
(2010) 10 OHC CK 0006

Orissa High Court

Case No: Writ Petition (C) No. 12175 of 2009

Sri Seetarama Rice Mill

APPELLANT

Vs

The Executive
Engineer, Jeypore
Electrical Division and
Another

RESPONDENT

Date of Decision: Oct. 25, 2010

Acts Referred:

- Electricity Act, 2003 - Section 126, 126(3)
- Orissa Electricity Regulatory Commission Distribution (Condition of Supply) Regulations, 2004 - Regulation 106, 82

Citation: AIR 2011 Ori 38 : (2011) 111 CLT 663 : (2011) 1 OLR 343

Hon'ble Judges: B.P. Ray, J

Bench: Single Bench

Final Decision: Allowed

Judgement

This Judgment has been overruled by : [The Executive Engineer and Another Vs. Sri Seetaram Rice Mill](#), (2011) ELR 1498 : (2011) 12 JT 386 : (2012) 3 RCR(Civil) 633 : (2011) 12 SCALE 243 : (2012) 2 SCC 108 : (2011) 6 UJ 3973

B.P. Ray, J.

Petitioner in the present writ application has called in question the initiation of proceeding as well as passing of the provisional order of assessment under Sub-section (1) of Section 126 of the Electricity Act, 2003 (described in short as "the Act") by the Executive Engineer Jeypore Electrical Division, Jeypore, the opposite party No. 1 on the allegation of over drawal of maximum demand. The Petitioner has also assailed the intimation bearing No. 853 dated 25.7.2009 under Annexure-3 issued by the opposite party No. 1

alleging unauthorized use of electricity by means not authorized by licensee (over drawal of maximum demand) under Sub-clause (ii) of Clause (b) of the Explanation appended to Section 126 of the Act.

2. Uncontroverted facts giving rise to the present petition are that the Petitioner is a small scale industrial unit engaged in production of rice and thus the Petitioner is a consumer having contract load/demand of 99 KW and it was classified as medium industry relating to supply of power with a contract demand of 99 KW as the same is below 110 KW. The Petitioner's industrial unit was inspected by the Executive Engineer (in-charge) and the S.D.O., Electrical MRT Division, Jeypore on 10.6.2009 and dump was conducted. Basing upon the results found from the dump showing increase in the connected load, the opposite party No. 1 issued an intimation bearing No. 853 dated 25.7.2009 intimating the Petitioner regarding unauthorized use of electricity u/s 126 of the Act, i.e., by means not authorized by licensee (over drawal of maximum demand) vide Annexure-3. On the same day, the Petitioner has been issued and served with a provisional assessment order bearing No. 854 dated 25.7.2009 under Annexure-4 by the opposite party No. 1 whereby the Petitioner has been assessed provisionally fastening liability to the extent of Rs. 7,77,300/- for the period from June, 2008 to August, 2009 treating the Petitioner as a large industry on the ground that as per the dump report, the maximum demand has raised to 142 KVA since 4.6.2008 at 16.00 hours. While assessing provisionally, the opposite party No. 1 further directed the Petitioner to file objection, if any, against the provisional assessment order u/s 126(3) of the Act within 30 days from the receipt of the provisional assessment order and the Petitioner was also called upon to deposit the aforesaid amount within seven days.

3. Learned Counsel for the Petitioner submitted that under Annexure-3, commission of unauthorized use of electricity by means not authorized by licensee (over drawal of maximum demand) has been alleged. But as per the provisions of law contained in Section 126 of the Act, the over drawal of maximum demand does not come within the ambit and sphere of "unauthorized use of electricity". By so submitting, the Petitioner has assailed the authority and jurisdiction of the opposite party No. 1 in invoking Sub-section (1) of Section 126 of the Act on the ground of unauthorized use of electricity on the allegation of over drawal of maximum demand. The Petitioner further submitted that "unauthorized use of electricity" has been defined in Sub-clause (b) of the Explanation to Section 126 which is not meant for the allegation of over drawal of maximum demand and for over drawal of maximum demand, a consumer can be penalized as indicated in the electricity energy bill. The Petitioner further submitted that since Sub-clause (ii) of Clause (b) of the Explanation to Section 126 does not treat the "over drawal of maximum demand" to be "unauthorized use of electricity", the opposite party No. 1 should not have put an amendment in the statute by indicating "over drawal of maximum demand" in the bracket against Sub-clause (ii) of Clause (b). The Petitioner also submitted that the assessment as per Section 126 comes into play if there is any "unauthorized use of electricity" and on the allegation of over drawal of maximum demand than the contract

