(2015) 09 JH CK 0117

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4232 of 2015

S.S.R. Sponge Iron Limited APPELLANT

Vs

Jharkhand Urja Vikas Nigam Limited and Others RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:
Electricity Act, 2003 — Section 126, 126(2), 126(5), 135, 135

Citation : (2015) 4 JLJR 154

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : M.S. Mittal, Senior Advocate, for the Appellant; Ajit Kumar, Senior Advocate and Navin Kumar, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J—Seeking quashing of provisional assessment bill dated 22.08.2015 for Rs. 11,46,87,300/- and seeking quashing of Inspection Report dated 21.08.2015, the present writ petition has been filed.

2. The petitioner - M/s. S.S.R. Sponge Iron Limited is a company incorporated under the Companies Act, 1956. The petitioner company now known as Vrajraj Ispat Limited established a sponge iron unit and for that purpose it took electricity connection for a contract demand of 7200 KVA. On 21.08.2015 during an inspection, seals of Meter Room and Meter Box were found intact and MRI of the meter was done however, a First Information Report being Chowka P.S. Case No. 53 of 2015 for offences under Sections 135, 136 and 138 of the Electricity Act, 2003 was lodged on the allegation of theft of electricity. The electricity connection to the petitioner''s unit was disconnected and on 22.08.2015 a provisional bill for Rs. 11,46,87,300/- was raised.

3. Mr. M.S. Mittal, the learned Senior counsel for the petitioner submits that though, the provisional assessment bill was issued on 22.08.2015, the First Information Report which was lodged on 21.08.2015 itself records theft of

electricity for the same amount i.e., Rs. 11,46,87,300/- which would establish that in pre-planned manner an inspection was carried and a First Information Report was lodged. It is submitted that respondent Nos. 3 and 4 demanded illegal gratification from the petitioner for rectification of the earlier bills however, the petitioner refused the same. The present case is an act of vendetta by the respondents. It is further submitted that the provisional bill in terms of third proviso to Section 135(1A) of the Electricity Act, 2003 can be issued only in terms of Section 126 and thus, without affording an opportunity of hearing provisional bill for Rs. 11,46,87,300/- could not have been raised. Per-contra, Mr. Ajit Kumar, the learned Senior counsel for the respondent-Jharkhand Urja Vikas Nigam Limited submits that there is no provision for affording an opportunity of hearing to the consumer when a provisional assessment in terms of third proviso to Section 135(1A) is made. The learned Senior counsel disputes that in W.P.(C) No. 2638 of 2012 this Court quashed the bill raised by the Jharkhand State Electricity Board.

4. Before dealing with rival contentions raised on behalf of the parties it is noticed that the petitioner has asserted that vide order dated 15.05.2012 in W.P.(C) No. 2638 of 2012 this Court directed restoration of electricity supply however, the petitioner was not directed to make payment to the Board. A perusal of orders dated 15.05.2012 and 30.07.2012 in W.P.(C) No. 2638 of 2012 would disclose that a First Information Report was lodged against the petitioner company and provisional bill for more than Rs. 7 crore was raised. In the said writ petition also the petitioner challenged the inspection report. At the instance of the petitioner, the said writ petition was disposed of with a direction to the Jharkhand State Electricity Board to send seized electric meter to National Physical Laboratory, New Delhi. Orders 15.05.2012 and 30.07.2012 in W.P.(C) No. 2638 of 2012 do not disclose that this Court quashed the provisional bill or the inspection report. The petitioner has not disclosed in the writ petition whether earlier, First Information Report was quashed by the Court. In the present writ petition challenge is confined to provisional bill for Rs. 11,46,87,300/- as contained in bill dated 22.08.2015 including Rs. 23,09,65,524/- which included previous arrears.

5. In so far as, challenge to the provisional bill for Rs. 11,46,87,300/- is concerned, it is a matter of record that Chowka P.S. Case No. 53 of 2015 has been lodged on 21.08.2015 on the allegation of theft of electricity and for causing loss to the Jharkhand Urja Vikas Nigam Limited to the tune of Rs. 11,46,87,300/-. I find that the Electricity Act, 2003 deals with cases of theft of electricity in an entirely different manner.

