

(2009) 01 JH CK 0031

Jharkhand High Court

Case No: Writ Petition (C) No. 349 of 2009

Laxmi Business and Cement Co.
(P) Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board
and Others

RESPONDENT

Date of Decision: Jan. 29, 2009

Acts Referred:

- Electric Supply Code Regulations, 2005 - Regulation 13.4.3, 13.4.4
- Electricity Act, 2003 - Section 126, 126(1), 126(2), 126(3), 126(4)

Citation: (2009) 57 BLJR 1420 : (2009) 2 JCR 401

Hon'ble Judges: Ajit Kumar Sinha, J

Bench: Single Bench

Advocate: Y.V. Giri, M.S. Mittal and M.K. Pasari, for the Appellant; Rajesh Shankar, for the Respondent

Final Decision: Dismissed

Judgement

Ajit Kumar Sinha, J.

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

- a. For issuance of an appropriate writ or a writ in the nature of mandamus directing upon the respondents to forthwith restore the electrical connection of the petitioner, which has been disconnected on 17.01.2009 pursuant to a purported inspection and allegations of theft of electricity.
- b. For issuance of an appropriate writ or a writ in the nature of certiorari for quashing the purported inspection report dated 17.01.2009 by which the allegation of theft of electricity has been alleged thought from the careful perusal of the so-called/taled/purported inspection report dated 17.01.2009 it would be evident that the allegations of tampered/duplicate seals have been made without obtaining the signature of any representative of the consumer and also without obtaining the

signature of any independent body/third party.

c. For a declaration that until such time the Electricity Board gets the meter tested under the provision of Clause 13.4 of Electric Supply Code, Regulations 2005, the licensee cannot proceed u/s 126 of the Electricity Act, 2003 in raising penal bill, until such time the provision of Clause 13.4 of the Electric Supply Code are strictly complied with by the licensee.

d. For issuance of an appropriate writ or a writ in the nature of Mandamus directing upon the respondents to forthwith send the meter, which has been removed from the petitioners premises on 17.01.2009 to the third party investigation/laboratory, as approved by the State Electricity Regulatory Commission.

e. For issuance of an appropriate writ or a writ in the nature of Mandamus directing the third party investigation/inspection by the Vigilance Department of the Government of Jharkhand, in order to analyze/investigate as to whether the seals alleged to have been tampered with/duplicate can be verified so as to arrive at a logical conclusion, as to whether at all the seals purported to have been tampered is the actual seals of the Board or not and also as to whether in order to harass the petitioner allegations of theft is being made or not.

2. The matter has been heard at length and is being disposed of at the admission stage itself.

3. The main contention raised by Sr. counsel Sri Y.V. Giri, for the petitioner is that there is total non-compliance of Section 126(1) and Section 126(6) of the Electricity Act, 2003. It has also been contended that the dis-connection was also illegal and violative of the provisions of Section 126. He has also referred to and relied upon Clause 13.4 of the Electricity Supply Regulation Code to contend that a proceeding of penalty u/s 126 of the Act cannot be initiated until the meters gets tested by the Electricity Board and the allegation of tampering/duplicate seals was illegal. It has also been submitted that only the Superintending Engineer is the assessing officer and thus the entire exercise is illegal, invalid and liable to be set aside.

4. Learned Counsel for the Jharkhand State Electricity Board, on the other hand, submitted that the petitioner is guilty of theft and pilferage by breaking seals of the meters and as such he was liable for dis-connection under the provisions of Section 135(1-A) of the Electricity Act, 2003. It is also submitted that the petition itself is premature since no final assessment has taken place and even otherwise the procedure has to be followed in accordance with the statute which dearly provides that the meters has to be sent for testing with prior notice to the consumer and he has a right to file objection within 7 days.

