
(2003) 04 JH CK 0114
In the Jharkhand High Court
Case No : C.W.J.C. No. 2302 of 2000 (P)

Anupam Food Pvt. Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 08-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 JCR 696

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : L.K. Bajla, for the Appellant; V.P. Singh and R. shankar, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—The petitioner has filed this writ petition for a direction for setting aside the order dated 3.2.2000, Annexure-2, passed by the respondent General Manager, whereby and whereunder in exercise of the power under Clause 13 of the H.T. Agreement who disposed of the claims of the petitioner for the year 1992-93 to 1997-98 by a composite order rejecting the total claim of the petitioner for remission in Maximum Demand Charges (MD for short) in all those years and curtailing the remission to which the petitioner was entitled in Annual Maximum Guarantee Charges (AMG for short) for the same years.

2. The petitioner is a consumer having a contract demand of 200 KVA. The petitioner claimed proportionate remission in A.M.G charges for the duration of non-supply of power and also for the inability of the petitioner to consume power for twenty minutes after each resumption of supply due to machine downtime. The petitioner had filed its claim for remission right from the year 1989-90 to 1998-99. The petitioner has also paid 50% of the amount of AMG bill for all the years except 1992-93 and in the year 1993-94, the amount paid by the petitioner is more by Rs. 15,000/- than the amount worked out on the basis of

the 50% AMG bill. As the claims of the petitioner were not disposed of by the General Manager, the petitioner filed the Title Suit No. 91/93 before the Sub-Judge, Deoghar, who directed the General Manager to dispose of the pending claim of the petitioner within two month. The said order was passed on 16.4.1999. The petitioner produced the records maintained by it in usual course of business mentioning the duration of the non-supply of electricity to the General Manager, but the same was rejected without assigning any reason and ignoring clear directions of this Court given in the case of Suprabhat Steel Ltd., that the records maintained by the consumer in the regular course of business cannot be rejected without assigning any valid reason. The General Manager also did not take into account the inability of the petitioner to consume power due to machine downtime after each resumption of power supply. According to the petitioner, under clause 13 of the H.T. Agreement, Annexure-1, the petitioner is entitled to proportionate remission in AMG and MD charges for the duration of non-supply of power and also for the reasons, like strike, riots, fire, floods, explosions, act of God or any other case reasonably beyond control. The formula for such computation of remission in AMG and MD charges had been laid down by the Court in Bihar Gases case. Though this decision rendered by this Court in Bihar Gases case was placed before the General Manager respondent along with the representation by the petitioner but that was not even referred to and the formula adopted by the respondent for arriving at the calculation as contained in Annexure-2 is contrary to the clause 13 of the H.T. Agreement as also the judgment of the High Court in Bihar Gases case.

3. From the aforesaid facts as pleaded by the petitioner, his grievances are three- (i) the adoption of a formula contrary to the formula laid down In Bihar Gases case by the High Court by the respondent, while disposing of the representation by An-nexure-2, (ii) non-consideration of the Register by the General Manager, giving the accounts of the trippings maintained by the petitioner, and (iii) the inability of the petitioner in consuming power even though the power supply was resumed for 20 minutes on each resumption of power not having been considered by the respondent-General Manager.

4. Clause 13 of the H.T. Agreement reads as follows :

"If at any time the consumer is prevented from receiving or using the electrical energy to be supplied under this agreement either in whole or in part due to strikes, riots, fire, floods, explosions, act of God or any other case reasonably beyond control or if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all of the causes mentioned above then the demand charge and guaranteed energy charge set out in the Scheduled shall be reduced in proportion to the ability of the consumer to take or the Board to supply such power and the decision of the Chief Engineer, Bihar State Electricity Board, in this respect shall be final."

A plain reading of the aforesaid provision makes it clear that the proportionate reduction has to be given in respect of the demand charge and guaranteed

energy charge. This matter does not require any further elaboration in view of the decision rendered in the case of *Supradhat Steels Ltd. v. Bihar State Electricity Board* reported in 1994 BBCJ 369 where the court held that "Clause 13 in clear term applies not only in case of minimum guarantee charges but also maximum demand charges". This view has not been unsettled till now. the Court further held that Clause 13 in clear term applies not only in case of minimum guarantee charges but also maximum demand charges and is not only attracted when the Board is unable to supply electrical energy but also to a case where a consumer is prevented from receiving or using electrical energy and that it cannot be interpreted In a restrictive manner and the Board is bound to grant remission for any duration, if a case therefore is made out.

