

**(2012) 04 JH CK 0049**

**Jharkhand High Court**

**Case No:** L.P.A. No. 316 of 2008

Jharkhand State Electricity Board  
and others

APPELLANT

Vs

M/s Raj Steel and Ferro Alloys  
Pvt. Ltd.

RESPONDENT

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**Date of Decision:** April 26, 2012

**Acts Referred:**

- Electricity Act, 2003 - Section 126, 126(1), 127

**Citation:** AIR 2013 Jhar 7 : (2012) 3 JLR 93

**Hon'ble Judges:** Prakash Tatia, C.J; Aparesh Kumar Singh, J

**Bench:** Division Bench

**Advocate:** Ajit Kumar and Kumar Sundaram, for the Appellant; M.S. Mittal . and N.K. Pasari, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

1. By Court:- Heard learned counsel for the parties. The appellant is aggrieved against the judgment dated 18.7.2008 passed by the learned Single Judge in W.P.(C) No. 1387 of 2008 by which the writ petition of the respondent was allowed and the order of the Electricity Board dated 15.2.2008 has been quashed.

2. Learned counsel for the appellants submitted that the respondent is a consumer of the Electricity Board, Jharkhand and on his premises inspection was conducted on 3.6.2005 and finding a case of theft, F.I.R was lodged on 4.6.2005. The Superintending Engineer gave a show cause notice to the respondent- writ petitioner by exercising power under clause 16.9 of the Electricity Tariff, 1993 and reduced the demand of Rs. 1,93,00,000/- to amount Rs. 1,10,000/-.

3. After about two years, the Board found that the Superintending Engineer had no jurisdiction to pass the order in view of Section 126 of the Electricity Act, 2003 and, therefore, recalled the order of the Superintending Engineer by impugned order

dated 15.2.2008, which is the impugned order in the writ petition.

4. The learned Single Judge allowed the writ petition after holding that the Board had no jurisdiction to withdraw the order of the Superintending Engineer and further held that the said order was appealable u/s 127 of the Electricity Act, 2003 and if the Board is aggrieved against the order, the Board should have challenged the order in appeal. However, learned Single Judge observed that in any subsequent proceeding the order of the learned Single Judge will not come in the way in deciding the matter.

5. Being aggrieved against the judgment of the learned Single Judge dated 18.7.2008, this L.P.A has been preferred by the Electricity Board. Learned counsel for the Appellant vehemently submitted that the order of the Superintending Engineer is wholly without jurisdiction in view of the fact that after coming into force the Electricity Act, 2003, such order could have been passed only by the Assessing Officer in view of sub Section (1) of Section 126 of the Act of 2003 and who will be Assessing Officer is given in the explanation appended to Section 126. As per the explanation, the Assessing Officer means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government. It is submitted that the Superintending Engineer erroneously by wrong interpretation decided the matter under the old tariff order of 1993 and before the Superintending Engineer even the writ petitioner himself raised objections that after coming into force the Act of 2003, the Superintending Engineer has no jurisdiction to pass assessment order in petitioner's case. However, the Superintending Engineer, after rejecting the writ petitioner's said objections, proceeded to decide the matter and reduced the demand of about Rs. 1,93,00,000/- to about Rs. 1,10,000/-.

6. It is submitted that the State Government vide notification dated 26.8.2004 appointed the Executive Engineer of the Electricity Board as the Assessing Officer. In view of the above, the learned Single Judge committed serious error of law by rejecting the appellant's objection that in case the Board order is set aside, it will revive an order, which is wholly without jurisdiction, which will perpetuate illegality.

7. Learned counsel for the respondent- writ petitioner tried to submit that the Board has falsely implicated the writ petitioner in the case of theft and tried to demonstrate the facts in which the proceeding against the petitioner has been initiated by the Board. Learned counsel further submitted that after the order dated 26.8.2004, by another notification "dated 13.7.2006 the General Manager of the Board has been declared as Assessing Officer and, therefore, even if the petitioner is directed to go to the Assessing Officer, then he could have been directed to approach the Executive Engineer, who was the competent authority at the time when the alleged commission or omission happened. It is submitted that petitioner could not have been directed to appear before the General Manager of the Electricity Board as has been directed by impugned order of the Board in view of the subsequent notification dated 13.7.2006.

8. We have considered the submissions of the parties and perused the judgment given by the learned Single Judge. We are of the considered opinion that order passed by the Superintending Engineer was wholly without jurisdiction and, therefore, even if it was set aside by illegal order even than subsequent illegal order could not have been set aside so as to bring into force the order which is wholly without jurisdiction. The clause 16.9 of the Tariff Order, 1993 had no application and in view of the statutory provision u/s 126(1) of the Act, 2003, the assessment order could have been passed by the Assessing officer appointed only by the State Government and not by the Board and, therefore, even if the Board has appointed the Superintending Engineer to decide the petitioner's case, that does not make the said appointment in accordance with law rather say this appointment is just the opposite to the statutory provision u/s 126 of the Act, 2003.

9. If the order passed by the Electricity Board is not set aside even then the order passed by the Superintending Engineer will not have any force in law and setting aside of the order of the Board, setting aside order passed by Superintending Engineer will not make the order of the Superintending Engineer as legal of order and in that view of the matter, there was no reason for quashing the order dated 15.2.2008 passed by the Board.

10. We do not find any force in the submission of the learned counsel for the petitioner that the Assessing Officer appointed by notification dated 26.8.2004 is competent officer to decide the matter and subsequent appointment of the General Manager as Assessing Officer by notification dated 13.7.2006 will not have jurisdiction to decide the matter. The General Manager was appointed as Assessing Officer on 13.7.2006, therefore that part of the order of the Board is legal and valid. Therefore, in view of the above reasons, the petitioner has to appear before the General Manager of the Electricity Board, who is the Assessing Officer u/s 126(1) of the Act, 2003.

11. Therefore, this L.P.A. is allowed and the impugned order passed by the learned Single Judge dated 18.7.2008 is set aside and writ petition of the petitioner is dismissed. it is made clear that we have not observed anything on the merit of the case, therefore there is no question of prejudice to any of the parties.