

M/S Associated Engineering Com Vs. Jharkhand State Electricity Bo

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Court : Jharkhand

Decided On : Feb-13-2015

Appellant : M/S Associated Engineering Com

Respondent : Jharkhand State Electricity Bo

Advocate for Pet/Ap. : Sri. Shankar Lal Agarwal

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(C) No. 4367 of 2010 with W.P.(C) No. 4396 of 2010 M/s Associated Engineering Company, a Proprietorship Firm having its place of business at B-18, 1st Phase, Adityapur, Adityapur Industrial Area, PO & PS- Adityapur, Dist.-Saraikella- Kharswan through its Proprietor Rajiv Chopra, S/o Late B.K. Chopra, R/o C-1, 36, C.H. Area(old), PO & PS- Bistupur, Town -Jamshedpur, Dist.-Singhbhum East(petitioner in W.P.(C) No. 4367/2010) M/s Associated Engineering Company, a Proprietorship Firm having its place of business at B-7, 1st Phase, Adityapur, Adityapur Industrial Area, PO & PS- Adityapur, Dist.-Saraikella- Kharswan through its Proprietor Rajeev Chopra, S/o Sri B.K. Chopra, R/o C-1, 36, C.H. Area(old), PO & PS- Bistupur, Town -Jamshedpur, Dist.-Singhbhum East ...(petitioner in W.P.(C) No. 4396/2010) Versus 1. Jharkhand State Electricity Board, through its Chairman, Engineering Bhawan, HEC Township, PO- Dhurwa, PS-Jagannathpur, Dist.-Ranchi 2. The General Manager-cum-Chief Engineer, Singhbhum Area, Co-operative Building, Bistupur, PO & PS-Bistupur, Town- Jamshedpur, Dist.-Singhbhum East 3. The Electrical Superintending Engineer, Jamshedpur Circle,

Vikash Bhawan, Adityapur, PO & PS- Adityapur, Dist.- Seraikella-Kharsawan.

4. Electrical Executive Engineer, Electric Supply Division, Adityapur, PO & PS- Adityapur, Dist- Seraikella-Kharsawan. (Respondents in both the cases) -----
CORAM: HONBLE MR. JUSTICE PRASHANT KUMAR ----- For the Petitioners: Mr. Shankar Lal Agarwal, Adv. For the Respondents: Mr. Mukesh Kumar Sinha, Adv.(JUVNL) Mr. Amit Sinha ----- 6/13.02.2015 These writ application are heard together and disposed of by this order as a common question of law arose in these cases.

2. It appears that petitioners are LT consumers and their premises inspected on 16.7.2010 and 17.7.2010, respectively and it was found that loads in the petitioners' factory premises 2 are more than the sanctioned load. It appears that thereafter, notices issued to the petitioners under Section 126 of the Electricity Act, 2003. Petitioners filed their objections under Section 126 (3) of the Electricity Act and thereafter, final assessment orders passed, which have been challenged by the petitioners vide interlocutory applications. Petitioners had also challenged the notices issued under Section 126 of the Electricity Act, 2003.

3. It is submitted by Sri Shankar Lal Agarwal, learned counsel for the petitioners that the notices issued under Section 126 of the Electricity Act are vague as they do not contain the provisional assessment orders. Thus, the entire proceedings initiated under Section 126 of the Act is liable to be quashed on that very ground. It is further submitted that even in the final assessment orders, no reason assigned as to why the contentions of the petitioners have been rejected. Thus, on that ground also, the final assessment orders are liable to be quashed.

4. On the other hand, Sri Mukesh Kumar Sinha, learned counsel appearing for the respondent-Board/Electrical Company(J.U.V.N.L.) submits that the petitioners filed their detailed objections, after receiving the notices. In that objections, they have not stated that the notices are vague, thus, they are unable to file objections against the provisional assessment orders. Sri Sinha, further submits that from perusal of the objections filed by the petitioners, it appears that they were fully acquainted with all the facts and filed representations against the inspection reports and other particulars of the provisional assessment orders, which show

that the aforesaid materials were within the knowledge of the 3 petitioners at the time of filing objections. Thus, no prejudice caused to him. It is further submitted that against the final assessment orders, an appeal lie before the appellate authority under Section 127 of the Electricity Act. Thus, on the ground of statutory alternative remedy, these writ applications are liable to be dismissed.

5. Having heard the submission, I have gone through the records of the case. From perusal of the notices served upon the petitioners, I find that in the said notices it is stated that the premises of the petitioners inspected on 17.7.2010 and 16.7.2010 respectively, and it was found by the inspection committee that they were using load more than the sanctioned load. It further appears that in the said notices, it is mentioned that petitioners put loss to the Electricity Board to the tune of Rs. 9,59,844/- and Rs. 12,74,139/-, respectively. Thus, in the show cause notices, it is clearly mentioned that the petitioners are using the load beyond the sanctioned limit and by doing so, they put loss to the Electricity Board. It further appears from the show cause filed by the petitioners that they filed detailed objections against the provisional assessment orders. It further appears from the final assessment orders that representatives of both the petitioners were heard by the Assessing Authority. It further appears that at no point petitioners made complaint that due to vagueness of notice they are not able to file objection properly. In that view of the matter, I find that no prejudice had been caused to the petitioners, because they filed detailed objections and were given full opportunity of being heard.

6. The Hon'ble Supreme Court in State of Karnataka and another Vrs. All India Manufacturers Organisation and 4 others reported in (2006) 4 SCC683 in a similar circumstance under land acquisition Act had held that if the objectors know the purpose of the notices and they have filed their objections before the competent authority and authority concerned also heard them after affording them an opportunity to file such objections, no prejudice caused to them as a result of the wordings of the notice.

7. In this case also, the notices issued to the petitioners, wherein it is mentioned that the said notices relate to inspections held on 17.07.2010 and 16.7.2010,

respectively. It is also mentioned in the notices that petitioners were using electricity beyond the sanctioned load and thereby, they put loss to the Electricity Board. It further appears that in their objections, petitioners have filed their detailed objections against the provisional assessment orders. The impugned final assessment orders show that the representatives of the petitioners were heard personally and their contentions were considered by the Assessing Authority. Under the said circumstances, I find that no prejudice caused to the petitioners and the principles of natural justice has been followed by the Assessing Authority. I further find that after hearing the representatives of petitioners, the Assessing Authority had scaled down the amount of penal bill.

8. It is clear that the final assessment orders under Section 126 of the Act are appellable under Section 127 of the Act. Thus, I find that a statutory alternative remedy is available to the petitioners. In that view of the matter, before filing these applications, petitioners ought to have used the said statutory remedy. Thus, I am not inclined to entertain these writ applications, accordingly, the same are dismissed. 5 9. However, I give liberty to the petitioners to file appeal before the Appellate Authority. If the petitioners will file the appeal, the period consumed by the petitioners in this Court will be condoned by the Appellate Authority. (Prashant Kumar, J.) Sudhir

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