
(2008) 08 JH CK 0138

Jharkhand High Court

Case No: L.P.A No. 220 of 2008

Sri Durga Cement
Company Limited

APPELLANT

Vs

Jharkhand State
Electricity Board and
Others

RESPONDENT

Date of Decision: Aug. 1, 2008

Acts Referred:

- Electricity Act, 2003 - Section 126, 127

Citation: (2008) 56 BLJR 2936 : (2009) 1 JCR 94

Hon'ble Judges: Gyan Sudha Mishra, C.J; Dilip kumar sinha, J

Bench: Division Bench

Advocate: Joy Saha, A.K. Pasari and N.K. Pasari, for the Appellant; V.P. Singh R. Shankar, P.K. Singh, D. Kumar and A. Prakash, for the Respondent

Judgement

D.K. Sinha, J.

This appeal has been preferred by the appellant, M/s. Sri Durga Cement Company Limited, against the order dated 16.6.2008 passed by the learned Single Judge in W.P. (C) No. 2776/2008, by which the learned Single Judge had been pleased to dispose of the writ petition with a direction to the respondent-Jharkhand State Electricity Board to make provisional assessment of the loss suffered by the respondent-Board on account of the alleged theft of electricity at the instance of the appellant. The provisional assessment was also ordered to be made u/s 126 of the Electricity Act, 2003, for the alleged unauthorized use of electricity and the assessment was to be done within a period of 7 days from the date of receipt of a copy of that order. The petitioner, appellant herein, was granted opportunity to file objection and thereafter reasonable opportunity of hearing was to be granted to the petitioner-appellant and a final order subsequently thereto was to be passed.

2. The learned Single Judge further directed that after the final assessment regarding the electricity dues payable the petitioner-appellant, the Board would restore the appellant's electric connection on payment of the amount determined by the Board after hearing the appellant.

3. It is now informed by the counsel for the appellant as also for the Board that the final assessment of the dues on account of the alleged unauthorized use of electricity, which was earlier assessed at Rs. 2.4 crores, has now been assessed at Rs. 63,17,704/- by the respondent-Board.

4. In spite of the aforesaid relief granted by the respondent-Board, the appellant- M/s. Sri Durga Cement Company Limited has preferred this appeal essentially on the ground that the appellant-company be not directed to pay the entire dues determined by the assessing authority as it is interested in preferring an appeal against the order passed by the Board, where it has to deposit 50% of the dues determined in order to get the appeal heard on merit. It was further contended that even if 50% is deposited by the appellant in order to get the appeal heard by the appellate authority, its electric connection would not be restored on account of non-payment of the balance amount, which has been determined in pursuance to the order passed by the learned Single Judge.

5. Having deliberated over the argument and counter-argument advanced by the counsel for the parties, we are of the view that the appellant has already been granted the opportunity of hearing against the demand of Rs. 2.4 crores, which has now been assessed at Rs. 63,17,704/-. Thus, prima facie the amount payable by the appellant-company is not more than Rs. 63,17,704/- and this amount has been determined after hearing the appellant. We, therefore, find no justification to permit the appellant to make payment of electricity dues only to the extent of 50%. At this stage, we are not concerned with the appeal, which is sought to be filed by the appellant before the competent authority under the Electricity Act, 2003, but are concerned with the correctness of the order passed by the learned Single Judge, directing the respondent-Board to restore the appellant's electric connection on payment of the amount determined by the assessing authority.

6. Under the circumstances referred to hereinabove and as already stated, the amount determined by the Board, prima facie, has to be treated as correct as the same has been determined by the respondent-Board after providing an opportunity of hearing to the appellant-company. We, therefore, see no reason to interfere with the order passed by the learned Single Judge. Hence, we direct the appellant-company to make payment of Rs. 63,17,704/- with the respondent-Board.

7. Counsel for the appellant has stated that it may be difficult for the appellant to pay the same in one go and therefore, the appellant be allowed to deposit only 50% of the amount determined by the Board. Thus, according to the averment of the counsel for the appellant, the payment of balance amount be deferred.

8. This request was strongly refuted by the counsel for the respondent-Board by submitting that the amount determined by the assessing authority ought to have been paid by the appellant forthwith as the same has been determined by the assessing authority after proper adjudication of the dispute and merely because the appellant might prefer an appeal in future, the same cannot be a ground for deferring the payment of the balance amount, as there is likelihood of dragging the matter in future and then getting the payment deferred.
9. Even if this submission were to be accepted as incorrect, we are not inclined to examine the same as it would be speculative, but in the interest of justice to all concerned and in order to facilitate the appellant's industry to operate and start its production, we deem it just and appropriate to direct the appellant-company to deposit 50% of the amount determined by the assessing authority by 4th August, 2008 and if 50% of the amount which comes to Rs. 31,58,852/- is deposited by the appellant-company by 4th August, 2008, the respondent-Board shall restore the electric connection of the appellant within 24 hours, i.e. by 5th August, 2008 itself.
10. In so far as payment of the balance amount is concerned, the same is ordered to be paid in two equal monthly instalments within a period of four months.
11. After deposit of 50% of the amount determined by the assessing authority with the respondent-Board, it is implied that if the appellant prefers an appeal before the statutory authority u/s 127 of the Electricity Act, 2003, the appeal by the statutory authority shall be heard on merit without directing the appellant to deposit 50% of the amount afresh.
12. The appeal, in view of the aforesaid order, be treated as disposed of.