
(2003) 11 JH CK 0045

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1116 of 2002

Accropoly Glass Industries (P) Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 07-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2004 Jhar 73 : (2004) AIR Jhar HCR 589 : (2003) 4 JCR 604 : (2003) 2 JLJR 714

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Biren Poddar, A. Poddar and Darshna Poddar, for the Appellant; V.P. Singh and Rajesh Shankar, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Petitioner has prayed for quashing the bill dated 1.8.2003 issued by the respondent Jharkhand State Electricity Board demanding a sum of Rs. 9,20,517/- being the Annual Minimum Guarantee (A.M.G.) charges for one year notice period subsequent to disconnection of the electrical line of the petitioner on 30.11.2000.

2. Petitioner's case is that in the year 1990, petitioner became a H.T. consumer for supply of electricity in its plant having contract demand of 80 KVA. Subsequently, in 1998 the connected load of the petitioner was enhanced from 80 KVA to 180 KVA vide H.T. Agreement dated 10.6.1998. On 5.3.1999 the petitioner served a notice upon the respondent-Board under clause 9 (a) of the Agreement and the said notice was received on 6.3.1999. After expiry of 12 months from 5.3.2000, the Agreement alleged to have been automatically stood terminated but the electrical connection of the petitioner was not disconnected. The petitioner therefore sent a letter dated 28.11.2000 requesting the respondent Board to disconnect its H.T. connection which was, however, disconnected by the Board on 30.11.2000. Petitioner's further case is that the

respondent after disconnecting supply of electricity, raised a bill dated 11.1.2001 of Rs. 14,54,101/-, out of which a sum of Rs. 9,20,216.73 paise was charged by way of A.M.G. for a period of one year subsequent to disconnection. Petitioner raised objection to the inclusion of the aforesaid amount as A.M.G. charges. The Electrical Executive Engineer of the respondent Board then corrected the bill and deleted the amount of A.M.G. charges. Petitioner thereafter deposited rest of the amount and there was no due at all. It is contended that all of a sudden respondent again served a bill claiming the said amount of Rs. 9,20,216.73 paise being A.M.G. charges for the period of one year notice subsequent to disconnection of supply of electricity. Petitioner filed objection against the aforesaid bill but instead of correcting the mistake, respondent Board set a notice directing the petitioner to pay the amount of the aforesaid bill, failing which recovery proceedings will be initiated.

3. Respondents' case on the other hand is that the notice dated 5.3.1999 sent by the petitioner was not a termination notice as contemplated under clause 9 (a) of the H.T. Agreement. It is stated that even after expiry of one year from the date of the said notice, petitioner did not take any step or even approached the authority of the respondents to disconnect the electrical line rather consumed electricity and it was only in November, 2000 vide letter dated 28.11.2000, petitioner requested the Board to disconnect the line. The line was accordingly disconnected on 30.11.2000 and the bill was raised including A.M.G. charges for a period of one year with effect from 30.11.2000 till October, 2001. The Electrical Executive Engineer thereafter raised provisional bill after deleting the A.M.G. charges which was subsequently found wrong by the Board and the General Manager - cum-Chief was directed to enquire into the said matter and submit a report. The General Manager in his report found that the amount of A.M.G. charges was wrongly deleted inasmuch as even if notice dated 5.3.1999 would have been treated as termination notice, petitioner ought to have approach the Board for disconnection of supply of electricity immediately after the expiry of one year.

4. Mr. Biren Poddar, learned counsel for the petitioner firstly submitted that the respondents are not entitled to raise any bill on account of A.M.G. charges and maximum charges with respect to one year notice period subsequent to disconnection of electric line in view of the notice of termination dated 5.3.1999 which was duly received by the respondents on 6.3.1999. Learned counsel drawn my attention to Annexure-2 to the writ application which is a notice dated 5.3.1999 and submitted that petitioner by the said notice decided to terminated the H.T. Agreement after the expiry of 12 months from the date of the notice. According to the learned counsel therefore, the demand of A.M.G. charges made by the respondents in the earlier bill was rightly deleted by the Electrical Executive Engineer and a revised bill was issued.

5. Mr. V.P. Singh, learned senior counsel appearing for the respondent-Board on the other hand submitted that the notice dated 5.3.1999 (Annexure-2) cannot be

treated as a notice under clause 9 (a) of the H.T. Agreement. The said notice is premature, vague, conditional and did not fulfil the requirements of clause 9 of the Agreement. Learned counsel submitted that petitioner had no right to terminate the agreement before the expiry of 3 (three) years from the date of commencement of supply of energy which took place in May 1998. In reply to the said submission Mr. Poddar, learned counsel for the petitioner submitted that supply of electricity commenced in the premises of the petitioner was enhanced in 1990 and not in May, 1998 and therefore petitioner had every . right to terminate the agreement after the expiry of three years from the date of commencement of supply of electricity i.e. from 1990.

