
(2011) 01 PAT CK 0160
In the Patna High Court
Case No : C.W.J.C. No. 8166 of 2008

Shyam Chandra Sharma

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0160

Final Decision : Allowed

Judgement

V.N. Sinha, J.—Heard Learned Counsel for the Petitioner, Bihar State Electricity Board (hereinafter referred to as the Board) including Sri Ram Balak Mahto, the Advocate General.

2. Petitioner is the proprietor of Hero Honda motorcycle showroom at Chapra. He is also a consumer of the Board bearing Consumer No. 11815/NDS-II for the sanctioned load of 1 K.W. He is aggrieved by the action of the Junior Engineer of the Board seizing PVC wire alleging theft of electricity by the Petitioner causing loss of Rs. 80,000/- for which First Information Report dated 25.12.2007 has been lodged against the Petitioner. The seizure list and the First Information Report are contained in Annexures-1, 2 to this application.

3. It is submitted on behalf of the Petitioner that in the light of the allegations levelled in the First Information Report he deposited a sum of Rs. 80,000/- with the Board and receipt showing such deposit is dated 26.12.2007 and is contained in Annexure-3 to this application. It is further submitted that seizure made and the First Information Report dated 25.12.2007 is contrary to the provisions of the Electricity Act, 2003 (hereinafter referred to as the Act) as amended with effect from 15.6.2007 when Section 135(1A) was inserted in the Act providing for detection of electricity theft by an officer of the Board/licensee duly authorized by the appropriate commission. In this connection, it is further pointed out that the Act was enacted repealing the provisions of (The Indian) Electricity Act, 1910, Electricity (Supply) Act, 1948 and the Electricity Regulatory Commission Act, 1988 which initially did not contain any provision authorizing the

Government or the Board or the Electrical Inspector to launch prosecution for the offence of theft of electricity. The Parliament noticed such omission and enacted Electricity (Amendment) Act, 2007 with effect from 15.6.2007 vesting the appropriate commission with the jurisdiction to authorize any officer of the licensee or supplier to take steps for detection of the offence of theft of electricity by filing complaint/lodging First Information Report. It is submitted that present First Information Report was lodged on 25.12.2007 by the Junior Engineer of the Board who was not authorized by the appropriate commission to take steps for detection of offence of theft and the Junior Engineer had No. jurisdiction to enter the showroom of the Petitioner for detection of the offence of theft of electricity and for seizure of the PVC wire. The seizure list, Annexure-1 and the First Information Report, Annexure-2 both dated 25.12.2007 are wholly without jurisdiction.

4. Learned Counsel for the Petitioner further submitted that the standing order dated 5.8.1988 issued by the Board authorizing all Electrical Engineers of the rank of the Junior Engineer and above to detect electricity theft and to lodge First Information Report alleging theft of electricity may have No. bearing in the present case, as after repeal of the Indian Electricity Act, 1910 and insertion of Section 135(1A) in the Act, the earlier standing order lost its force by virtue of repeal of the Indian Electricity Act, 1910 because the standing order is directly in conflict with Section 135(1A) of the Act. It is further submitted that Act is a consolidating enactment as it has consolidated the provisions of the three repealed Act(s). The standing order dated 5.8.1988 may have been operative until Section 135(1A) was not inserted in the Act but after insertion of Section 135(1A) the standing order dated 5.8.1988 being in conflict with Section 135(1A) of the Act became inoperative and may not vest any authority in the Junior Engineers of the Board to enter the premises of the consumer and launch prosecution alleging power theft. In support of the aforesaid proposition, Learned Counsel for the Petitioner relied on the judgment of the Hon"ble Supreme Court in the case of State of Punjab v. Harnek Singh, reported in State of Punjab Vs. Harnek Singh, paragraph-26, Southern Petrochemical Industries Co. Ltd. Vs. Electricity Inspector and E.T.I.O. and Others, paragraphs 90, 91, 96 and Harishchandra v. State of Madhya Pradesh, reported in AIR 1965 SC 323, paragraphs-14 to 18 and submitted that after repeal of the Indian Electricity Act, 1910 and enactment of Section 135(1A) in the Act, the officer of the licensee authorized by the appropriate commission is only vested with the jurisdiction to enter the premises of the consumer to launch prosecution alleging power theft. In the instant case, First Information Report having been lodged on 25.12.2007 by which date No. authorization having been issued by the appropriate commission, the seizure made and First Information Report lodged against the Petitioner on 25.12.2007 is wholly without jurisdiction being in teeth of Section 135(1A) of the Act and is fit to be quashed with direction to the authorities of the Board to adjust the amount of Rs. 80,000/- which was paid in the light of the allegations made in the First Information Report on 26.12.2007 towards the

future bill of the Petitioner.