In the present case, a specific case made out by the petitioner is that on every interruption in supply of power and on every resumption of power, it took 20 minutes for. the machines to become operative again. Therefore, this 20 minutes on every resumption, even though there was power supply by the Board, yet the consumer-petitioner became unable to utilize it and this inability is something beyond the control of the petitioner- consumer and therefore, it should have been taken into consideration by the respondent-Board. The petitioner in paragraph 15 of the writ petition has stated that the manufacturing process of the petitioner industry is a continuous process and on sudden interruption, the petitioner is rendered incapable of consuming the electricity for at least 20 minutes because the rollers get jammed, which require cleaning etc. But in paragraph 46, the petitioner said that the respondent-General Manager be directed to consider the claim of the petitioner for further remission on account of inability of the petitioner to consume power at least for 10 minutes after resumption for the reasons beyond the control of the petitioner. Thus, the petitioner in two different paragraphs gives two period of time, i.e. 20 and 10 minutes respectively, during which it remains unable to utilize the power supply even in the event of resumption of the power supply due to machine jam etc. The petitioner itself is not very certain as to the accurate duration during which it remains unable to consume power even after resumption of power supply. When a machine is given power, it start functioning and similarly, with the tripping of the power, it stops and even after resumption of the power, it may take sometime to start functioning due to inertia. Similarly, when a machine comes ultimately to a halt, even after resumption of power, under the same law of Inertia, it may take sometime, however small, in becoming functional, but what will be the exact time is always a question of fact and the unilateral statement on this point that the consumer's machine took 20/10 minutes time in becoming functional cannot be accepted. As stated, it is a question of fact. Therefore, it is a situation, where it is desirable that a joint inspection be made by the respondents and the consumer and the average is found out as to how many minutes, the machines take in becoming functional after each resumption of power and then on that scope, remission can be made because inability clause as used in Clause 13 will definitely include such situations when despite power

supply the consumer remains unable to use it and it will be wrong on the part of the respondents to say that the inability of the petitioner-consumer during the period, for which the machine does not become operational despite power supply, cannot be considered for remission, for the simple reason that such a situation is an outcome of trippings.

5. In the case referred to above and relied upon by the petitioner, it has been decided that the records maintained by the Board in this regard should be prima facie evidence for claim of proportionate remission of A.M.G. and M.D. charges, but the same does not mean that the records maintained by the consumer are not admissible evidence. Here the petitioner has made out a case that the records maintained by it in respect of the trippings were not considered/were rejected by the respondents (paragraph 25 of the writ). The copy of the record that the petitioner has produced before the respondents has not been made Annexure in this writ petition. A similar matter was under consideration before a learned Single Judge of this Court in the case of Industrial Resources & Monolithic Pvt. Ltd. v. Jharkhand State Electricity Board and Ors. reported in 2003 (1) J.C.R. 488. In that case, the learned Single Judge took into consideration the decision reported in 1994 BBCJ 369 (supra) and also examined the matter regarding the register maintained by the consumer. The petitioner of that case had enclosed the copies of the petitions filed under Clause 13 of the Agreement. It was a detailed format for claiming relief under Clause 13. In all formats against the column, whether the consumer was prevented from receiving or using energy supplied by the Board", the petitioner had mentioned that "due to power failure, the consumer was prevented from using energy". The statements showing the exact date, number of hours, days, months during which energy was not received were enclosed with each of the proforma under Clause 13, but evidence was not enclosed or cited by the petitioner while making such claim. At column 10 of the proforma to claim exemption under Clause 13, specific question made was any other matter that the consumer wants to bring to the notice of the Board with regard to its claim for relief under Clause 13 of the Agreement, but all the time, the petitioner mentioned-please refer to the judgment of Supreme Court of India in this regard. In the instant case, the petitioner has not produced any proforma. This Court has a difficulty in holding whether the Register maintained by the petitioner-consumer with regard to the trippings was properly maintained and therefore, it should not have been rejected. The petitioner has not even filed the representation/copy of the claim, which had been filed before the Sub-Judge, consequent upon which the impugned order, Annexure-2, was passed. Therefore, even though I agree that in view of the decision rendered in the case of Suprabhat Steel Ltd. (supra), the Register maintained by the petitioner consumer is required to be considered, but if that Register is not maintained so as to give details, then its non-consideration is not illegal, but that should have been mentioned in the impugned order.

6. Then comes the question whether or not the formula adopted by the respondent-General Manager in disposing of the Representation of the petitioner

is a formula completely alien to the Agreement or in contravention of the directions given in Bihar Gases case.

In paragraph No. 2 of the impugned order, the respondent writes that as per Clause 13 of the H.T. Agreement, remission is to be granted to the consumer to the extent of the inability of the Board to supply power, which is nothing but the interruption in power supply. All other considerations are foreign to the provisions of Clause 13.

