(2008) 09 JH CK 0070

In the Jharkhand High Court

Synergy Polypacks Pvt. Ltd. APPELLANT

Vs

Jharkhand State Electricity Board and Others RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Electricity Act, 2003 — Section 126, 127, 135

Penal Code, 1860 (IPC) — Section 379

Citation : (2008) 4 JCR 282

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Prayer in this writ application is for issuance of an appropriate writ commanding the respondents to immediately and forthwith restore the power supply of the petitioner, which was disconnected on 14.6.2008. Further prayer has been made to direct the respondents not to force the petitioner to pay any amount as mentioned by them, in the FIR lodged against the petitioner.

2. Petitioner is a consumer of electrical energy in the HTS category under Consumer No. NR-I/548, for a contract demand of 200 KVA since 10.10.2007. The petitioner used to pay monthly electric charges as per the bill raised on the basis of the meter readings. As per the usual practice every month a team of Board''s Officials used to make periodical visits to the premises of the petitioner to check and verify the electric meters and such verification was done in the month of March, 2008.

On 14.6.2008, the Board''s Officials visited the petitioner''s premises and inspected the electric meter installed in the petitioner''s premises. On inspection, the Board''s Officials had found evidence which suggested prima facie to them that the electric meter was tampered with, whereby the meter had slowed down and was not showing correct readings. Attributing the fault to the petitioner, the officials of the respondent-Board lodged an FIR against the petitioner vide Govindpur P.S. Case No. 0186 of 2008 for the alleged offences u/s 379 of the IPC and u/s 135 of the Electricity Act, 2003 stating therein that an amount of Rs. 60 lakhs was the loss caused to the respondent-JSEB. On the same day. the electric supply to the petitioner''s premises was disconnected.

A provisional assessment of the amount of loss was subsequently made and the same was served upon the petitioner calling upon him to submit his objections if any.

3. The petitioner has challenged the entire action of the respondents, including disconnection of power supply and assessment of the amount as purported loss, as being absolutely illegal and contrary to the provisions of law u/s 126 of the Electricity Act, 2003 and the provisions of the Supply Code Regulation issued by the JSERC.

Mr. Ajit Kumar, learned Counsel for the petitioner submits that as per the provisions of Section 126 of the Electricity Act, if on inspection of the premises the Assessing Officer of the Board comes to a conclusion that the Consumer has been indulging in unauthorized use of electricity, the Assessing Officer shall make a provisional assessment of the electricity charges payable by the Consumer and the order of provisional assessment shall have to be served upon the Consumer to enable the consumer to file his objections if any, against the provisional assessment and only after providing such reasonable opportunity that the final order of assessment of electricity charges payable by the consumer can be made. Learned Counsel argues that such being a mandatory provision of law, the declaration of an arbitrary amount of Rs. 60 lakhs as alleged loss being caused to the JSEB without making a provisional assessment and serve a copy thereof, to enable the petitioner to file his objections, is totally arbitrary and illegal.

Mr. Ajit Kumar, learned Counsel for the petitioner explains that even where the Assessing Officer reaches to the conclusion that unauthorized use of the electricity has taken place, then considering the fact that no anomaly or defect in the meter was found in the month of March, 2008, when the Board Officials had inspected the electric meter, the maximum assessment amount towards loss could be made for the month of April. 2008 till 14.6.2008 when the alleged defect in the meter was detected. The provisional assessment if made even by applying the widest range of considerations, it could not exceed more than Rs. 3 lakhs in all. The claim of Rs. 60 lakhs is preposterously inflated and arbitrary.

Learned Counsel argues further that even otherwise, before finally deciding that the meter was defective, it was incumbent upon the officials of the respondent-JSEB to get the meter tested by an independent expert agency and only after obtaining the expert''s report, could the respondents proceed to take any action u/s 126 of the Electricity Act.

4. Counter affidavit has been filed on behalf of the respondent-Jharkhand State Electricity Board. Denying and disputing the entire claim and allegations of the petitioner, the respondents would explain that the inspection of the meter installed in the premises of the petitioner had revealed that by means of

inserting three number of external devices inside the meter, the measurement of current supply was interfered with and as a result of which there was a mismatch in the meter display, which did not correspond to the actual consumption of electricity. On the basis of prima facie evidence of theft of electricity, the FIR was lodged against the petitioner and the electric supply was disconnected in exercise of the powers u/s 135(1-A) of the Electricity Act, 2003. It is further stated that a provisional assessment of the loss sustained by the Board was made on the basis of which a provisional bill for a sum of Rs. 58,26,240/- was attributed to the petitioner but the petitioner did not chose even to file any objection against the same and on the other hand, he had admitted his liability to the extent of Rs. 12,67,760/- against the provisional amount of loss caused to the JSEB.

