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**(2003) 03 JH CK 0053**  
**In the Jharkhand High Court**  
**Case No : CWJC No. 12699 of 1999 (P)**

Anupam Foods Pvt. Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

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**Date of Decision :** 12-03-2003

**Acts Referred:**

Electricity Act, 1910 — Section 24

**Citation :** (2003) 3 JCR 56

**Hon'ble Judges :** Vikramaditya Prasad, J

**Bench :** Single Bench

**Advocate :** L.K. Bajla, for the Appellant; Mukesh Kumar, for the Respondent

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## Judgement

Vikramaditya Prasad, J.—The determination of the writ is based on the application of Clause 16.4.1 of the 1993 tariff which reads as follows :--

The Transformer capacity of H.T. and E.H.T. consumers shall not be more than 150 per cent of the contract demand. If any consumer is found violating this provision his sanctioned connection will be disconnected.

The vires of this provision of the tariff has been upheld by the Apex Court. Therefore, in this writ only point to be examined is whether the audit objection dated 26.4.99 and the bills dated 26.11.99 (Annexure-5 and 7) are in conformity with the decisions of the Division Bench of the Patna High Court 1994 (II) PLJR 103.

2. In the aforesaid Division Bench Judgment one direction was given while upholding the virus of 16.4.1 of the tariff that for arranging additional resources and also for procuring new transformer six months time should be considered a reasonable period for this purpose. In fact this has been one of the arguments of the petitioners in this case for challenging the bills and also the notice of disconnection issued (Annexure-1).

3. The short facts are that the petitioner's had a sanctioned load of 200 KVA.

Thus because of the aforesaid tariff they were entitled to use a transformer of a capacity of 300 KVA ( $200 \times 150\% = 300$  KVA) only but it was detected that they were using a transformer of 350 KVA capacity. This fact is not denied. A notice was served upon the petitioner (Annexure-1) giving three directions (i) either to purchase a transformer of 300 KVA capacity or (ii) to increase the demand to 233 KVA (iii) and to enter into an agreement with the respondent in that regard and ultimately a direction was given that if within 15 days the petitioner did not comply the aforesaid direction then the petitioner's supply would be disconnected and the proceeding for realization of revenue would be initiated. It was also informed that it should be treated as notice before any action. This notice was issued on 31.3.98. Relying on Division Bench Judgment upholding the vires the petitioner claims that six months time should have been given to the petitioner. The said judgment was delivered on 18.4.94 and was reported in 1994 itself, whereas the notice aforesaid was issued five years after the said decision. Consequent to that notice the petitioner themselves made a representation that they were contemplating either for reducing or enhancing the load (Annexure-2) and ultimately by Annexure-3 they informed the board respondent that they had decided to expand the load and requested for enhancement of the load by 80 KVA, meaning thereby, enhancing of the load from 200 KVA to 280 KVA and they filed a requisition in the prescribed Performa further. Then it appears that vide Annexure-5 an audit team of the respondent board raised an objection that because of no action taken on Annexure-3 and no disconnection having been made the Board had suffered a loss. This audit objection made on 26.4.99 and soon thereafter the Annexure-4 was issued demanding payment of the arrears bill, pursuant thereto a representation was made Annexure 6 by the petitioner referring to certain oral discussion between the petitioner and the superintending engineer concerned expressing grievance that the load was not extended/Increased, consequent to which in absence of any action by the respondent no agreement could have been entered into for the enhanced load but no reply was given and ultimately the impugned bill (Annexure-7) was issued.

4. The respondent appeared but did not file any counter affidavit stating that this writ may be decided as only point of law is involved.

5. It is not disputed that the capacity of the transformer was not of 350 KVA though the petitioner under the tariff was entitled to use a transformer up to capacity of 300 KVA, thus petitioner was enjoying a transformer of the capacity of 350 right from the date of coining of the new tariff and subsequent thereto. Therefore the Board rightly informed the petitioner to make arrangement either for reduction of the load or for enhancement of load. Petitioner himself made submissions against the notice and ultimately submitted the request form for enhancement of the load. Prior to this proposal the petitioner had not disclosed that his factory was sick and therefore he should be given certain remissions under the circular of the board dated 13.9.96 by which certain remissions were provided to the Units at the verge of closure. This stand for the first time was taken by Annexure-6 on 27.5.99 by the petitioner.

6. The petitioner was already enjoying a transformer of higher capacity. If he would have applied for reduction of load, prejudice would have been caused to him because he was using the transformer of the capacity 350 KVA. But if the petitioner himself applied for a higher load of 80 KVA meaning thereby for a total load of 280 which would require a transformer of 420 KVA then in the circumstance as the petitioner was already using transformer of 350 capacity he can not say that he was prejudiced by non sanctioning of that extended load.

7. The Notice of six months it appears to me is necessary to those consumers who wanted to reduce the load and consequently in absence of replacement of the existing transformer they were expected to be billed at higher side. Moreover this time of six months is not necessary to be given in every case particularly when the provision of the tariff was known to the consumers right from its inception in the year 1993.

8. In the aforesaid circumstances the notice Annexure-1 is a notice under Clause 16.4.1. of the Tariff as also u/s 24 of the Indian Electricity Act. A notice is given as a warning to the person so noticed and noticed person may then submit his representation against that notice if some punitive/coercive acts is contemplated therein. But the notice does not absolve the noticed person of his liability. So if after being served with the notice the petitioner so noticed submitted some representation, praying for time for taking decision, then it simply means that the period of 15 days given for disconnection of the power has only been extended but it does not mean that the authorities right to raise the demand under Clause 16.4.1, and the charging provision thereof has been curtailed or has been recalled.

9. Therefore even if the respondent did not give extended load till the date of requisition i.e. 6.7.98 (Annexure-3) no prejudice is caused to the petitioner in any way. So up till this date the bill that has been raised on the basis of 233 KVA is fully legal and valid because use of a transformer of 350 KVA corresponds to 233 KVA which the petitioner was using even subsequent to the requisition made (Annexure-4). The said transformer was being used and as said earlier even though the petitioner applied for extra load of 80 KVA then also no prejudice was caused to him and the respondents were justified in raising the bills at the 233 KVA against the aforesaid transformer of 350 KVA. Thus if the audit made an internal objection it is not very material, as it did not injure the interest of the petitioner.

10. Annexure-4 is a notice submitting the bill on the enhanced rate giving 20 days time for submitting the bill. It appears that the petitioner had represented against that notice vide Annexure-6. There is nothing on the record to show that this representation of the petitioner was disposed of by any order and before raising Annexure-7 the petitioner was given any opportunity of being heard.

11. Therefore in view of a Division Bench decision reported in *Izaz Najmuddin Vs. The State of Bihar and Others*, the impugned bill Annexures 4 and 7 are

quashed. The respondents shall dispose of the representation as contained in Annexure-6 within three weeks and petitioner if he has got to file representation against Annexure-7, he will file it within that period of three weeks hereinafter because when the petitioner challenged this Annexure-7 then it means that he has noticed of this bill and if any representation is filed against that Annexure-7 that will be disposed of within next 15 days by the respondents and thereafter a fresh bill can be raised considering the representation. With this direction this writ is disposed of.