

(2008) 09 JH CK 0057

Jharkhand High Court

Case No: None

Binod Kumar Barthwal

APPELLANT

Vs

Jharkhand State
Electricity Board and
Others

RESPONDENT

Date of Decision: Sept. 3, 2008

Acts Referred:

- Electricity Act, 2003 - Section 126, 135

Citation: (2008) 4 JCR 507

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.G.R. Patnaik, J.

Petitioner, has challenged the order, passed vide letter No. 1007 dated 12.07.2008, by the Respondent No. 6, whereby an amount of Rs. 6,61,422/- as "penalty" has been imposed against the petitioner and has prayed for quashing the aforesaid order and to issue appropriate direction to the Respondent No. 6 to take up and decide the matter strictly in accordance with the provisions of Section 126 of the Electricity Act, 2003, after giving appropriate opportunity of hearing to the petitioner and also for a direction to the Respondents to restore the electric connection to the petitioner's premises without imposing any condition for payment of any amount, which may be subject to the outcome of the final assessment to be conducted by the Respondents themselves.

2. The petitioner is a Low Tension consumer of electricity supplied by the Respondent-J.S.E.B.

On an inspection conducted by the Respondents on 07.05.2008, the officials of the Respondents-J.S.E.B. found certain evidences on the basis of which an inference was

drawn that by tampering the seal of the electric meter box and the C.T. Box, the petitioner was committing theft of electric energy. On such prima facie findings, an F.I.R. was instituted u/s 135 of the Electricity Act, 2003 against the petitioner by the concerned authorities of the J.S.E.B. and an amount of Rs. 8,83,000/- was assessed as the loss caused to the J.S.E.B. by theft of electricity. The electric supply to the petitioner's premises was promptly stopped.

Liter, a provisional assessment was made and a provisional bill was raised and served upon the petitioner under the signature of the Assistant Electric Engineer.

3. Upon such disconnection, the petitioner had earlier preferred a writ application vide W.P.(C) No. 2699 of 2008. The petitioner had challenged the amount of loss as assessed and stated in the F.I.R. and had also contended that the provisionally assessed bill was never served in accordance with the provisions of Section 126 of the Electricity Act on the petitioner. The petitioner had also challenged the act of the Respondent-Electricity Board in disconnecting the electric supply on the ground that it was totally arbitrary and contrary to the provisions of the statute.

4. By order dated 16.06.2008, passed in the aforesaid writ application, this Court had directed the Respondent to serve the provisionally assessed bill to the petitioner immediately so as to enable the petitioner to file his objections and after giving a reasonable opportunity of hearing to the petitioner, to pass a final order of assessment within two weeks from the date of receipt/production of a copy of the order. It was further directed that after the final assessment, the Board shall restore the petitioner's electric connection forthwith on payment of the assessed amount.

5. In compliance with the order, the Respondent-J.S.E.B. served a provisional bill upon the petitioner though under the signature of the Assistant Electric Engineer. This was followed up by a communication addressed to the petitioner by the Executive Engineer-cum-Assessing Officer, calling upon the petitioner to submit his objections, if any, to the provisional bill and to appear before him and explain his objections. In response to the aforesaid letter of the Electric Executive Engineer, the petitioner had filed his objections (Annexure-6), mentioning in detail his entire grounds both on facts as well as on points of law. After considering the objections, the Assessing Officer vide his letter dated 12.06.2008 (Annexure-7), made a final assessment towards loss for an amount of Rs. 6,61,422.80 Paise, calling upon the petitioner to pay the same.

6. Assailing the aforesaid order of final assessment Mr. Ajeet Kumar, learned Counsel for the petitioner raises the following grounds:

(i) That the inspection as made by the officials of the Respondent-J.S.E.B. was in utter violation of the provisions of Section 126 of the Electricity Act, 2003, since it was not conducted in presence of the petitioner or his representative and neither was the presence of any independent witnesses secured,

(ii) That the objections advanced by the petitioner was not duly and adequately considered and

(iii) That the amount of final assessment is highly inflated and is based on an erroneous formula of calculation.

7. Mr. V.P. Singh, learned senior Counsel appearing for the Respondents-J.S.E.B., counters the arguments of the learned Counsel for the petitioner by raising a preliminary objection on the ground of maintainability of this writ application. It is submitted by the learned Counsel for the Respondents that the petitioner's grievance is against the final assessment made by the Assessing Officer of the J.S.E.B. A remedy is available to the petitioner against the order of final assessment for preferring an appeal before the appropriate forum as laid down under the Act itself. It is further submitted that even otherwise, the grounds advanced by the petitioner involves a dispute relating to facts, which cannot be considered and adjudicated upon by this Court in exercise of its writ jurisdiction. It is further submitted that since the issues raised in the present writ application, are virtually the same which the petitioner had raised in the earlier writ application and an order have been passed therein, the petitioner cannot be allowed to re-agitate the same issues in a disguised form. Learned Counsel explains further that all the issues, which have been raised by the petitioner in this writ application including the ground relating to the legality of the manner of inspection conducted in the petitioner's premises, which though was available to the petitioner but not raised in the earlier writ application, can still be agitated before the appellate forum, which has the authority to decide upon all such issues.

8. From the pleadings, it appears that in compliance with the directions of this Court in the earlier writ application, a provisional bill was raised and served upon the petitioner under the signature of the Junior Electric Engineer. By a letter issued by the Executive Engineer-cum-Assessing Officer, the said bill was ratified and the petitioner was called upon to file his objections, if any. The petitioner had already availed his opportunity to file his objections raising several grounds both on facts as well as on points of law. The objections were considered and a final order of assessment was passed by the Assessing Officer. The petitioner is now aggrieved against the final order of assessment for which a remedy is available under the provisions of the Electricity Act for of preferring an appeal before the appropriate forum.

9. In view of the fact that the alternative remedy is available to the petitioner and there being no reasonable and convincing grounds offered to invoke the writ jurisdiction of this Court, this application is not maintainable. Accordingly, this writ application is dismissed. The petitioner may prefer his remedy under the provisions of the Electricity Act, 2003 against the impugned order.