demand as agreed upon by a consumer, the said over drawal of maximum demand will be taken into task by Regulation 82 of Orissa Electricity Regulatory Commission Distribution (Condition of Supply), 2004 and in any circumstances, there should not have been any provisional assessment u/s 126 of the Act on the undisputed allegation of over drawal of maximum demand. Accordingly, the Petitioner has prayed to quash the intimation under Annexure-3 and the provisional assessment order under Annexure-4 as well.

4. Per contra, the learned Counsel for the opposite party No. 1 has submitted that vide Notification bearing No. 4982-R & R-II-16/2003 dated 21.5.2004, the Executive Engineer of the electrical Division is empowered and having authority to assess the loss incurred by the company due to unauthorized use of electricity. He submitted that the provisional assessment order has been made as per the dump report of MRT Division dated 10.6.2009 wherein it was found that the Petitioner's industrial unit had consumed more power beyond the agreed quantum since 4.6.2008 and the MRT report speaks that the power consumed have raised to the average 117 KVA per month. He submitted that as per Section 126(5) of the Act, if the Assessing Officer reaches at the conclusion that the unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection and therefore,, he submitted that since the maximum demand was raised with effect from 4.6.2008 and in the subsequent months, the maximum demand was more than 100 KW or 110 KVA. As the order of assessment has been passed requesting the Petitioner to appear within 30 days and file objection, if any, it was ascertained that the excess load had continued till August, 2009 and the total period for use of unauthorized electricity shall be 15 months i.e. from June, 2008 to August, 2009. He further submitted that in the instant case, the maximum demand of the consumer was raised to 142 KVA which was more than 110 KVA and accordingly, the Petitioner's industrial unit comes under large industries category with a contract demand of 110 KVA and above but below 2500 KVA and accordingly, the provisional assessment has been made by taking demand charges under large industries category since June, 2008 i.e. the month from which the Petitioner exceeded the load of a medium industry. He further submitted that the Petitioner without filing any objection before the Assessing Officer has filed the writ application which is not maintainable. The Petitioner-consumer had executed an agreement of 99 KW, but has unauthorizedly drawn power to the extent of 142 KVA which is in violation of the agreement vis-a-vis Regulation 106 of the OERC Distribution (Condition of Supply) 2004 which provides that no consumer shall use of power in excess of the approved contract demand. Accordingly, he submitted that the Petitioner should be directed to execute a fresh agreement for large industries category and by so submitting, the learned Counsel for the opposite party No. 1 prayed for dismissal of the writ application with cost as the same devoids of any merit.

5. In view of the rival contentions of the respective parties, the most vital/pertinent questions require for consideration by this Court are as follows:

(i) Whether "over drawal of maximum demand" falls under Sub-clause (ii) of Clause (b) of the Explanation to Section 126 which defines "unauthorized use of electricity" ?

(ii) Whether the opposite party No. 1 has authority and jurisdiction to pass provisional order of assessment by invoking or by taking cognizance of Sub-section (1) of Section 126 of the Act on the ground of "unauthorized use of electricity" alleging "over drawal of maximum demand" ?

Section 126 of the Act provides for assessment which runs as under:

Section 126-Assessment-

(1) if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under Sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

(6) The assessment under this Section shall be made at a rate equal to one-and-half times the tariff applicable for the relevant category of services specified in Sub-section (5).