6. Before appreciating the rival submission made by the learned counsel. I would like to refer the relevant provisions of the H.T. Agreement, 1998, a copy of which has been annexed as Annexure-1 to the writ petition. Admittedly, petitioner took H.T. connection in 1990 with a contract demand of 80 K.V.A. In 1998 at the request of the petitioner the connected load was enhanced from 80 K.V.A. to 180 K.V.A. vide H.T. Agreement date 10.6.1998. A copy of the H.T Agreement dated 10.6.1998 has been annexed as Annexure-1 to the writ application. Under clause 8 of the agreement the commencement of supply has been shown as May, 1998. Clause 9 of the Agreement is worth to be quoted herein below :

"(a) The consumer shall not be at liberty to determine this agreement before the expiration of three years from the date of commencement of the supply of energy. The consumer may determine this agreement with effect from any date after the said period on giving to the Board not less than twelve calendar months" previous notice writing in that behalf and upon the expiration of the period of such notice this agreement shall case determine without prejudice to any right which may then have accrued to the Board hereunder provided always that the consumer may at any time with the previous consent of the Board transfer assign this agreement to any other person and upon subscription of. such transfer this agreement shall be binding on the transferee and Board and take effect in all respects as if the transferee had originally been a party hereto in place of the consumer who shall henceforth be discharged from all liabilities under or in respect thereof.

(b) In case the consumer"s supply is disconnected by the Board in exercise of its powers under this agreement and/or law and the consumer does not apply for reconnection in accordance with law within the remainder period of the compulsorily availing of supply as started above or the period of notice whichever be longer, he will be deemed to have given a notice on the date of the disconnection in terms of aforesaid clause 9 (a) for the determination of the agreement and on expiration of the above said remainder period of compulsorily availing of supply or the period of notice whichever is longer, this agreement shall cease and determine in the same way as above."

7. From the aforesaid clause, it is therefore clear that the consumer after the ? expiry of three years of, the Agreement may determine the agreement by giving

12 previous calendar months notice upon the expiry of 12 months the agreement will automatically (sic) to an end. Clause 9 (b) provides that in case supply of electricity is disconnected by the Board and the consumer does not apply for reconnection in accordance with law then it shall be deemed that consumer has given notice on the date of disconnection in terms of clause 9 (a) for termination of the agreement.

8. In view of clause 9 of the agreement, in my opinion, if the notice dated 5.3.1999 fulfill the requirement of clause 9 (a) of the agreement then the demand of A.M.G. charges after the expiry of one year from the date of notice cannot be sustained in law. The only question therefore falls for consideration is to whether notice dated 5.3.1999 shall be treated as a notice intending to determine the agreement after the expiry of one year from the date of notice.

9. As noticed above, clause 9 (a) very clearly provides that consumer can determine the agreement with effect from any date by giving 12 calendar months" previous notice and in such case after the expiry of 12 months from the date of notice agreement will come to an end. it is, therefore, necessary to look into the notice-dated 5.3.1999 (Annexure-2), which is the sheet anchor of the petitioner"s case. The said notice reads as under ;

"Ref. AI/06/876/98-99 Date 5.3.1999 To,

The Electrical Superintending Engineer, Bihar State Electricity Board, Jamshedpur.

Sub : Request for disconnection notice of our line, Consumer No. HT AP-97 in the name of M/s. Accropoly Glass Ind. (P) Ltd.

Dear Sir,

With due respect we would like to inform that we are ancillary of M/s. Telco Ltd., M/s. Telco is curtailing their production schedule day by day and reducing price of the components also. As we are loosing our order continuously it seems very difficult to run our company in future.

Therefore, we are requesting your honour to treat this letter as notice, so that we can ask your honour to disconnect our line as and when we require.

This is an information notice for your needful action.

Thanking you,

Yours faithfully

for ACCROPOLY GLASS INDUSTRIES PVT. LTD

Sd/- (Deepak Goyal) Managing Director

CC to : Electrical Executive Engineer,

B.S.E.B. Adityapur

CC to : Asst. Electrical Engineer,
Electricity Supply Sub-division.

10. From bare perusal of the aforesaid notice it is manifest that it has not been specifically mentioned by the petitioner that he has given the said notice for determination of the H.T. Agreement as contemplated under clause 9 (a) of the Agreement, rather it is a notice for disconnection of line and that too as and when petitioner required (emphasis given).

