

**(2009) 01 JH CK 0019**

**Jharkhand High Court**

**Case No:** Writ Petition (C) No. 2197 of 2003

Jharkhand State Electricity Board

APPELLANT

Vs

Sri B. Ram, General  
Manager-cum-Chief Engineer  
and Another

RESPONDENT

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**Date of Decision:** Jan. 16, 2009

**Acts Referred:**

- Electricity (Supply) Act, 1948 - Section 5

**Citation:** AIR 2009 Jhar 95 : (2009) 57 BLJR 1125

**Hon'ble Judges:** Ajit Kumar Sinha, J

**Bench:** Single Bench

**Advocate:** R.N. Sahay, P.K. Singh and Rahul Kumar, for the Appellant; Jaya Saha, N.K. Pasari for Respondent No. 1 and Indrajit Sinha, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Ajit Kumar Sinha, J.

The present writ petition has been filed for the following reliefs:

(i) For issuance of a writ of certiorari quashing the order dated 8.5.2002 passed by the General Manager-cum-Chief Engineer, Singhbhum Area, Jamshedpur, whereby he has illegally decided the representation in favour of respondent No. 2 without hearing the representative of the petitioner and without properly considering the materials/documents available on record.

(ii) For issuance of a writ of mandamus commanding upon the General Manager-cum-Chief Engineer, Singhbhum Area, Jamshedpur, to decide the matter afresh after giving proper opportunity of hearing to both the sides i.e. the petitioner and respondent No. 2 and going through all possible aspects in relation to pilferage

of electrical energy done by respondent No. 2.

2. The facts, in brief, are set out as under:

The petitioner is a statutory body constituted u/s 5 of the Electric (Supply) Act, 1948 and respondent No. 1 is the General Manager-cum-Chief Engineer, who has passed the impugned order dated 8.5.2002, sought to be challenged in this writ petition, pursuant to the direction issued by this Court on 12.4.2002 in C.W.J.C. No. 1620 of 2001. Respondent No. 2 is the consumer of Jharkhand State Electricity Board under High Tension Tariff having a contract demand of 800 KVA.

On 25.4.1996 a Committee, constituted by the then General Manager-cum-Chief Engineer inspected the premises of respondent No. 2 and noticed that no current was flowing in "R" phase of the said Electric Meter installed in the premises, although the plant of respondent No. 2 was availing the electricity and functioning properly. The members of the Committee have visited the premises in the evening and, thus, the actual cause of fault could not be found out and they again visited the premises on the next day i.e. 26.4.1996 and inspected C.T./P.T. Combined Metering Unit.

3. On inspection it was detected that the incoming jumper of the meter "R" phase has been snapped and melted with the outgoing jumper in the Metering Unit of the same phase. A report was accordingly given by the Committee that due to the aforesaid reason no current was flowing in the "R" phase of the meter. Pursuant to the said inspection and on detecting the pilferage of electrical energy, a bill under Clause 16.9(A) of the Tariff Notification, 1993 amounting to Rs. 2,70,44,345/- was issued against respondent No. 2 on 4.5.1996 for the period October, 1995 to March, 1996. In addition to this, an F.I.R. was also lodged with the local police station for pilferage of electricity. The same was challenged by respondent No. 2 before the Ranchi Bench of Patna High Court, as it then was, vide C.W.J.C. No. 1536 of 1996(R). The then Ranchi Bench of Patna High Court disposed of the writ petition vide its order dated 21.5.1996 with a direction to respondent No. 2 to make a detailed representation before the General Manager-cum-Chief Engineer, who was directed to dispose of the representation after affording an opportunity of hearing. It also directed respondent No. 2 to deposit Rs. 25,00,000/- for restoration of its electrical line.

