
(2000) 03 PAT CK 0131
In the Patna High Court
Case No : C.W.J.C. No. 1548 of 1998

Bajrang Flour Mills Pvt. Ltd. and Another	APPELLANT
Vs	
The Bihar State Electricity Board and Others	RESPONDENT

Date of Decision : 27-03-2000

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 9

Citation : (2000) 2 PLJR 705

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Subhro Sanyal, for the Appellant; Mihir Kumar Jha and Mohit Kumar Shah, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The Petitioners seek direction to the Respondents to implement the decisions/orders of the General Manager-cum-Chief Engineer, Mithila Area Electricity Board, contained in Annexures 1, 2 and 3 to the writ petition, and a further consequential direction to the Respondent to issue fresh energy bill after giving credit of the remission allowed by the General Manager-cum-Chief Engineer under orders Annexures 1, 2 and 3. The Petitioners also seek quashing of the entire proceedings in Certificate case No. 8/94-95 before the District Certificate Officer, Begusarai initiated for recovery of the electricity dues.

2. The Petitioner No. 1 is a private limited company engaged in the manufacture of Ata, Suji, Maida and Chokar in its flour Mills at Teghra in the District of Begusarai. Petitioner No. 2 is its Managing Director. For doing business Petitioner No. 1 got an electric connection bearing No. TR- 12246/HT under H.T. agreement for contract load of 265 KVA. Being aggrieved by interrupted supply of electrical energy resulting in production losses it made a representation under Clause 13 of the H.T. agreement claiming remission for different years.

3. It is relevant to point out at this stage that the claim for remission with

respect to AMG charges for the years 1989-90, 1990-91 and 1991-92 was allowed in part by the authority i.e. the General Manager-cum-Chief Engineer, Mithila Area Electricity Board vide his memo No. 3414 dated 28.7.98. Against part rejection of the claim the Petitioners preferred CWJC No. 3752 of 1995 in this Court. During the pendency of that case on 27.6.95 the Petitioners filed a fresh, so called "composite" application making several claims including claim for remission of AMG charges for the years 1989-90, 1990-91 and 1991-92 before the successor General Manager. It is this application/claim which has been allowed by the orders as contained in Annexures 1, 2 and 3 of which the implementation is sought by the Petitioners in the present case, as mentioned at the outset.

4. It may be relevant to give a brief description of the claims which were the subject-matter of the application dated 27.6.95 as follows: (i) admissible relief in AMG including MD charges for the year 1992-93, (ii) excess billing during the periods 1989-90 to 1992-93, (iii) excess billing during the notice period 1993-94, (iv) fuel surcharge on unconsumed KWH during 1989-90 to 1992-93, (v) interest charged on wrong billing, and (vi) review of the decision of the General Manager-cum-Chief Engineer dated 28.7.94. By annexures 1, 2 and 3 the General Manager allowed remission of Rs. 20,76,347.27 on account of AMG charges, MD charges, fuel surcharge, excess billing etc. By annexure 2 he allowed the claim with respect to interest on security deposit to the extent of Rs. 22,316/- while by Annexure 3 some more reliefs with respect to the notice period to the tune of Rs. 6,47,209.10 paise were allowed.

5. Curiously, the fact that the Petitioners had lodged a fresh claim which had, in fact, been allowed, was not brought to the notice of this Court in CWJC No. 3752 of 1995. From the order dated 14.12.95 by which the said writ petition was disposed of, it rather appears that virtually no argument was made with respect to the claim for remission on account of AMG charges, the only grievance made before this Court was that the General Manager (meaning thereby the previous General Manager who had decided the claim vide his order dated 28.7.94) did not consider the Petitioners claim for remission of MD charges. This Court accordingly disposed of the writ-petition with a direction to the General Manager to consider the Petitioners' claim with respect to the MD charges also.

6. It is significant to mention here that the fact that the Petitioners had earlier made representation under Clause 13 of the Agreement which had been allowed in part by order dated 28.7.94 against which a writ petition (CWJC No. 3752/95) had been filed and the same in fact, stood disposed of in terms of the order dated 14.12.95 have been suppressed in the present writ petition filed on 17.2.98.

7. It is obvious that the Petitioners have not come with clean hands to this Court. This could be enough to hold them disentitled to any relief in writ jurisdiction. I have nevertheless considered the contentions on merit of the case.

8. The Petitioners seek implementation of certain orders, but it is obvious that any such direction can be issued only if those orders are in accordance with law. After hearing counsel for the parties, I have come to the conclusion that the orders as contained in Annexure 1, 2 and 3 suffer from inherent infirmities and any direction for the implementation would amount to perpetuating wrong and illegality. Firstly, there is no provision for review of any decision or order of the competent authority under Clause 13 of the H.T. agreement. There being already decision by the previous General Manager, his successor could not sit in appeal over it. It would not be out of place to mention that though claim for remission had been disallowed in part against which writ petition, CWJC No. 3752 of 1995 was preferred, they did not urge their grievance with respect to the part rejection of the claim with respect to the AMG charges. Obviously because they had managed to obtain a more favourable order from the successor General Manager in the meantime. Secondly, the items of claim put forward in the so called composite application lay outside the scope of Clause 13 and competence of the General Manager. Clause 13 empowers the General Manager to adjudicate upon the claim for remission on account of AMG and MD charges only but as noted above, the Petitioners made claim with respect to excess billing, fuel surcharge, interest etc. as well. In terms of Clause 15.4.9 of the Tariff, it is the Billing Authority i.e. Executive Engineer (Commercial and Revenue) who is competent to decide the claim with respect to the excess billing. Lastly, though not leastwise, the impugned decisions/orders of the General Manager appear to be collusive in nature. As a matter of fact it has been stated that action has been taken against the concerned officer on the administrative side.

9. A certificate case vide Case No. 8/94-95 has been instituted for realization of sum of Rs. 19,63,521.58 paise and from the breakup furnished by the counsel for the Board in course of hearing, it appears that credit of Rs. 94,014.84 paise allowed as remission by the then General Manager vide his order dated 28.7.94, has already been given. Out of the said amount of Rs. 19,63,521.58 paise the dues on account of AMG charges are to the tune of Rs. 14,10,009.75 while the dues on account of energy charges from December, 1990 to January, 1993 are to the tune of Rs. 5,53,511.83 paise. The remission allowed by the then General Manager having already been credited and the subsequent decision of the successor General Manager being illegal, as held above, the initiation of the certificate proceeding for recovery of the electricity dues cannot be said to be arbitrary or illegal.

10. Counsel for the Board pointed out that the Bihar Public Demands Recovery Act, provides a complete remedy to a certificate debtor and it is open to the Petitioners to challenge the order of the Certificate Officer passed on objection u/s 9 by way of appeal and revision. I find force in the submission of the counsel.

11. In the above premises, I am unable to issue any direction, as prayed for, for implementing the impugned decisions as contained in Annexures 1, 2 and 3 and would, accordingly dismiss this petition. The dismissal of this petition however,

will not stand in the way of the Petitioners in having their claim with respect to remission on account of MD charges adjudicated by the competent authority, as per the order of this Court in CWJC No. 3752, provided the same has not been already considered and disposed of.

12. In the result, this writ petition is dismissed.