Explanation: for the purposes of this Section,

(a) 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,

(b) unauthorized use of electricity" means the usage of electricity-

(i) by any artificial means; or

(ii) by a means not authorized by the concerned person or authority or licensee, or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorized;

A careful reading of the aforesaid provisions of law contained in Sub-section (1), it goes with saying that the assessing officer shall assess provisionally to the best of his judgment the electricity charges payable by such person or by any other persons benefited by such use if the assessing officer comes to a conclusion that such person is indulged in "unauthorized use of electricity" or in other words, it clearly establishes that if there is unauthorized use of electricity, then there will be provisional assessment of electricity charges to the best of judgment of the assessing officer. As per Sub-section (5), the assessment shall be made for the entire period of "unauthorized use of electricity" if the assessing officer reaches to a definite conclusion that unauthorized use of electricity has taken place.

Sub-clause (ii) of Clause (b) under Explanation appended to Section 126 defines "unauthorized use of electricity" which is exhaustive because it defines what the "unauthorized use of electricity" is. As per the aforesaid definition, the "unauthorized use of electricity" can said to be taken place if there is unauthorized use of electricity by any artificial means or by a means not authorized by the concerned person or authority or licensee or through a tampered meter or for the purpose other than for which the use of electricity was authorized or for the premises or areas other than those for which the supply of electricity was authorized.

6. In the instant case, the assessment under Sub-section (1) of Section 126 has been undertaken on the allegation of unauthorized use of electricity leading to over drawal of maximum demand. But this Court does not find that the "over drawal of maximum demand" comes under any category as defined under the statute for "unauthorized use of electricity" and therefore, this Court holds that "over drawal of maximum demand" does not come under the definition/meaning of "unauthorized use of electricity" as per Sub-clause (ii) of Clause (b) to Explanation appended to Section 126 of the Act.

7. Since this Court holds that over drawal of maximum demand does not fall under any category given for unauthorized use of electricity, the opposite party No. 1 had no

authority or jurisdiction to assess the Petitioner provisionally under Sub-section (1) of Section 126 of the Act on the ground of unauthorized use of electricity alleging over drawal of maximum demand. The power given to the opposite party No. 1 under Sub-section (1) can be in operation or invoked when there would be unauthorized use of electricity as defined in the Act. But in the instant case, "over drawal of maximum demand" does not come under the definition of "unauthorized use of electricity" and therefore, the opposite party No. 1 had no jurisdiction to resort to take cognizance of Sub-section (1) of Section 126 in passing the provisional order of assessment under Annexure-4.

8. This Court also finds that by intimation bearing No. 853 dated 25.7.2009 under Annexure-3, it has been indicated that there was unauthorized use of electricity by the Petitioner by a means not authorized by the licensee (over drawal of maximum demand). The over drawal of maximum demand, which is given in the bracket as stated above does not find place in the definition as to "unauthorized use of electricity" and therefore, the aforesaid intimation under Annexure-3 is not maintainable inasmuch as the opposite party No. 1 had no authority to enlarge the scope of the Legislation or the intention of the Legislature when the language of the provision is very clear and unambiguous. It has been held by the Supreme Court in the case of [Union of India and another Vs. Deoki Nandan Aggarwal](#), that:

It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.

9. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. The intention of the Legislature is primarily to be covered from the language used, it means the attention would be paid what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of word as meaningless has to be avoided as held by the Supreme Court in the case of *Institute of Chartered Accounts of India v. Price Waterhouse and Anr.* AIR 1998 SC 74. In such view of the matter, the intimation as communicated by the opposite party No. 1 by adding over drawal of maximum demand in the definition of unauthorized use of electricity is not feasible in the eye of law and accordingly, the said intimation is quashed.

10. As "the over drawal of maximum demand" does not come under the scope of "unauthorized use of electricity" as defined in the Act, this Court is of the considered view that the opposite party No. 1 had no jurisdiction to invoke Sub-section (1) of Section 126 of the Act in passing the provisional assessment order under Annexure-4 which is not sustainable or tenable in the eye of law and is hereby quashed.

11. Since this Court came to a finding that the opposite party No. 1 had no jurisdiction to assess the Petitioner provisionally under Annexure-4, the other points as raised by the Petitioner becomes academic and this Court does not incline to go into those aspects of the matter.

The writ petition is accordingly allowed and there would be no order as to cost.