4. In compliance to the aforesaid order dated 21.5.1996, passed in C.W.J.C. No. 1536 of 1996(R), the General Manager-cum-Chief Engineer started the hearing on the representation filed by respondent No. 2. After hearing the matter at great length, the representation was decided/disposed of by the General Manager-cum-Chief Engineer, Singhbhum Area, Jamshedpur vide its order dated 22.1.2001, rejecting the representation preferred by respondent No. 2. Respondent No. 2 herein again filed a writ petition bearing C.W.J.C. No. 1620 of 2001 challenging the order dated 22.1.2001. During pendency of the writ petition, the General Manager-cum-Chief

Engineer, Singhbhum Area, Jamshedpur again took up the matter and while finding some calculation mistake in the bill dated 4.5.1996 directed the Board vide its order dated 26.5.2001 to raise a fresh bill after rectifying the calculation earlier made. In pursuance of the order dated 26.5.2001 a fresh bill was raised by the petitioner-Board on 19.3.2002 amounting to Rs. 86,91,746/-. Thereafter, the writ petition bearing C.W.J.C. No. 1620 of 2001 was taken up for hearing and vide order dated 12.4.2002 the order dated 22.4.2001 passed by the General Manager-cum-Chief Engineer was set aside together with the supplementary bill and the matter was remitted to the General Manager-cum-Chief Engineer, Singhbhum Area, Jamshedpur, to pass fresh order in accordance with law after taking into consideration the observations made in the said order and also the directions given earlier in C.W.J.C. No. 1536 of 1996(R).

In compliance to the order/direction dated 12.4.2002 passed in C.W.J.C. No. 1620 of 2001, the matter was heard by the Incharge General Manager-cum-Chief Engineer, who vide its impugned order dated 8.5.2002 held that the consumer respondent No. 2 herein was only required to pay loss to the petitioner-Board for four days to be calculated under the provisions of Clause 16.9(A).

5. The main contention raised by the learned Counsel for the petitioner is that the impugned order passed by the General Manager-cum-Chief Engineer, Singhbhum Area, Jamshedpur, is illegal and devoid of jurisdiction since he was only an Incharge officiating on the post of General Manager and, thus, was not competent to adjudicate the revenue issues. It has further been contended that the direction of the High Court was to the General Manager to decide the dispute. The second contention raised by the learned Counsel for the petitioner is that the Superintending Engineer while functioning as Incharge General Manager-cum-Chief Engineer, who has passed the impugned order dated 8.5.2002, sought to be challenged in this writ petition, cannot be a judge in its own cause. The third contention raised by the learned Counsel for the petitioner is that neither any opportunity of hearing was given nor any notice was issued to the representative of the petitioner and/or the Inspecting Team. It has further been contended that the impugned order on the face of it is self-contradictory since at some places it says that there was no pilferage whereas finally it says that there was abnormal reading for four days only. It has also been contended that the Incharge General Manager-cum-Chief Engineer in its impugned order dated 8.5.2002 has committed serious error in solely relying upon the report of the National Metallurgical Laboratory, which is only a piece of evidence to negate tampering and pilferage but cannot be the conclusive proof to determine the question of illegal misuse of electrical energy by the consumer.

6. Learned Counsel for respondent No. 1 in reply has brought to my notice the notification of appointment of respondent No. 1, which is annexed as Annexure-D to the counter affidavit (page 79), filed by respondent No. 1. The said notification is

quoted as under:

Jharkhand State Electricity Board  
Doranda, Ranchi-2.

Notification No. 56/EB

Ranchi, dated 2.7.01

Sri Bikrama Ram, Elecl. Superintending Engineer, Electric Supply Circle, Jamshedpur is hereby allowed to look after the work of General Manager-cum-Chief Engineer, Jamshedpur Supply Area, Jamshedpur in addition to his own duties until further orders with full financial power of General Manager-cum-Chief Engineer.

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7. Learned Counsel for respondent No. 1 has also referred to and relied upon page 43 of the writ petition, which is the order passed by respondent No. 1 dated 8.5.2002 to prove the fact that the petitioner Board was duly represented and appeared also and submitted its case and after conclusion of the hearing, order was passed. It has also been contended on behalf of respondent No. 1 that in the representation filed no such objection was raised and, thus, the petitioner cannot be allowed to raise a new contention at this stage. It has also been contended that the representation was duly considered and the impugned order was passed after hearing the matter in full compliance of the direction issued by the High Court.

