

(2001) 03 JH CK 0014

Jharkhand High Court

Case No: CWJC No. 1174 of 2001

Bihar State Electricity Board

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: March 28, 2001

Acts Referred:

- Bihar Reorganisation Act, 2000 - Section 62, 62(4)

Hon'ble Judges: Vinod Kumar Gupta, C.J; A.K. Prasad, J

Bench: Division Bench

Advocate: J.P. Shukla and Mihir Jha, M.S. Mittal, for the Appellant; M.M. Banerjee, General, P.K. Prasad and A. Sahay, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Heard the learned counsel for the parties.
2. Let respondents file detailed counter-affidavits in three weeks from today. Rejoinder, if any, by the writ petitioner shall be filed in ten days thereafter. The matter shall appear, as per orders, after five weeks.
3. Yesterday, when the matter came up for consideration, we had passed an order whereby certain directions were issued with respect to solving the matter on the basis of some amicable settlements.
4. Mr. Sahay appearing for the Jharkhand State Electricity Board has informed us today that perhaps an amicable solution at this stage may not be possible. Mr. Banerjee, learned Advocate General, has informed us that the Government of Jharkhand has already allocated an amount of Rs. 20 crores for being paid to the National Thermal Power Corporation (NTPC) in the allocation meant for current financial year and that the Government of Jharkhand shall make this payment to NTPC before 31st March, 2001 towards the charges of electricity consumed within

the Jharkhand State. In any case, this shall be an on account payment.

5. Mr. Sukla, learned senior counsel appearing for the petitioner, drew attention to two orders passed by the respondent No. 8 on 20th March, 2001 (copies annexed as Annexures 5 and 6) and submitted that these two orders even though purported to have been passed in exercise of the power vesting in respondent No. 8 u/s 62 of the Bihar Reorganisation Act, 2000 were passed without jurisdiction because respondent No. 8 did not have any such power u/s 62 (supra). He drew attention to another order passed on 20th March, 2001 (Annexure 7) and some other orders, copies whereof have been filed along with the writ petition. Finally, reference was made to the order dated 22nd March, 2001 passed by the Government of India in purported exercise of the power vesting in the Central Government u/s 62(4)(a) of the Bihar Reorganisation Act, 2000. Actually, the petitioner is putting heavy reliance on this order.

6. In this case, issues based on the interpretation to be given to various sub-sections of Section 62 of the Act would fall for our consideration. The points raised are indeed debatable. It is now worth considering and examining whether the orders passed on 20th March, 2001 by the respondent No. 8 were in exercise of the power u/s 62 of the Act or not. This consideration apart, one thing which prima facie does appear to have been done in accordance with Section 62 of the Act is the issuance of the notification dated 22nd March, 2001 by the Central Government. This notification, of course, makes itself applicable and enforceable from 1st April, 2001. By this notification, assets, liabilities, rights and undertakings of the existing Board, that means the Bihar State Electricity Board have been allocated provisionally with effect from 1st April, 2001 between the two Boards in accordance with the prescriptions contained in the notification itself. Without expressing any final opinion at this stage, because the matter has to be considered in the light of the affidavits to be filed by the parties and after a full fledged hearing, as an interim measure, we direct that even though the Jharkhand State Electricity Board has already come into existence and has also opened its own Bank Account, from tomorrow (29th March, 2001) uptill 31st March, 2001, the Jharkhand State Electricity Board shall not receive any collection towards any revenue from the consumers and that the consumers shall be liable to deposit revenue with the Bihar State Electricity Board, which the Bihar State Electricity Board shall be entitled to receive and appropriate to its account. Receipt by the Bihar State Electricity Board, however, of the revenue in between 29th March and 31st March, 2001 shall abide by the result of the writ petition. The Bihar State Electricity Board shall file an undertaking to this Court latest by 5.00 p.m. tomorrow (29.3.2001) to the effect that if it loses this petition and if it is asked by this Court to make over the aforesaid amount to Jharkhand State Electricity Board, it shall do so within four weeks from the date of passing of the order. It is further directed that uptill 31st March, 2001, both the Boards shall function strictly in conformity with and in accordance with the terms contained in the Central Government notification dated 22nd March, 2001.

7. It is submitted by Mr. Sukla, that the Government of Jharkhand has to pay an amount of Rs. 14 crores to the petitioner towards the arrears of electricity consumed with respect to the Government installations.
8. The learned Advocate General is directed to convey this submission to the Government of Jharkhand, which will consider making this payment to the writ petitioner during the current year allocation if it finds that this amount is payable to the petitioner.
9. Let a copy of this order be given to Mr. Sukla. learned senior counsel for the petitioner.
9. Writ petition allowed.