On perusal of these, it is clear that the respondents, while dealing with the representation, worked under a view that only the interruptions because of the failure of supply of power by the Board, can be taken into consideration and not the inability of the consumers even if the supply of power had been resumed. In view of the respondent, this inability was something foreign to the provisions of Clause 13. This view, in my opinion, is completely incorrect and illegal. If strictly interpreted, it will mean that even vis measure factor available to the consumer, according to the respondents, is foreign to Clause 13, so far as it gives relief to the petitioner, what to say of other inability not falling under the viz measures clause. Clause 13, so far as consumer is concerned, is divisible in two parts-the first part is the inability to consume power either in whole or part due to strikes, riots, fire, floods, explosions, act of God and the other part is the inability of the consumer to take the power. The first has conclusive grounds and the second part has inconclusive grounds and are left to the discretion of the either parties to interpret. In the existing circumstances, if the petitioner gives that even after resumption of power supply, the machine takes 20/10 minutes in getting operative and therefore, the petitioner is unable to use the power and this inability is due to the interruption, is not foreign to the Clause 13 as conceived by the respondents. In the case of M/s. Suprabhat Steel Ltd. (supra) it was clearly held that the remission clause is applicable even if the consumer is prevented from receiving or using the electrical energy. This inability of the petitioner in respect of receiving the energy is reflected in it being disabled from receiving energy for the reasons aforesaid. The very calculation of the respondents is based on a wrong premises.

7. The respondent General Manager calculated the relief in Maximum Demand Charges for the different years on the basis of the formula, $X.A/8760$ during a year, where X is the Maximum Demand in Rs. and A is the hours of interruptions of during of 30 minutes and above during that month. Further he calculated the Guarantee charge during the particular year and the interruption of duration of 30 minutes and above during that year. While calculating this, the respondent took into consideration the shortfalls. This order was passed by the respondent on 3.2.2000. This order, as stated earlier, was passed under a direction to dispose of the representation by the Sub-Judge. The Sub-Judge had passed the order on 16.4.1999. The question here is whether the formula laid down in the Bihar Gases case was to make applicable while disposing of the claim of the petitioner. The decision of the Bihar Gases came in the year 1999 and was

reported in 1999 (2) PLJR 105. The Court held that the General Manager had erred in calculating the guarantee charges on the basis of the formula- $Y \times B$ divided by 8760. Similarly, the Court also held that the remission in the demand charges should be calculated on the formula, i.e. Total KVA charges x Total hours of non-supply divided by Total Hours of Power to be supplied. The Court further held that the General Manager was, therefore, obliged to allow to petitioner's claim for remission in maximum demand charges as per the equation formulated in that judgment as quoted above. The Court clearly held that the remission in guaranteed energy charges has to be calculated by multiplying the total number of guaranteed energy units but not the shortfall calculation obtained on dividing the hours, of non-supply of electricity by the total hours in a year and while coming to this inference, the Court also took into consideration the decision rendered in the case of Balajee Wire Products Vs. The Bihar State Electricity Board and Others, .

8. I also agree with this finding of the learned Single Judge. The petitioner says that it had filed the said decision before the respondent but he did not consider it. This approach of the respondent cannot be appreciated. The finding of the High Court in many cases may be applicable to that particular case, but when the findings are of general nature and lays down a formula for making certain calculation, then it becomes universally applicable in the State till that is disturbed. Therefore, any disobedience/ ignorance of such decision cannot be appreciated. Similarly, if an interpretation of a particular clause of an agreement as has been made by the High Court (in Suprabhat Steels Pvt. Ltd.), that interpretation is binding on not only the petitioner and respondents of that case but in all other cases, in which that interpretation becomes applicable.

9. In the aforesaid circumstances, I find that it was wrong on the part of the respondents to hold that only the inability of the respondents to supply power for calculating the remission under AMG and MD charges can be taken into consideration and all other factors are alien. If the petitioner makes out a case of his inability to use power even in case of supply, then assessment for that has to be made but that case has to be conclusively proved and any unilateral statement of the petitioner having not been verified by the respondents cannot be considered. A Register maintained regarding the trippings by the consumer may be considered but if it does not give all the details, as has been done in the case of M/s. Industrial Resources & Monolithic Pvt. Ltd. (supra), this can be rejected but by a reasoned order.

10. In the aforesaid circumstances, the impugned order, Annexure-2, suffers from the vice that" it does not take into consideration the formula for calculating remission as laid down by this Court in the case of M/s. Balajee Wire Products reiterated by this Court in the case of The Secretariat Assistant Successful Examiness Union and Others Vs. The State of Bihar and Others which was placed before the respondent by the petitioner, which calculates the remission only on the basis of the shortfall which was not approved by the Court in Bihar Gases

case. Consequently, the impugned order is set aside and the matter is remanded back to the respondents to consider the representation of the petitioner afresh and to dispose it of within a period of one month from the date of receipt/production of a copy of this order in accordance with the law laid down by this Court in the case of Bihar Gases Limited (supra) and in the case of M/s. Suprabhat Steel Ltd. (supra) and also in view of the discussion made above, such calculation will be made on that formula, when such formula was laid down, but for the earlier years, the calculation will be made as per the then existing rules.

11. With the aforesaid observations/ directions this writ petition is allowed.