6. The Electricity Act, 2003 is a special enactment, is an admitted position. Besides being an Act to consolidate the laws relating to generation, transmission, distribution and trading and use of electricity and for taking measures conducive to development of electricity industry, constitution of Central Electricity Authority, Regulatory Commissions and for establishment of Appellate Tribunal and various

other matters connected therewith or incidental thereto, there are several special features of the Act which make the Electricity Act, 2003 a very special Act. The Act itself provides for functions, duties and rights of the licensee or generating company as well as the consumers. Section 43 castes a duty on every distribution licensee to supply electricity to the owner or occupier of any premises within one month after receipt of the application, failing which the distribution licensee has been made liable to pay penalty. Section 45 gives power to the distribution licensee to charge prices for supply of electricity in accordance with tariffs from time to time and in terms of conditions of the licence. Section 46 provides that the State Commission by regulation, may authorise a distribution licensee to charge any expense reasonably incurred in providing any electric line or electric plant used for the purpose of supplying electricity. Similarly, Section 47 gives power to a distribution licensee to require a person to furnish reasonable security, as may be determined by regulations. In the Act, vast power has been given to the distribution licensee to refuse to give supply of electricity and to discontinue supply of electricity A distribution licensee may provide additional terms and conditions for supply of electricity to a consumer.

7. The Electricity Act, 2003 has another special feature engrafted in the Act itself. The Special Court constituted for speedy trial of offences referred to in Sections 135 to 140 and Section 150 of the Act and it has been conferred power to determine civil liability against a consumer in terms of money for theft of energy besides, power and jurisdiction to try the offences mentioned in Section 153. Section 154 empowers the Special Court, notwithstanding anything contained in the Code of Criminal Procedure, 1973, to try the offence mentioned in Section 153. Generally, the procedure followed is of a summary trial however, if the Special Court finds that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court may recall the witnesses and rehear the case in the manner provided under the Code of Criminal Procedure for the trial of such offences. The Special Court has the power conferred upon it to tender pardon to a person who makes a full and thorough disclosure of the circumstances relating to the offences. Section 154(5) provides that the civil liability shall be recovered as if it were a decree of civil court. The Special Court has been conferred upon powers of the Court of Sessions and it has power to review its own order or judgment passed under Section 154 of the Act. Thus, the case of theft of electricity has to be dealt with in an entirely different manner contrary to the cases of unauthorised use of electricity. This distinction is apparent in as much as, the cases of unauthorised use of electricity as covered under section 126 finds place in Chapter XII which deals "investigation and enforcement" whereas, the theft of electricity under Section 135 is in a different Chapter, Part XIV of the Act which deals with "offences and penalties". The provision under Section 126 and Section 135 are two different and distinct provisions operating in independent fields and have to be dealt with in different manner, is no longer in dispute.

8. Section 126(2) provides that in cases of unauthorised use of electricity, the

order of provisional assessment would be made and after affording a reasonable opportunity of hearing to the consumer/person in occupation or possession or in charge of place of premises, final order of assessment would be made within 30 days from the date of service of provisional assessment order. Section 126(5) provides the manner in which the assessment shall be made. Against the final order under Section 126, the aggrieved person has a remedy of appeal. In contradistinction to Section 126, in Section 135 under Part XIV, there is no provision for appeal in cases of theft. Third proviso to Section 135(1A) provides that the loss suffered by the licensee or supplier would be assessed in accordance with the provisions of this Act and on payment of assessed amount or electricity charges, the supply line of electricity shall be restored.

9. Considering the specific provisions under the Electricity Act, 2003, I am of the opinion that at the stage when provisional assessment under third proviso to Section 135(1A) is made no opportunity of hearing is contemplated. The contention of the petitioner that the Trivector Energy Meter installed at its premises is of such high accuracy that it records small tripping and the software installed in the energy meter detects and reports misuse voltage, CT reversal, current imbalances etc. are issues on the merits of the matter which would require adjudication on the questions of fact. The various other contentions raised by the petitioner to attack registration of First Information Report can be the grounds urged in the quash-petition seeking quashing of First Information Report. As long as First Information Report remains on record, provision under Chapter XIV would be attracted and the writ court would not interfere in the matter unless, on admitted facts it is demonstrated that provisional bill for Rs. 11,46,87,300/- raised on 22.08.2015 is illegal and arbitrary. No ground for interference with the enquiry report or the provisional assessment bill for Rs. 11,46,87,300/- is made out. Considering the aforesaid facts, no direction for restoring the electricity connection at the petitioner''s unit can be issued.

10. I find no merit in the writ petition and accordingly, it is dismissed.