5. I have considered the arguments and the rival contentions of the parties. It is relevant to clarify that Part 12 of the Electricity Act, 2003 deals with investigation and enforcement and Section 126(1) provides that in case a consumer indulging in

unauthorized use of electricity a provisional assessment has to be made by the Assessing Officer to the best of his judgment with regard to the electricity charges payable by such person who has benefited by such illegal use. u/s 126(2) the copy of the provisional assessment has to be served and u/s 126(3) the consumer is entitled to file objection against the provisional assessment before the Assessing Officer who shall after affording a reasonable opportunity of hearing to such person pass a final order of assessment with regard to the electricity charge payable. u/s 126(4) the person concerned may deposit the assessed amount based on provisional assessment with the licensee within seven days and only upon finding a conclusion with regard to the fact that the unauthorized use of electricity has taken place, the assessment shall be made for the entire period and Section 126(6) provides for the rate of assessment which should be equal to twice the tariff applicable. u/s 127 a statutory appeal is provided against a final order/assessment made u/s 126 of the Electricity Act, 2003.

6. I have clarified the aforesaid statutory provisions for the sole reason that in the instant case the matter is at the provisional assessment stage and/or at the F.I.R. stage and the consumer is entitled to file its objection. Thus the contention raised by the petitioner that the entire exercise of the respondent is violative of Section 126(1) and 126(6) of the Electricity Act, 2003 appears to be erroneous. It is further relevant to clarify that under the Electricity Amendment Act, 2007 Section 135(1-A) has been substituted/included in the Electricity Act, 2003 which is quoted as under along with the relevant proviso:

(1-A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorized shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

7. On bare reading of Section 135(1-A) it will be clear that the licensee or supplier upon detection of theft of electricity is empowered to immediately disconnect the

supply of electricity and as per the third proviso on deposit or payment of the assessed amount or electricity charges the supply line of electricity can be restored within 48 hours. Thus the contention with regard to illegal disconnection is also unsustainable and liable to be rejected. The fact remains that the F.I.R. has also been lodged as per the requirement of the statute and a provisional assessment has been made and the licensee is entitled to disconnect the supply line of electricity. Another contention raised by the Sr. Counsel is that the respondents have acted in contravention to Chapter 13 of the said regulations which deals with meters and in particular Clause 13.4 of the said regulation and in particular he has relied upon Regulation 13.4.3 and 13.4.4 which is quoted herein below:

13.4.3. Before testing the meter of a consumer 7 (seven) days notice shall be issued to the consumer intimating date, time and place of testing for the consumer or his authorized representative to be present during the testing. Consumer or his authorized representative present during testing will sign the test report as a token of witness.

13.4.4. The Distribution Licensee shall issue rectified bills on the basis of the test report with a copy of the Test Report to the consumer within one month of the testing.

It will be evident on reading the aforesaid that the regulation under Clause 13.4 of the Electricity Supply Code Regulation, 2005 provides for the subsequent procedure to be followed after the meter has been taken for testing. It says because once the meter is taken away seven days notice has to be issued to the consumer intimating the date, time and place of testing to enable the consumer or his authorized representative to be present during the test who is also required to sign the testing report and based on that test report the distribution licensee can issue rectified bills.

8. Thus, the contention raised that the action of the respondent is in complete violation of regulation 13.4.3 and 13.4.4 is misconceived and cannot be sustained in the eyes of law. The learned Sr. counsel also referred to and relied upon notification No. 1584 dated 13.7.2006 to suggest that the Assessing Officer has to be the Superintending Engineer. However, the final assessment is yet to take place.

9. Considering the aforesaid facts and circumstances of the case, this writ petition is devoid of any merit and even otherwise premature and is accordingly dismissed. However, the Sr. counsel, appearing on behalf of the petitioner after completion of argument gave an offer of Rs. 25,00,000/- (rupees twenty five lakhs) for restoration of electrical connection which has been opposed by the respondent Board.

10. It will be in the interest of justice to direct the respondents to restore the electrical connection subject to payment of Rs. 60,00,000/- (sixty lakhs rupees) by the petitioner which will certainly be without prejudice to the rights and contentions of the parties and will depend upon the final outcome.

11. This writ petition is accordingly dismissed without any order as to costs.