8. Learned Counsel for private respondent No. 2-consumer has contended that the Incharge General Manager-cum-Chief Engineer was not a member of the Inspecting Team nor a judge of its own cause and thus, the contention raised by the petitioner is without any basis. He has further submitted that the impugned order has been passed in full compliance of the order and direction issued by the High Court and was not beyond the scope of the order passed by the High Court. He has referred to page Nos. 41 and 42 of the paper book, which is the order passed by the High Court dated 12.4.2002 to support his contention.

9. I have considered the pleadings and the rival arguments raised on behalf of the parties. I find some force in the argument on behalf of respondent No. 1 that the in-charge General Manager-cum-Chief Engineer who has passed the impugned order had full financial power as per the notification issued on 02.7.2001 and thus he was competent to decide the dispute. However, as regards the contention of the respondent No. 1 as well as No. 2 that full opportunity was given and hearing took place before passing of the impugned order by the in-charge General Manager-cum-Chief Engineer, appears to be incorrect. Annexure 7 at page 43 of the writ petition is the record of proceeding dated 8.5.02 itself wherein even though it indicates that the petitioner appeared and referred to its representation to be decided in the light of the direction issued by the Hon"ble High Court and in the last sentence it is recorded that "let the hearing to be concluded for orders" and on the

same day i.e. 8.5.2002 the impugned speaking order has been passed which is under challenge. Strangely in the impugned order under challenge only the arguments and submissions of the consumer respondent No. 2 herein has been recorded in the first four pages and thereafter the report and observation of National Metrological Laboratory has been recorded and finally it records that the consumer placed heavy reliance on the report based on that it has concluded in one paragraph that the Hon"ble High Court has laid great emphasis on the findings of National Metrological Laboratory report and the correctness cannot be doubted and finally holds that there was abnormality in the reading in the last four days for which the loss suffered by the party was to be calculated under the provision of Clause 16.9(A) for the consumer to pay.

10. However, no reason has been assigned as to how it has come to the conclusion of four days loss and further about the misuse of electricity and power and other evidences produced. It nowhere in the impugned order even refers to the contention raised by the petitioner in his representation. The National Metrological Laboratory can at best be relied upon for the purpose of holding that there may not be any pilferage or deliberate attempt by the consumer but that cannot absolve the consumer from payment of electricity bill for the illegal consumption during that period. Neither representation has been discussed nor traversed nor any finding has been given and there is no whisper about the other evidences and the inspection report. Even the observation that the Hon"ble High Court heavily relied upon the report of the National Metrological Laboratory may not be correct, instead the High Court clearly, while remitting the matter, directed to pass afresh order in accordance with law after taking into consideration the order and the directions given earlier in C.W.J.C. No. 1536 of 1996 (R) but the respondent No. 1 has not even referred the order passed by the High Court dated 21.5.1996

11. Unfortunately respondent No. 1 in its impugned order has completely misdirected itself by holding that it was not a case of pilferage as per the report, which may or may not be correct and assuming that it was not a case of pilferage and tampering still then the electric bills for the period October 1995 to March 1996 during which respondent No. 2 has availed the energy and consumed the electricity illegally has to be paid for the loss suffered by the Board. Unfortunately in the impugned order loss has been shown for only four days without even referring to the period in question i.e. October 1995 to March 1996. The complaint upon inspection was that the metering unit of "R" phase was snapped and melted with outgoing jumper of the metering unit of the same phase. The reason and/or the cause for no current flowing though C.T. of "R" phase may differ but the fact remains that the electrical energy and the power was consumed and used in excess to the contracted load without being reflected in the metering unit and without any specific permission of the Board. These issues have not even been referred and or considered by the General Manager-cum-Chief Engineer in its impugned order and even the other evidences brought on record have not been dealt with and it has

solely relied upon the report of the National Metallurgical Laboratory.

12. Considering the aforesaid facts and circumstances of the case, this writ petition is allowed and the impugned order dated 8.5.2002, passed by the Incharge General Manager-cum-Chief Engineer, Singhbhum Area, Jamshedpur, is quashed and the matter is remitted back to the General Manager-cum-Chief Engineer of the petitioner- Board to decide the matter afresh within a period of two months after hearing both the sides and after considering all the evidences on record and pass a reasoned order.