(2003) 2 JCR 569

Jharkhand High Court

Case No: Writ Petition (C) No. 3523 of 2001

Santosh Stone Works		APPELLANT
	Vs	
Jharkhand State Electricity Board and Others		RESPONDENT

Date of Decision: Feb. 7, 2003

Citation: (2003) 2 JCR 569

Hon'ble Judges: Vikramaditya Prasad, J

Bench: Single Bench

Advocate: Ajit Kumar, M.K. Sinha and V.K. Gupta, for the Appellant; C. Prabha, for the Respondent

Final Decision: Allowed

Judgement

Vikramaditya Prasad, J.
The petitioner was a LTIS consumer, having a connected load of 25 HP. Its line was disconnected allegedly on

29.11.2000, which the petitioner disputes and says that the line was not disconnected. But, according to the respondents, the line was

disconnected on that date and after the disconnection, a raid was made allegedly on the premises of the petitioner when a load of 30 HP was

detected, besides pilferage pf power as against the alleged disconnection. This raid was made on 17.2.2001 and consequently, an FIR was

lodged. The case of the petitioner is that no notice u/s 24 of the Indian Electricity Act was served upon it and the power.was never-disconnected

and whatever FIR was lodged is just on the, basis of some imaginary disconnection and allegation of pilferage is quite false.

2. To the contrary, the case of the respondents is that by Annexure A, a notice, was served upon the petitioner on 25.9.2000. During the course of

argument, the learned counsel for the respondents admitted that this (Annexure A) is not a correct notice and produced the file of the Board to

show that subsequently a notice was again sent by letter No. 2934 dated 6.11.2000, referring the earlier notice of 25.9.2000, again giving the

petitioner a time of 7 days for clearing off the dues of Rs. 69,906/- and ultimately a Certificate Case, vide Annexure C/1, was initiated against the

petitioner.

3. Learned counsel appearing for the petitioner has relied upon the Board''s Circular as contained in the Dy. Financial Adviser''s Circular, which

has been annexed as Annexure 2 to the writ petition; the extracted notification at page 138 of the same, running page 22 of the writ petition, reads

as follows :--

(2) Wherever possible the statutory 7 days'' notice of disconnection should be served personally on the consumer under due acknowledgment.

In such a case, if the consumer fails to pay up the dues within the period stipulated in the notice, it would be perfectly legal to disconnect supply of

energy to the consumer without sending him any further notice.

(3) In respect of IIT consumers and Industrial (medium pressures) consumers if energy bills are not paid by the due date the normal 7 days'' notice

should be sent straightway by registered post, duly prepaid and addressed properly to the consumer.

Admittedly the petitioner is an Industrial Medium Pressure LTIS consumer, which is apparent from the Annexure I. Therefore, according to the

petitioner, ''the Clause (3) of the Circular is applicable, according to which normal 7 days'' notice should be served straightway by registered post,

duly prepaid and addressed properly to the consumer.

4. The learned counsel appearing for the respondents argued that, this Circular is not in vogue and a new Circular is there. But when she was

confronted as to what is the new Circular and was asked to produce the same, she rescinded from her stand.

5. The basic question is whether there was a notice served upon the petitioner for disconnection of the, power supply on account of non-payment

of the dues, that is to say - whether Annexure A annexed to the counter-affidavit is a notice and even if, for the argument''s sake, I agree with the

learned counsel appearing for the respondents that it is not the real notice, rather the real notice is the notice dated 6.11.2000, which she produced

in the Court today not on affidavit, but by producing the record of the Board, then also that question remains to be answered whether the second

notice dated 6.11.2000 is a notice or not.

6. A notice, in fact, is an information of certain positive facts intended to be given to the other side. This, in one sense, is a warning or caution to the

person on whom the notice is sent and also indicates the intention of the party sending the notice. Thus, the very essence of notice is to caution the

person upon whom notice is served arid also to inform him the legal consequences that may fall if the instructions given in the notice are not taken

note of or complied with. Therefore, the rule of natural justice and also of the substantial law demands that the notice must be sewed. Therefore,

the person, who claims that the notice has been served, has to prove as a fact that the notice was actually served. If we go by the rules or

procedures, it is apparent that actual service of notice will be complete only when the certain steps are taken by the sender of the notice. Thus, in

the instant case, when the provisions quoted above clearly say that the notice should be sent straightway by registered post, duly prepaid and

addressed properly to the consumer, then it will be enough on the part of the Board to show that the notice was, actually sent by registered post

and if the Board can prove it, then the onus of proving the fact of non- receipt of the notice by the person for whom the notice was intended will

shift upon that person. In the Instant case, nothing has been shown by the respondent Board that in terms of their own circular, notice was sent by

registered post. Even if I take the regulation specified in Clause (2) of the aforesaid Circular that a notice can be served personally upon the

consumer, because this Clause (2) does not indicate clearly whether it applies to the domestic consumer or IIT consumer or LTIS consumer. Thus,

one construction may be that it applies to all. Then in that circumstance also, the respondent Board has the duty to show that the notice was

personally served. Nothing has been shown by the respondents that the notice was served personally on the petitioner. On the basis of the

discussions made above, I have no hesitation in holding that the notice of the demand, was never served upon the petitioner. Therefore, if there is

no notice, then there can be no presumption that in consequence of that notice, the power was to be disconnected. The whole case of the

respondents fallen to the ground.

7. A Division Bench of this Court in the case of I.V.O. Pharmaceuticals (P) Ltd. and Others Vs. Bihar State Electricity Board and Others held as

follows :--

Disconnection of electric supply -notice contemplated u/s 21(1) not served on consumer before disconnection of power supply by BSEB on

consumer applying for rectification of bill raised by BSEB - no regulation framed by BSEB u/s 49 of Electricity Supply Act - Bill cannot be

construed to be service of notice contemplated u/s 2(1) - disconnection by the Board - held to be illegal.

8. If the disconnection is illegal, then the question of pilferage does not apply. What applies in this case is the provisions of Rule 16.9 of the Tariff,

which lays down the penalties in case of a consumer being detected using higher load then the sanctioned/connected load. In the result, it is held

that the notice was not served upon the petitioner for disconnection and the alleged disconnection was illegal and the Board is only entitled to

impose penalty upon the petitioner under Rule 16.9 of the Tariff, as it was found that instead of 25 HP the petitioner was consuming the ppwer of

30 HP. Consequently, the Board will revise the impugned bill and serve it properly upon the petitioner and then will proceed to take action against

the petitioner according to law, if the revised bill is not paid. The revised bill must be served upon the petitioner within 15 days from the date of

receipt/production of a copy of this order. The impugned demand (Annexure 5) is quashed with obvious consequences.

9. With the aforesaid observations/ directions, this writ petition is allowed at the admission stage itself.

10. At the time of parting, I must reiterate that despite several circulars issued by the Board the field officials of the Board are acting in violation of

the directions issued by the Board. This case is one of the examples, in which directions given by the Board for transmission of notices of

disconnection were completely flouted by them. The officials, who are responsible for not complying the directions/instructions issued by the

Board, should be departmentally proceeded.