5. Mr. V.P. Singh, learned senior counsel appearing for the JSEB submits that if the petitioner is aggrieved against the provisional bill, the law u/s 126 of the Electricity Act, 2003 gives the benefit to the petitioner to file his objections and also to participate at the hearing conducted by the Assessing Officer of the JSEB. Learned Counsel explains further that the monthly meter readings cannot be treated as an inspection of the meters and it is, therefore, wrong on the part of the petitioner to treat the readings of the meter, taken by the Board''s Officials, as an inspection of the meter by them, Learned Counsel argues further that against the final order of assessment, the provisions u/s 127 of the Electricity Act enables the consumer to file his appeal before the prescribed forum after depositing 50 per cent of the bill amount raised in the final order of assessment.

6. After hearing the learned Counsel for the parties and considering the materials available on record, I find that the respondents had raised a provisional bill and have served the same on the petitioners. As per the statement of the learned Counsel for the respondents, the petitioner has not raised any objection to the provisional bill. The provisions of Section 126 of the Electricity Act enables the consumer to file his objections, against the provisional assessment and also entitles him the benefit of a reasonable opportunity of hearing before the Assessment Officer passes the final order of assessment.

Under the provisions of the Act, the consumer may accept the provisional assessment, pay the amount of provisional bill within seven days from the service of the provisional assessment order and get the electric supply restored. Alternatively a remedy u/s 127 of the Act is also available to the consumer to prefer an appeal against the final order of assessment after depositing 50 per cent of the final order of assessment.

7. Learned Counsel for the petitioner submits that the petitioner has already submitted his objections and has also demanded that the electric meter installed in his premises be sent for testing to an authorized agency and the final assessment should be made only after receipt of the expert''s report and after due consideration of the objections of the petitioner. Since this process will take some time, the petitioner and the large number of its worker''s employees would suffer irreparable loss on account of the closure of its industry. Referring to an

earlier judgment of this Court passed under similar circumstances, learned Counsel submits that restoration of electric supply of the petitioner can be ordered by allowing the petitioner to deposit a reasonable percentage of the amount of provisional bill and to pay the remaining amount in equal installments within four months, subject to the final assessment and also subject to the orders of the appellate authority, in the event the petitioner files an appeal u/s 127 of the Electricity Act.

8. Learned Counsel adds further that the opportunity of being heard, of which the petitioner is entitled to, under the provisions of Section 126 of the Electricity Act, also entitles him to cross-examine the departmental officials of the respondent-Electricity Board on the basis of which the final assessment would be made and the respondents should not deny such privilege to the petitioner. Learned Counsel relies in this context to the judgment of the Supreme Court in of the Transmission Corporation of A.P. Ltd. and Others Vs. Sri Rama Krishna Rice Mill, .

9. Learned Counsel for the respondent-JSEB counters by stating that such right of cross-examination is already available to the petitioner in the criminal case, which has been initiated on the basis of the FIR lodged against the petitioner and therefore, no such right can be demanded by the petitioner at the stage of final assessment made by the Assessing Officer.

10. The argument as advanced by the learned Counsel for the petitioner is apparently based on the words "after affording reasonable opportunity of hearing to such persons" as appearing in Section 126, Clause 3 of the Electricity Act.

In the case of Transmission Corporation (supra), while dealing with a similar issue, the Supreme Court has held as in the following terms:

...What would be a reasonable opportunity would also depend upon the fact situation....

...It cannot be laid down as a rule of universal application that whenever the statement of the departmental officer is pressed into service for the purpose of adjudication, a right of cross-examination is inbuilt....

....Where the reliance is only on accounts prepared by a person, cross-examination is not necessary. But where it is based on reports alleging tampering or pilferage, the fact situation may be different. Before asking for cross-examination the consumer may be granted an opportunity to look into the documents on which the adjudication is proposed. In that event, he will be in a position to know as to the author of which statement is necessary to be cross-examined.

The observations of the Supreme Court offers sufficient guidance to the Assessing Officer in the matter of granting the consumer a reasonable opportunity of being heard. No separate specific order is required to be passed by this Court on this issue.

11. Considering the fact that after receipt of the petitioner''s objections to the provisional bill, the process for final assessment has been initiated, and since an alternative remedy under the provisions of the Electricity Act is available to the petitioner against the final order of assessment and in absence of any reasonable ground for invoking the writ jurisdiction of this Court, this writ application, in my opinion is not maintainable.

12. Accordingly, this writ application is dismissed.

