

(2009) 12 JH CK 0007
Jharkhand High Court
Case No: None

Bansal Industries Gases (Bihar)
Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision: Dec. 16, 2009

Citation: AIR 2009 Jhar 104

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.

Heard the learned Counsel for the parties.

2. The petitioner, in this writ application, has prayed for quashing the order dated 17-2-2004, passed by the Sub-Divisional Officer, Public Health and Engineering Services Department, Adityapur Sub-Division, Jamshedpur, (now Drinking Water Department) by which the petitioner has been asked to pay a sum of Rs. 55,574/- up to the period January, 2003 on account of Water charges and with a further warning that if the amount is not paid by 28-2-2004, the petitioner would be compelled to pay the charges up to the month of February, 2004.

A further prayer has been made for quashing the demand notice, issued to the petitioner for payment of Rs. 55,574/- by way of arrears of bill for the period, April, 1996 to January, 2003. The petitioner has also prayed for a direction upon the Respondents to refund the excess amount realised by the Respondents from the petitioner.

3. The facts of the petitioner's case in brief are as follows:-

The petitioner is an Industrial unit and for the purposes of running its factory, it had obtained water connection from the Public Health and Engineering Department, (hereinafter to be referred as "the Board"). The water connection was given to the petitioner's unit, sometime in the year 1995, but on account of huge dumping of raw material by the neighbourhood Factory, the supply line of the petitioner was disrupted resulting in stoppage of water supply to the petitioner's unit. The petitioner promptly informed the concerned authorities of the Respondents to correct the breach and to restore the water supply but in spite of reminders, the water supply to the factory was not restored.

However, the petitioner continued to receive the bills every month from the Respondents on the basis of average billing at the rate of Rs. 160/- per month and he continued to deposit the bill amounts regularly, till the month of August, 1998. When even thereafter, the breach was not repaired and the water connection was not restored, the petitioner submitted an application in the month of December, 1998 to the concerned authorities of the Respondents, requesting to disconnect the water supply.

As it appears even from the counter affidavit of the Respondents, the application for disconnection was though received by the Respondents, but the water connection was not officially disconnected. On the other hand, the Respondents continued to raise bills towards water charges not only at the original rate but also on the basis of the revised rates of Rs. 989/- per month. In the month of November, 2000, the Respondents served a demand notice along with a bill demanding payment of an amount of Rs. 54,186/- claiming that the charges having accumulated by way of arrears till the month of November, 2000.

Being aggrieved, the petitioner preferred a writ application before this Court vide C.W.J.C. No. 528 of 2001. After hearing the parties, this Court disposed of the writ application with a direction to the petitioner to file a fresh representation before the concerned authorities of the Respondents and with a corresponding direction to the Respondents, namely, the Respondent No. 3, the Executive Engineer, P.H.E.D., to consider the representation and the objections of the petitioner raised therein, and to take a decision by passing a reasoned and appropriate order, within two weeks from the date of receipt of the representation.

In compliance, the petitioner filed a representation before the concerned authorities of the Respondents on 12-11-2002. Upon receipt of the representation, the Executive Engineer by his letter dated-3-11-2003, directed the Sub-Divisional Officer of the R.H.E.D. to conduct an enquiry and to submit Report.

In response, the Sub-Divisional Officer submitted his Report of inspection dated-4-11-2003 (Annexure-12), confirming therein that on spot inspection, it was found that the main pipe through which the water connection was extended to the petitioner's factory premises, had suffered breakage on account of heavy stone

