
(2006) 03 MP CK 0031
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2638 of 2005

Umiya Glass Industries

APPELLANT

Vs

M.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Electricity Act, 2003 — Section 126, 127

Madhya Pradesh Urja Adhiniyam, 2001 — Section 10, 2, 3, 4, 5

Citation : AIR 2006 MP 105

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Seth, J.—Petitioner is claiming a writ in the nature of Certiorari against the Panchnama dated 18-1-2005 P-1; Provisional Bill P-2 for Rs. 7.41.886/-; Final Bill P-5 dated 22-1-2005; and the order P-9 rejecting appeal preferred by the petitioner against the assessment order P-5.

2. Petitioner is a proprietary concern. It is engaged in the manufacturing of glass ampoules required for pharmaceutical industry. Petitioner has a commercial service connection of the sanctioned load of 100 hp. On 18-1-2005 electrical installation in the petitioner's premises was checked and a case of tampering with connection and meter leading to illegal abstraction of energy was detected. A Panchnama P-1 was prepared in presence of representatives of petitioner and provisional bill P-2 was issued raising a demand of Rs. 7,41,886/-, Protest lodged by the petitioner was rejected and a final " bill P-5 dated 22-1-2005 was Issued. Against said final bill petitioner filed an appeal and that too, was dismissed vide P-9. Hence this petition under Article 226/227 of the Constitution of India.

3. After notice, respondents filed their reply and justified the final bill and rejection of appeal preferred by the petitioner. According to them, impugned action was taken in accordance with law and the procedure prescribed there

under and as such no interference is warranted by this Court in the exercise of extra ordinary writ jurisdiction. It was also pointed out that on account of theft of electricity, criminal prosecution is also pending in the Court of Special Judge, Indore under the provisions of the Electricity Act, 2003.

4. Learned Counsel appearing for petitioner submitted that whole action was taken without affording opportunity of hearing to petitioner. In support of her contentions, she drew attention to provisions of the M. P. Urja Adhiniyam, 2001 and rules framed there under known as M.P. Urja Rules 2001. Referring to provisions of the Electricity Act, 2003 it was contended that contrary to the principles of natural justice, final assessment order P-5 was passed and the officer who had issued the final bill, he himself heard and decided the appeal preferred by the petitioner. In support of contentions learned Counsel relied upon decision of Gujarat High Court reported in Leenaben Vs. Ahmedabad Electricity Co. Ltd., unreported decision of this Court in W.P.N. 1960/2002 decided on 21-10-2003.

5. After having heard rival submissions and going through material available on record, we find no substance in the writ petition.

6. M. P. Urja Adhiniyam, 2001 is enacted to provide for prohibition of unauthorized use of electrical energy and assessment of amount of electricity charges in case of unauthorized use of energy in the State and matters connected therewith. Section 2(d) defines unauthorized use of energy to mean any abstraction, consumption or use of energy not permitted. Section 3 ibid, prohibits unauthorized use of energy and makes such person liable to pay the amount assessed under the Act in addition to any other action taken under any law relating to electricity for the time being in force. It also empowers disconnection of Supply of electricity. Section 4 deals with power of entry, search and seizure by officers notified in this behalf by the State Government. Section 5 envisages assessment of electricity charges payable by the person benefited by the unauthorized use of energy by any means. Section 6 provides for an appeal against the assessment order within the stipulated time. Section 10 is the rule making power of the State Government to carry out the purposes of the Act. In exercise of powers conferred by Section 10 ibid, State Government has made the M.P. Urja Rules 2001, which amongst other things, lay down modalities of entry; search; seizure; preparation of panchnama; and assessment order; appeal against the assessment order etc. by the notified competent authority. Sections 126 and 127 of the Electricity Act, 2003 were also pressed into service. In the backdrop of above legal provisions, according to learned Counsel for petitioner, in the present case, without affording opportunity to file objections final assessment order P-5 was not only made by the officer but also he himself decided the appeal against it, without affording opportunity of hearing to petitioner. This contention is not borne out from the documents available on record. From the bare perusal of the provisional and final assessment orders P-2 and P-5 respectively, it is clear that the Additional Executive Engineer MPSEB passed

them. Ann. P2 is the provisional assessment order wherein it was clearly mentioned that objections if any, might be preferred within seven days failing which the provisional assessment order would become final. It was a sufficient notice to the petitioner to file objections against the provisional assessment order. No further notice was required. It appears that petitioner did not file objections but demanded restoration of supply on 20-1-2005. Having failed to avail of the opportunity, now petitioner cannot be permitted to turn around to contend that no opportunity was afforded before passing the final assessment order. So this contention fails and on this count, no infirmity can be attached either to Panchanama P-1 or Assessment Orders P-2 and P-5. Next point urged by learned Counsel for petitioner is that contrary to provisions of Electricity Act 2003 and M.P. Urja Adhiniyam, 2001, same authority that passed the final assessment order, himself decided appeal preferred by the petitioner and that too without affording opportunity of hearing. Again there is no force in the submission. It is clear from documents that final assessment order was passed by the Additional Executive Engineer whereas the Additional Superintending Engineer decided the appeal. Obviously, the post and rank of Additional Superintendent is higher to the post and rank of Additional Executive Engineer. Both cannot be equated together. Lastly, it was submitted that appeal preferred by the petitioner against P-5 was decided by an antedated order P-9. According to petitioner was done in order to overcome the allegations made in the petition, notice whereof was served humdast on respondents. According to contentions, petitioner learnt about the dismissal of appeal only after respondents filed copy thereof along with the reply to show cause notice of the petition and to sustain it, they fabricated notice dated 21-4-2005 and 11-5-2005 cumulatively filed as R-3. Developing further it was submitted that relevant extracts of the dispatch register R-7-A and R-7-B are fabricated documents. This contention is like I chasing a teasing illusion and appears attractive on the face value, but loses Importance in absence of supporting documents. It is too far fetched to accept. Suffice it to say that respondent is a body corporate having organised establishment and office and the presumption is in favour of the respondents for having kept documents in the regular course. It cannot be brushed aside lightly on a mere flight of fancy entertained by the petitioner. The rampant theft or energy has now become a bane of society and is Impeding the desired national growth and development. In the case in hand, for the reasons mentioned above, neither the assessment order nor the order passed by the appellate authority is open to challenge on the grounds urged in the petition and at the time of hearing. In the facts and circumstances of the case, reliance placed by the learned Counsel for petitioner on the decisions mentioned above is of no avail,

7. The upshot of the above discussion is this writ petition is devoid of substance and falls. It is accordingly, dismissed with costs of Rs. 2500/-. Needless to say that all Interim orders passed in this petition stand vacated and this order shall not in any manner prejudice defense of the petitioner in the criminal prosecution launched in the Court of Special Judge. Indore under the provisions of the

Electricity Act. 2003.