5. Counsel for the Board has opposed the aforesaid submission. It is submitted on behalf of the Board relying on Sub-section (2) of Section 185 of the Act as also on Sections 6, 24 of the General Clauses Act, 1897 that the standing order dated 5.8.1988 issued in terms of Section 50 of the Indian Electricity Act, 1910 authorizing all Junior Engineers of the Board to launch prosecution alleging electricity theft will continue to hold the field until authorization by the appropriate commission was issued in terms of Section 135(1A) on 4.6.2008. It is further submitted that this Court while considering the provisions enacted for detection of the offence of theft of electricity and the penalties to be imposed, as provided in Part-XIV of the Act should interpret and harmonize the provisions so as to uphold the contents of the First Information Report, failing which theft of electricity which is so precious a commodity is likely to go scot free at the instance of the Court. To buttress the aforesaid submission reliance is placed on two judgments of the Hon"ble Supreme Court in the case of The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., paragraphs-12, 13 and in the case of State of Karnataka Vs. Adimurthy alias B. Moorthy, paragraph-7.

6. To appreciate the rival submissions of the parties, it is meet and proper to consider the provisions of Part-XIV of the Act, which provides for offences and penalties for theft of electricity. The Act is in the nature of consolidating statute as while repealing the three enactment(s) the provisions of the repealed Act(s) have been consolidated in the Repealing Act. While enacting the consolidating Act initially Part-XIV of the Act provided for offences and penalties of theft of electricity. The provisions of Part-XIV as originally enacted did not contain any provision for institution of prosecution for detection of the offence of theft. Such omission was noticed by the Parliament and Electricity (Amendment) Act, 2007 was enacted with effect from 15.6.2007, whereunder Section 135(1A) was inserted in Part-XIV of the Act providing for authorization by the appropriate commission in favour of the officers of the licensee or supplier or the officers of the rank higher than the rank so authorized by the appropriate commission for filing complaint/lodging FIR for prosecution of the offence of theft of electricity. Sub-section (2) of Section 185 of the Electricity Act, 2003 saves the action which has already been taken in the light of the provisions of the repealed statutes. Sub-section (2) of Section 185 also saves such Rule, notification, order or notice made or issued under the repealed statutes, which are not in conflict with the provisions of the Act. Same is the position with regard to Sections 6, 24 of the General Clauses Act, 1897, which provides for effect of repeal and continuation of orders etc. issued under repealed enactment(s). The standing order dated 5.8.1988 issued u/s 50 of the Indian Electricity Act, 1910 is in conflict with Section 135(1A) of the Act which was brought on the statute book w.e.f. 15.6.2007 as u/s 135(1A) the authorization for detection of the offence of theft of electricity is required to be made by the appropriate commission in favour of an officer of the licensee (Board). Authorization has been issued by the appropriate commission in favour of all the Assistant Engineers of the Board on

4.6.2008. Thus, it is quite evident that during the period between 15.6.2007 when Section 135(1A) of the Act was brought on the statute book mandating authorization by the appropriate commission and the date on which such authorization was issued by the appropriate commission i.e. 4.6.2008 there being No. authorization in favour of any of the officer of the licensee (Board) to lodge First Information Report for detection of theft of electricity, the seizure made and the First Information Report lodged against the Petitioner on 25.12.2007, Annexures-1, 2 alleging theft of electricity being without any authority from the appropriate commission is required to be quashed, which is, accordingly, quashed with direction to the Board to adjust the amount of Rs. 80,000/- which has been paid in the light of the contents of the First information Report towards the future bills of the Petitioner Before parting with this order, I may like to observe that the Petitioner had filed Cr. Misc. No. 28221 of 2009 praying inter alia to quash the First information Report, Annexure-2 and "the application was permitted to be withdrawn under orders dated 24.11.2010 which has been placed before this Court. This Court having perused the said order is of the view that this Court while permitting the Petitioner to withdraw the criminal miscellaneous application did not consider the submission of the Petitioner which has been raised and considered in this order, as such, withdrawal of the application shall not be a ground to refuse the prayer made in the writ petition.

7. the writ application is, accordingly, allowed.