
(2010) 02 PAT CK 0073

In the Patna High Court

Shree Shankar Swavlambi Sahkari Sheet Bhandar Samiti
Limited

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Electricity Act, 2003 — Section 42, 56

Citation : (2010) 02 PAT CK 0073

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Judgement

Navaniti Prasad Singh, J.—The petitioner is a co-operative running a cold storage at Khagaul in Danapur Sub Division of Patna district. It appears that in the year 2008 the petitioner was having some difficulty in paying certain electricity dues. It made an application to the respondent-Board praying for installment to liquidate them. The matter was then considered at different levels in the Bihar State Electricity Board (hereinafter referred to as Board) and ultimately the same was considered by the Finance Controller, who rejected the prayer. As it now appears that at no stage either petitioner was asked for any explanation nor was petitioner informed about the decision of the Finance Controller and immediately after the decision was taken, the electric line of the petitioner was disconnected on 14.01.2009. This has started the litigation.

2. Petitioner asserts that he had a right to seek instalment for payment of bills, which the Board was required to consider, as this is fully envisaged in regulation 10.13 of the Bihar Electricity Supply Code, 2007. Petitioner was neither communicated the order refusing to grant instalments nor granted any opportunity in this regard. In such situation, petitioner having sought permission for payment in instalment cannot be said that he had neglected to pay any charge investing the Board with jurisdiction u/s 56 of the Electricity Act, 2003. Thus, being of the view that the disconnection was illegal, the petitioner moved the Consumer Redressal Forum, as contemplated u/s 42(5) of the Act. The

Consumer Redressal Forum directed no disconnection of electricity and directed the payment of bills in certain instalments. This order, learned Counsel for the Board points out, was an ex parte order and based on some misrepresentation, as by the time the order was passed by the Consumer Redressal Forum, electricity had already been disconnected. Board had since appeared before the Consumer Redressal Forum and filed applications for modification of the said order but the problem is that the Consumer Redressal Forum has become non-functional because all the three members therein have since completed their terms and there are no fresh appointments.

3. Petitioner further submits that now the Financial Controller has also granted instalments but it is contrary to the instalments as granted by the Consumer Redressal Forum and further that because of disconnection and bills raised during the disconnection period the dues being enhanced to the said amount but it cannot be liquidated immediately. Mr. Suraj Samdarshi, learned Counsel for the petitioner submits that the disconnection itself was in contravention to the powers conferred by Section 56 of the Electricity Act. He is not liable to pay any amount for the disconnected period.

4. In my view, these are matters which would be gone into by the Consumer Redressal Forum where the dispute, substantively, lies.

5. Learned counsel for the petitioner states that the season is to begin within a week and if petitioner is not permitted to run the cold storage he will lose another year causing irreparable injury, and if the matter is delayed again, he misses the loading period. He points out that the Consumer Redressal Forum has to be established by the Board as per the guidelines, as may be specified by the State Commission. If for any reason the Board fails to do so, the consumers like the petitioner cannot be made to suffer.

6. Having considered the matter and with consent of parties I am disposing of the writ petition at this stage itself.

7. So far as reconnecting the cold storage is concerned, considering the urgency of the matter, I direct that the amount that is shown outstanding, as against the petitioner on 14th January, 2009, would be liable to be paid by the petitioner. Parties are in agreement that the amount is correctly reflected in Anneure-6 to the writ petition being bill issued on 5th January, payment whereof is 28th January which bill is for about Rs.15.65 lacs, which includes almost Rs.14 lacs as arrears for non-payment whereof, the electricity was disconnected on 14.01.2009. This amount would be payable on petitioner depositing a sum of Rs.5 lacs, his line would be immediately reconnected on payment of reconnection charges within 48 hours. Petitioner would then within 30 days deposit further Rs.5 lacs and 30 days thereafter further Rs.5 lacs and 30 days thereafter the balance amount. During this period separate bill for current electricity charges would be issued excluding disconnection period arrears, which would also be paid by petitioner punctually to avoid disconnection.

8. So far as the matter before the Consumer Redressal Forum is concerned, it is a matter of regret that though provision of Section 42(5) of the Act makes provision for a continuous body available to the consumer for redressal of their grievances. The body has been non-existent from 1st September 2009 and no one has considered it a matter urgent enough to give it due and adequate consideration. Referring to the provisions of Section 42 Sub-sections (5), (6) & (7), it would clearly be seen that it is the Board which has to establish a Forum for redressal of grievances of the consumers. The function of the State Regulatory Commission is only to issue guidelines in that regard. Essentially it would be seen that the Consumer Dispute Redressal Forum has to be a creation of the Board but nevertheless as it has to inspire confidence of the consumers, it must be manned by persons not within the Board. For example, if even a senior person like the General Manager of the Board is appointed to the said Forum then it is not expected of him to act freely without bias and adjudicate upon a dispute which may be a policy matter of the Board. The Forum must not only exist but must inspire confidence. Earlier all the three members were from outside the Board. I see no reason why similar appointments cannot be made expeditiously. The Forum is an obligation of the Board.

9. I, therefore, direct the Board and the State Regulatory Commission to see that the Forum for redressal of consumer disputes is made fully functional within a period of one month from the date of this order in accordance with law. I may only mention that if one refers to Sub-section (5) of Section 42, it would be seen that the Forum has to be established by the Board who is the licensee. Whereas it comes to appointment, he has to be appointed by the State Regulatory Commission itself. Thus, the two are responsibility of two different bodies, both of which must be done expeditiously, as noted above.

10. In the hope that the Forum would be constituted and functional within a period of one month from today, I direct the Forum to take up the case of the petitioner and finally adjudicate and decide the same within a period of three months from its resuming function in accordance with law.

11. With these observations and directions, the writ petition stands disposed of.