause (b), it does appear that even if a device or method is used which interferes with the accurate or proper registration/calibration or metering of electric current it comes within the definition of theft.

Further the third proviso of the said provision reads as follows:

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

15. Thus, right appears to be there to prove it otherwise where presumption of theft is drawn on account of use of artificial means. But again it would not be proper here to agitate this issue, rather in the facts and circumstances, it needs to be raised before the authority dealing with the matter u/s 126(5) of the Electricity Act, so that the authority before deciding the matter u/s 126(5) may have relevant record/report from the Nilachal Feeder of Manikui Grid to ascertain the unit consumed by the Petitioner after taking into account the units supplied to other one consumer as well transmission loss so as to come to final conclusion in terms of Section 126(5) of the Electricity Act, as it becomes imperative for the administrative authority to follow not only the principle of natural justice and the principle established by law but to see that fair treatment is given to the person to meet the case against him.

16. Thus, the Petitioner though being not entitled to relief as claimed is directed to put forth all the pleas before the authority dealing with the matter u/s 126 of the Electricity Act so that the authority may procure the record/report of Nilachal Feeder of Manikui Grid as indicated above and to dispose of the matter within four weeks from the date of receipt/production of a copy of this order.

17. Thus, this application is disposed of.