

(2011) 04 JH CK 0017

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1075 of 2011

Special Wire and Industries

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 9

Citation : (2011) 04 JH CK 0017

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

R.K. Merathia, J.—Mr. Shankar Lal Agrawal, Advocate For the Respondents: Mr. Rajan Raj, Advocate ---3.27.04.2011 Mr. Agrawal, learned Counsel appearing for the Petitioner, submitted that a Bill dated 19.02.2004 was served on the Petitioner for AMG and energy charges, but in the counter-affidavit, it is said that the energy charges are actually fuel surcharge. The Petitioner made a representation on 7.4.2004 before the Respondent No. 2-General Manager-cum-Chief Engineer, but without passing any order on that, a certificate case being C.C. No. 3 (Elec.) of 2004-05 was filed on 23rd July 2004 after serving a legal notice to the Petitioner on 7.4.2004. As the Petitioner was required to file its objection within the stipulated time, an objection was filed u/s 9 of the PDR Act. He further submitted that without disposing of the representation and without ascertaining the amount payable by the Petitioner, filing of the certificate case is bad. In this regard, he relied on judgment of this Court in the case of R.K. Steels v. Bihar State Electricity Board(now Jharkhand State Electricity Board) and Ors. 2006(1) JLJR 159.

2. On the other hand, Mr. Rajan Raj, learned Counsel appearing for the Respondents, submitted that as the amount would have become time barred, the Board was justified in filing the certificate case and when the Petitioner has filed its objection, the Certificate Officer can decide the amount payable. He further submitted that the Petitioner has moved this Court after about five years of filing

its objection u/s 9 of the PDR Act before the Certificate Officer.

3. In reply, Mr. Agrawal referred to paragraphs-20, 21 and 22 of the writ petition to explain the delay in filing this writ petition. He further submitted that only in the year 2009, judgment with regard to fuel surcharge was delivered in the case of Bihar State Electricity Board v. Pulak Enterprises and Ors. (2009) 5 SCC 641.

4. Mr. Rajan Raj could not show as to what happened to the Petitioner's representation. Mr. Agrawal is justified in saying that before initiating a certificate case, the representation of the Petitioner should have been disposed of and the liability should have been decided as the Respondent Board is competent to decide the objection / claim of the Petitioner with regard to the fuel surcharge and AMG. When I indicated that certificate case is premature, Mr. Rajan Raj submitted that the General Manager will pass order on the Petitioner's representation.

5. In the circumstances, Petitioner is permitted to make a fresh representation annexing the earlier representation, before the Respondent No. 2-General Manager-cum-Chief Engineer, Jharkhand State Electricity Board, Jamshedpur (Singhbhum East). within two weeks from today. The Respondent No. 2, after giving opportunity of hearing to the parties, will dispose it of by passing a reasoned order in accordance with law, as early as possible and preferably within two months from the date of receipt of the representation.

Till further orders, further proceedings of Certificate Case No. 03 (Electricity) of 2004-05 pending before Certificate Officer at Karandih, shall remain stayed.

Parties are given liberty to move for fixation of an early date of hearing.