dumping and since September, 1995, no water supply was made to the petitioner's Factory. It was also affirmed that in December, 1998 the petitioner had submitted his application for withdrawal of the water connection. This was followed by a legal notice issued on behalf of the petitioner indicating that if the water supply is not disconnected immediately, the petitioner would resort to legal proceedings. The Report also confirms that the petitioner had paid the water charges up to the month of July, 1998. It appears that in spite of the above categorical Report, the Respondent-Executive Engineer, by his impugned order, had declared that the petitioner has to pay the water charges at the previous rate till December, 1998 and at the enhanced rate, from the date of revision, i.e. from 1-1-1999 to 31-1-2003. The impugned order also declares that considering the order passed by the High Court, the petitioner was being given a concession/rebate of 50 per cent in the total bill amount. The demand for payment of the water charges till the month of January, 2003 has been made on the ground that though the petitioner had prayed for withdrawal of the water connection but he had not completed the requisite formalities, namely, deposit of Rs. 50/-, towards disconnection charges and further, that he had not paid the arrears of dues.

4. In the counter affidavit, the stand taken by the Respondents is more or less in consonance with the stand taken in the impugned order of the Respondents-Executive Engineer.

5. From the rival submissions and upon perusal of the documents on record, I find that admittedly, the water supply to the petitioner's factory premises was stopped, since September, 1995. However, it appears that though on account of the breakage in the water pipes, the petitioner did not receive any water supply ever since September, 1995 as affirmed in the Report of the Sub-Divisional Officer (Annexure-12), but the petitioner did not promptly seek restoration of the water supply by addressing any written demand. As it appears, from the petitioner's own pleadings, the letter through which request was made by him for the first time to the concerned authorities of the Respondents, was on 5-11-1998, stating therein, that for the past three years the petitioner has not been receiving any water supply and also protesting against the bill raised for the month of August, 1998.

6. It appears that this aspect of the petitioner's case was considered by this Court on the earlier direction in the writ application filed by the petitioner and it was observed that the petitioner was liable to pay the charges for the water supply till December, 1998.

It further appears that notwithstanding the fact that the water supply was disconnected, the petitioner continued to pay the water charges every month till July, 1998, even though the water connection to his Factory premises continued to remain unrestored even after July, 1998 and even after the petitioner had demanded withdrawal of the water supply by addressing a letter in December, 1998. As it appears, even from the counter affidavit, the Respondents did not officially

disconnect the water connection nor informed the petitioner of any Rule by which the petitioner was obliged to deposit any money towards disconnection charges nor was any condition placed that the water supply would not be officially withdrawn, unless the arrears were paid.

7. The fact remains, therefore, that despite the petitioner's specific request made in December, 1998 for withdrawal of the water connection, the Respondents did not officially disconnect the water supply and on the other hand continued to raise bills every month towards charges for water supply which they had not actually made.

The petitioner's contention that there could be no arrears towards water charges, is sought to be explained in the context of his claim that no water supply was made ever since September, 1995 to 1998 and even otherwise, till July, 1998, the petitioner had paid all the monthly bills. Even if, the month from which the petitioner's water supply was disrupted, is taken to be July, 1998, then also, there could be no arrears pending against the petitioner in view of the fact that admittedly, he had cleared all the monthly dues till the month of July, 1998. The Respondents cannot, therefore, claim that the petitioner had defaulted in payment of the monthly water charges and that there was outstanding arrears against him, and that according to some stipulated Rule, the petitioner ought to have been paid before seeking disconnection of the water supply. It also appears from the impugned order that the Executive Engineer, has misconceived the directions contained in the order passed by this Court in the earlier writ application. Since no water supply was made to the petitioner from December, 1998 onwards, no bill or payment for water supply could have been raised against him either at the old rate or at the revised rates.

8. In the light of the above discussions and in the facts and circumstances of the case, I find merit in this writ application. Accordingly, the same is allowed. The impugned order passed by the Sub-Divisional Officer, Public Health and Engineering Services Department, Adityapur (Respondent No. 4), dated-17-2-2004, as also the demand notice, whereby demand for payment of Rs. 55,574/-has been raised against the petitioner, are hereby quashed. However, in the facts and circumstances, there shall be no order as to costs.

9. Let a copy of this order be given to the learned Counsel for the respondents.