11. Admittedly, after giving this notice petitioner continuously consume d electricity even after expire of 12 months. In other words, petitioner consumed electricity on the basis of H.T. Agreement till the end of November, 2000. It was only by letter dated 28.11.2000, petitioner requested the Board to disconnect the line with immediate effect. The said letter is also worth to be quoted herein below :

Ref : AI/06/481/2K.01, dated 28.11.2000. To,

The Superintending Engineer, Bihar State Electricity Board, Adityapur, Jamshedpur.

Sub : Disconnection of H.T. Line of M/s. Accropoly glass Ind. Pvt. Ltd. Consumer No. H.T. AP-97.

Dear Sir,

Further to our Letter No. AI/OG/ 876/98-99, dated 5.3.1999, we would like to confirm you that our H.T. connection should be disconnected from today dated 28.11.2K.

Kindly arrange to disconnected the line as early as possible. We are enclosing a list of security deposit receipt in original for Rs. 3,15,310.00 duly received payment by us for adjustment in our fuel surcharge dues.

Thanking you,

Yours faithfully

for ACCROPOLY GLASS INDUSTRIES PVT. LTD

Sd/- Managing Director

CC to : Electrical Executive Engineer,

B.S.E.B. Adityapur

CC to : Asst. Electrical Engineer,

Electricity Supply Sub-division.

12. It is evident from the aforesaid letter that the petitioner confirmed that the H.T. connection should be disconnected from to day i.e. 28.11.2000. It is,

therefore, clear that the first notice dated 5.3.1999 was not a notice determining the agreement rather it was a letter sent by the petitioner to the Board informing the later that their line may be disconnected as and when they require. After one year nine months, petitioner sent second notice dated 28.11.2000 confirming that the line should be disconnected. Immediately on receipt of the notice-dated 28.11.2000 the Board disconnected the line on 30.11.2000. In the facts of the case. I have no hesitation in holding that the letter dated 28.11.2000 shall be taken as a notice in terms of the clause 9 (b) of the Agreement. Consequently, the respondent Board rightly raised the bill demanding A.M.G. charges for a period of one year from the date disconnection of supply. At any stretch imagination, the letter dated 5.3.1999 cannot be treated as a notice determining the H.T. agreement in terms of clause 9 (a) of the said Agreement.

13. It is well settled that consumer Is liable to pay minimum guarantee charge unless it could be shown that contract itself was terminated by giving clear notice of termination of agreement. Mere disconnection of electric supply does not amount to termination of the contract. In this connection reference may be made to the decision of the Supreme Court in the case of General Manager-cum-Chief Engineer, BSEB v. Rajeshwar Singh and Ors. (1990) PLJR (SC) 67 and in the case of Bihar State Electricity Board, Patna v. M/s. Green Rubber Industries and Ors. (1990) PLJR (SC) 73.

14. Similarly, in the case of Gaya Roller Flour Mills Pvt. Ltd. Vs. Bihar State Electricity Board and Others , a Bench of Patna High Court after considering clause 9 of the H.T. Agreement held as under :

"I am unable to accept the contention advanced on behalf of the petitioner. It would be quite anomalous to hold that notwithstanding the fact that the petitioner continued to receive and utilise energy after 20.4.1989, he would not be liable to pay for it because he had given a notice for disconnection on 20.4.1988. In my opinion, clause 9(a) of the H.T. Agreement gives the consumer a right to determine the agreement after the expiry of one year from the date of the notice. Now, the accrual of the right of determination of the contract is one thing and the actual determination of the contract, in exercise of that right, is something quite different, In the instant case, a right might have accrued to the consumer on the basis of the notice dated 20.4.1988 but notwithstanding the notice the contract was kept alive and subsisting by the action of the consumer in continuing to receive, and utilize electricity. He would, therefore, be liable to all the obligations in terms of the contract. I have also perused the decisions relied upon by Mr. Agarwal but I am unable to see how the petitioner in this case can derive any support from them."

15. Taking into consideration the enure facts and circumstances of the case, I have no hesitation in holding that notice dated 5.3.1999 given by the petitioner were not a notice of termination of agreement as Contemplated under clause 9 (a) of the H.T. Agreement, rather it was a notice intimating the Board that petitioner may give a notice for disconnection of electric line as and when they

require. Accordingly, the petitioner for the first time gave notice dated 28.11.2000 asking the Board to disconnect the supply of electricity. Petitioner is therefore, liable to pay Annual Minimum Guarantee Charges for a period of one year from the date of disconnection of line as contemplated under clause 9 (b) of the said Act.

16. For the aforesaid reasons, I do not find any illegality in the demand raised by the Board for payment of Annual Minimum Guarantee charges for one year subsequent to disconnection of electric line. There is no merit in this writ application, which is accordingly, dismissed.