

(2009) 04 JH CK 0099
In the Jharkhand High Court

Shree Shyam Steel's

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Electricity Act, 2003 — Section 126, 126(4), 135

Citation : AIR 2009 Jhar 121 : (2009) 2 JCR 485

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Judgement

1. Challenge in this writ application is to the inspection report dated 6.2.2009, the provisional assessment order dated 7.2.2009 and the corresponding bill issued by the respondents No. 4 and 5 respectively, whereby the respondents have proceeded against the petitioner under the provisions of Section 126 of the Electricity Act, 2003 and have raised a demand for payment of the amount assessed as loss caused to the Board by the petitioner by his alleged acts of unauthorized use of electricity. In addition to the prayer for quashing the aforesaid report and the provisional bill, the petitioner has also prayed for a direction to the respondents to forthwith restore the electrical connection to the petitioner's premises, without imposing any condition upon the petitioner for payment of the demanded amount. By way of an amendment to the writ petition, the petitioner has sought to introduce a further prayer for quashing the circular No. 531 dated 29.1.2009 issued by the respondent No. 1 through its Secretary, whereby the concerned officers of the respondent Board have been directed to adopt a specific formula for assessment of the loss caused to the respondent Board in cases of unauthorized use of electricity.

2. The petitioner being a steel manufacturing unit is a consumer of electricity under the respondent Jharkhand State Electricity Board (JSEB) and has been obtaining electric supply on contract demand of 334 KVA on 11 KV electric connection. The charge for electric connection is assessed on the basis of readings in the meter installed for the purpose within the premises of the

petitioner's establishment. On 6.2.2009, a team of officers of the JSEB visited the petitioner's premises and carried out an inspection in which it was allegedly detected that two numbers of poly carbonate seals associated with the meter box were duplicate. On removal of the seals and conducting examination of the meter, it was detected that all the seals associated with the meter i.e. the Meter Body optical port, meter outer terminal, were also duplicate. Further more, two numbers of holographic paper seals of the manufacturer namely the Secure Meter Ltd, were also found completely tampered. It was also found that a foreign device (chip) was transplanted inside the meter and the internal circuit of the meter was arranged in such a manner as to facilitate controlling of the reading/ recording in the meter through remote operation. The entire inspection as carried out was videographed. An inspection report was prepared by the inspecting team. On the basis of the materials and the evidence collected during inspection, the inspecting team arrived at the conclusion that by deliberate and dishonest means and by tampering in the meter system, the consumer has been making unauthorized use of electricity and by such act of theft, has caused loss to the Electricity Board. The electric supply was promptly disconnected and an FIR was lodged u/s 135 of the Electricity Act mentioning the amount of loss caused to the Board.

A provisional assessment of the loss on having been made, the provisional bill was raised and served upon the petitioner demanding payment of the assessed amount of Rs. 94,16,280/- within the statutory period as required u/s 126(4) of the Electricity Act, 2003 and in the alterative, to file its objection against the provisional bill.

3. Through IA petition, the petitioner has informed that during the pendency of the writ petition, the final assessment has been made by the respondents and communicated to the petitioner by memo No. 427 dated 14.3.2009 annexing a bill dated 16.3.2009, and by way of final assessment, demanding payment of the same amount as earlier stated in the provisional bill, from the petitioner. The petitioner has also challenged the aforesaid final assessment order and the corresponding bill dated 16.3.2009.

4. The thrust of the arguments advanced by Sri Ajit Kumar, learned Counsel for the petitioner, is against the manner in which the inspection was conducted, the manner in which the provisional assessment of loss was made, and the manner in which final assessment has been declared, are totally arbitrary, unjustified, illegal and prompted by mala fide motives. Learned Counsel would argue that the amount as assessed in the provisional bill has been raised by a totally wrong method of calculation, inasmuch as the method under Clause 16.9 of the Bihar State Electricity Board Tariff, 1993, has been adopted despite the fact that the aforesaid tariff has been repealed by subsequent laws. It is argued that the formula of $L \times F \times D \times H$ as contained in Clause 16.9 of the aforesaid 1993 tariff could not have been applied since after repeal of the tariff, assessment could have been made only on the basis of average consumption of the preceding one year.

Learned Counsel argues that even according to the admitted consumption of electricity by the petitioner since January, 2007, normally, the monthly consumption used to be recorded between 5000 to 10,000 units per month in the whole year and even if the average consumption is calculated and the amount assessed, yet, by no stretch of imagination, it could extend up to Rs. 94,16,280/-.

Learned Counsel argues further that the respondents have illegally issued the impugned circular No. 531 dt. 29.1.2009 advising its officers to make assessment according to the formula $L \times F \times D \times H$ and as such in terms of the aforesaid Circular, the Assessing Authority has made final assessment illegally by adopting the repealed formula, thereby causing serious prejudice to the petitioner.

Disputing the findings recorded in the report prepared by the inspecting team and comparing the same with the FIR lodged against the petitioner, learned Counsel argues that the FIR contains vague and unspecific allegations and the inference as drawn by the inspecting team on the basis of the materials and evidence obtained in course of the inspection are misleading, perverse and based only on conjectures and surmises. Learned Counsel would explain that though the inspection report alleges seizure of certain articles at the time of inspection, but the seizure list annexed to FIR does not contain any corresponding reference to any such articles, nor has any such article been delivered at the police station with the FIR.

