
(2005) 03 JH CK 0021
In the Jharkhand High Court
Case No : LPA No. 103 of 2005

Sourya Metals Limited

APPELLANT

Vs

Jharkhand State Electricity Boards and Others

RESPONDENT

Date of Decision : 09-03-2005

Acts Referred:

Citation : (2005) 4 JCR 140

Hon'ble Judges : S.J. Mukhopadhaya, J; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : M.S. Mittal and Anubha Rawat Choudhary, for the Appellant; Ajit Kumar, for the Respondent

Judgement

1. In this appeal, the appellant has challenged the order dated 17th February, 2005 passed by the learned single Judge in W.P. (C) No. 754 of 2005 which reads as follows :

2/17.2.2005 Mr. Ajit Kumar, learned Counsel for the Board, prays for time to seek instructions and file counter-affidavit.

Put up this case on 9th March, 2005.

So far as the prayer of the petitioner for the stay of the recovery of the aforesaid amount is concerned, I am not inclined to stay the recovery of the amount specially in view of the decision of the Supreme Court in the case of B.S.E.B v. Bihar 440 Volt Vidyut Upbhokta Sangh, (1997) 11 SCC 380 .

2. The only issue, required to be determined in the connected writ petition and the present appeal, is "whether the Jharkhand State Electricity Board can demand Delayed Payment Surcharge on the security deposit of the appellant ?"

3. Counsel for the appellant submitted that Delayed Payment Surcharge is not payable of security deposit; he relied on Clause 15.3. of 1993 Tariffs. On the other hand, according to the counsel for Jharkhand State Electricity Board, the appeal is not maintainable, the same having been preferred against an interim

order.

4. Counsel for the appellant relied on the order dated 17th February, 2005 and submitted that the order is final in nature, learned single Judge, having observed that the case of petitioner is covered by Supreme Court decision in the case of B.S.E.B v. Bihar 440 Volt Vidyut Upbhokta Sangh, (1997) 11 SCC 380 .

5. Admittedly the issuer as involved in the connected writ petition and the present appeal, as referred above, was neither raised nor discussed nor decided by the Supreme Court in the case of Bihar State Electricity Board and Anr. v. Bihar 440 Volt Vidyut Upbhokta Sangh and Ors. (supra). In the aforesaid background, learned single Judge should not have referred the aforesaid decision of Supreme Court even at the time of deciding the question of interim relief. We, accordingly, set aside the last paragraph of order dated 17th February, 2005 and remit the case to the learned single Judge for decision on the issue "whether the appellant is entitled for interim relief, as sought for, or not ?"

This letters patent appeal is, accordingly, disposed of.

LPA disposed of.