

(2010) 08 JH CK 0022
In the Jharkhand High Court
Case No : L.P.A. No. 391 of 2009

Sujata Picture Palace

APPELLANT

Vs

Jharkhand State Electricity Board, and Others

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Citation : (2010) 4 JLJR 314

Hon'ble Judges : Sushil Harkauli, Acting C.J.; D.N. Patel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Consequent upon an inspection/raid on the Petitioner's premises (cinema halls) on 28-01-2000 by the officers of the Respondent Electricity Board, the quantum of assessment was adjudicated by the order dated 07-06-2000 passed by the General Manager of the Respondent Board. That order was unsuccessfully challenged by the Petitioner-Appellant before a learned single Judge by means of a writ petition which was dismissed by the impugned order dated 01-07-2009.

We have heard learned Counsel for the parties at length today. At the previous hearing, on 17th July, 2010, the following order was passed in this case:

Prima-facie, the General Manager, who passed the reasoned order pursuant to the direction of this Court given in an earlier writ petition of the Appellant, has not recorded a clear finding as to whether all three projectors in one hall and both the projectors in the other cinema hall can be operated simultaneously. Similarly, he has not recorded any finding as to whether both the central air conditioning plants can in the normal course be operated simultaneously. There is also no finding whether for operating a central air conditioning plant both the motors are necessary or only one motor runs at a time.

However, before taking a decision whether to remand this matter to the General Manager or not for considering whether all the equipments, i.e. all the projectors and the air conditioning plants with both motors, fall within the definition of

"connected load", we deem it appropriate to grant a further opportunity to the learned Counsel for the J.S.E.B. to seek specific instructions in that behalf having regard to the normal usage of such equipments in such situation. As prayed, list this case on 30.7.2010.

2. "Connected load" has been defined under Sub-clause 14(A) of Clause 2 of the Financial and Account Code, issued by the Bihar State Electricity Board, which reads as follows:

"Connected load" means the sum total of the installed capacities of all the energy consuming devices on the consumers' premises which can be operated simultaneously, excluding spare or stand by capacity in the form of extra units or larger ratings than necessary.

3. The words "can be operated simultaneously" is the crucial phrase.

4. The learned Counsel for the Respondent-Board has argued that if all the energy consuming devices can "possibly" be operated simultaneously whether with or without any objective or purpose, they should be deemed to be included within the definition of "connected load". We do not think any rational person would possibly subscribe to such unreasonable view. In our considered opinion, there can be no possible doubt that the phrase quoted above can only mean the situations where in the normal usage by sensible persons, the power consuming devices would find simultaneous operation. For example, in the present case it would cross all limits of perversity to hold that in a cinema hall having only one screen, more than one movie projector would operate simultaneously with other projectors at any given point of time.

5. Because in the impugned order there is no application of mind to the crucial factual question whether the devices found in the premises of the Appellant could in the normal circumstances of usage be operated simultaneously or not, therefore, the impugned order cannot be sustained so far as that aspect is concerned.

6. In the assessment, the unused plug points have also been added to the connected load.

7. It has been pointed out from the Petitioner's side that there is a circular of the Board dated 28th July, 2001, enclosed as Annexure 12 to the memo of appeal, in which it is specifically mentioned in the first note at the bottom of the circular that idle and unused plug points are not to be included in the assessment of "connected load".

8. From the side of the Respondents, it has been argued that the inspection took place on 28th January, 2000 i.e. before the date of the aforesaid circular and consequently, the circular cannot be utilized by the Appellant for excluding the idle and unused plug points.

9. Even if it is assumed for the sake of argument that the circular cannot be

utilized for the aforesaid purpose being subsequent to the date of inspection, yet it has not been shown by the Respondent-Board that there was any other circular prior to the date of inspection, which permitted adding of the unused and idle plug points to the "connected load". We are of the opinion that idle and unused plug points cannot be added in determining the "connected load" unless the same is made permissible under some circular or other law. The reason for this opinion is that it has to be specifically provided as to how much load would be attributable to each of such idle and unused plug points. Whimsical attribution of load to unused and idle plug points cannot be permitted as the same would suffer from the vice of arbitrariness, as the discretion would be totally unguided.

10. This aspect has also not been considered by the impugned order.

11. It has been argued from the side of the Appellant relying upon the decision of the Supreme Court in the case of J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, (Pr. 17 of that law report) that fuel surcharge cannot be multiplied by three. The formula for calculating the fuel surcharge is given in Clause 16.10.3 of the tariff, which requires several factors to be taken into consideration and they depend upon many variables.

12. The argument that fuel surcharge should also be assessed at three times the rate per unit in accordance with Part (III) of Clause 16.9 of the tariff was expressly rejected by the Supreme Court in that case.

13. The impugned order has not examined the matter in the light of the law laid down by the Supreme Court as aforesaid.

14. We find from the impugned order dated 7th June, 2000 that out of the four pages order, the General Manager-cum-Chief Engineer has discussed the submissions from the parties in almost the entire judgment and in the last paragraph he has cursorily decided the dispute.

15. A reasoned order requires that all the plausible arguments must be answered with reasons individually.

16. Lastly, after the above judgment was being dictated, learned Counsel for the Respondent-Board brought to our notice a decision dated 24th March, 2000 passed by a learned single Judge of the Ranchi Bench of the Patna High Court in C.W.J.C. No. 379 of 2000(R) in the case of Sarda Colour Laboratory v. B.S.E.B. and Ors. which according to him was upheld in an L.P.A. The order of the L.P.A. was not produced, but relying upon the decision of the learned single Judge, it was argued that our order, dictated above, was contrary to the Division Bench decision in L.P.A., which was not produced before us. This contention is with regard to unused plug points.

17. In that order, the learned single Judge has held that he was unable to find any illegality in the order impugned before him wherein unused plug points were taken into account by the Board. Now, that decision is not res-judicata as the Appellant was not a party to the same. The question to be examined is the value

of that decision as a precedent on the point. We find that the learned single Judge has not held in a positive manner that unused plug points should be added in determining the "connected load". The ratio of a decision is the reason on which the decision is based. The basis of the said decision of the learned single Judge is that he was not shown (during arguments) any ground for holding that addition of unused plug points was legally not permissible. The difficulty in adding unused and idle plug points to the "connected load" without an express authorization to that effect and more importantly, the difficulty about how much load could possibly be attributed to each unused plug points, are aspects to which the attention of the learned single Judge was not invited. Therefore, we do not find the said decision of the learned single Judge to be relevant as a precedent for answering the issue of permissibility of addition of unused plug points. In any case, we are keeping all these questions open to the General Manager-cum-Chief Engineer while deciding the matter afresh consequent to the remand order being passed by us.

18. While passing the fresh order, the General Manager-cum-Chief Engineer will keep the above observations in mind.

19. This Letters Patent Appeal is accordingly allowed with costs. The judgment and order dated 1st July, 2009 passed by the learned single Judge in C.W.J.C. No. 1571 of 2000(R) is hereby set aside and the impugned order dated 7th June, 2000 passed by the General Manager-cum-Chief Engineer, Electricity Supply Area, Ranchi (Annexure 7 to the memo of appeal) is quashed. The matter will be decided afresh by the General Manager-cum-Chief Engineer by a reasoned order within six weeks from the date on which a certified copy of this order is presented before him after giving an opportunity of hearing to the Appellant.