Learned Counsel further argues that even though the respondents have claimed that the assessing authority has made final assessment imposing liability of payment of Rs. 94,16,280/- upon the petitioner, but the assessment having been made in accordance with a repealed formula, and without considering the objection raised by the petitioner against the provisional bill, the same has no legal relevance and the petitioner cannot be thrust upon the liability to pay the highly inflated amount as demanded by the respondents. Learned Counsel adds further that even though as per the provisions of the Electricity Act, the petitioner has an alternative remedy of appeal before the appellate authority, but in doing so, he would have to deposit 50% of the amount demanded, which the petitioner under his present financial crisis, is not able to do so and thus would have to suffer loss of business, and even closure of his business establishment, on account of disconnection of electric supply.

Referring to the judgment of the Division Bench of this Court in LPA No. 357 of 2008 (Binod Kumar Barthwal v. Jharkhand State Electricity Board), learned Counsel submits that on considering a similar situation, this Court had granted relief to the petitioner by directing him to deposit 50% of the amount of average consumption normally charged for one year, and directing that half of the 50% should be paid by way of initial deposit and remaining half be paid in easy monthly instalments and upon such initial deposit being made, the Electricity Board was directed to restore the electrical connection to the petitioner. Learned Counsel prays for a similar relief.

5. Sri Rajesh Shankar, learned Counsel for the respondent Board vehemently opposes the grounds advanced on behalf of the petitioner claiming that the instant writ petition is not maintainable at all. Learned Counsel argues that though initially the writ petition was filed for quashing the provisional bill, but at the same time, the petitioner had submitted his objection to the provisional bill which the Assessing Officer had considered and by recording a reasoned and speaking order, the Assessing Officer has made the final assessment and has assessed the amount payable by the petitioner towards the loss of electricity caused to the Board. Since the alternative remedy of preferring appeal against the order of final assessment is available to the petitioner, the said remedy ought to have been availed by the petitioner instead of filing the instant writ petition. Learned Counsel adds that the petitioner has not raised any tenable ground on the basis of which he could pray for invoking the writ jurisdiction of this Court. It is further contended that the entire grounds against the provisional bill and against the final assessment, can very well be taken up by the petitioner in appeal before the appellate authority and it would be within the powers of the appellate authority to consider all such grounds and take appropriate decision in the matter. Referring to a judgment passed by this Court in the case of M/s Jai Mahavir Atta Mills v. JSEB vide WP (C) No. 6186 of 2008, learned Counsel submits that on considering identical issues as raised in the present writ application, this Court had directed the writ petitioner to avail the remedy of appeal and had disposed of the writ petition accordingly.

6. The facts which emerge from the rival submissions of the learned Counsel for the parties is that by allegedly adopting fraudulent and dishonest means, the petitioner had been making unauthorized use of electricity thereby causing substantial loss to the respondent Board on account of which the provisional bill was raised and against which the petitioner had filed its objection. The Assessing Officer, after considering the objection, had recorded his final assessment virtually affirming the amount as raised in the provisional bill and demanded the petitioner to pay the said amount.

Though the learned Counsel for the petitioner would contend that the assessment was made by the Assessing Officer on the basis of the formula prescribed by the Board in the impugned circular No. 531 dated 29.1.2009, but on going through the impugned assessment order, it appears that the assessing officer has categorically declared that he has worked out the amount of assessment on the basis of the basic principle of registration of KWH/unit in the accurate meter and not on the basis of Clause 16.9 of the Erstwhile tariff of the BSEB. The assessing officer has given details of assessment justifying the manner in which the assessment was made and it also appears that after working out the loss of the total units of electric energy, the assessing officer has recorded that the consumer has to pay the charge for total quantity of 11,77,035 units at the contract rate of Rs. 4 KWH and adding double the amount so calculated by way of penalty, the total amount of Rs. 94,16,280/- has been assessed.

7. As observed by the Division Bench of this Court in the case of Binod Kumar Barthwal (*supra*), since the charge of theft is yet to be proved, the respondents, at this stage, cannot be permitted to claim the amount of penalty.

In the earlier judgments passed by this Court, as referred to by the counsel for the respondents, the issue as to whether the amount by way of penalty should be paid by the assessee even without the charge of theft of electricity having not been proved, did not come up for consideration nor was decided.

In the light of the overall view of the entire matter, in my view, it would be just and appropriate that the petitioner shall pay charges only for the units assessed as the loss calculated at the contractual rate of Rs. 4/ KWH as indicated in the final assessment order, without adding the amount of penalty.

8. On deducting the amount of penalty, the total amount as per the final assessment payable would come to Rs. 47,08,140/- of which the petitioner shall have to pay 50%. The petitioner shall pay Rs. 11,77,035/- (rupees eleven lakhs, seventy seven thousand and thirty five) being 1/4th of total Rs. 47, 08, 140/- in one lumpsum and shall pay the remaining one-fourth amount of Rs. 11,77,035/- in four equal monthly instalments commencing with payment of the first instalment within fifteen days from the date of making the lump sum deposit as indicated above. By making such deposits, the appellant shall be paying 50% of raised demand to the respondent by paying Rs. 11,77,035/- in one lump sum and thereafter the balance 50% of the raised demand in four equal monthly instalments. Thus, the statutory requirement of deposit of 50% at the stage of appeal shall stand satisfied. The amount which would be paid by petitioner shall be subject to the result of the appeal which the petitioner would be at liberty to prefer. Upon the petitioner making the lump sum payment of Rs. 11,77,035/- plus the amount of first instalment of the remaining balance, as indicated above, the respondents shall restore the electrical connection to the petitioner's premises.

With the above observations, this application disposed of.

Let a copy of this order be given to the counsel for the respondents.