
(2003) 04 JH CK 0093
In the Jharkhand High Court
Case No : CWJC No. 1346 of 2000 (R)

Bansal Industrial Gases (Bihar) Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 16-04-2003

Acts Referred:

Citation : (2003) 4 JCR 116

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.S. Mittal, A.K. Yadav and Vikash Mittal, for the Appellant; V.P. Singh Mukesh Kumar and Rajesh Shankar, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—The petitioner prays for quashing the order dated 21.4.2000 (Annexure-10) passed by the respondent No. 2 disposing off the representation filed by the petitioner pursuant to the order passed on 28.1.2000 in CWJC No. 3625 of 1999 (R) (Annexure-8). By reason of the said impugned order dated 21.4.2000, the respondent No. 2 held that there was prima facie allegation of theft of energy against the petitioner and therefore Clause 16.9 of the Tariff was applicable.

2. The petitioner further prays for quashing of the Bills raised pursuant to the said order dated 21.4.2000 on the ground that the same is not as per the directions given in the impugned order nor is it in accordance with the formula meant to be followed as per Clause 16.9 of the 1993 Tariff. The petitioner also makes a prayer for issuance of writ of mandamus directing the respondents to restore the electric connection of the petitioner's factory having Consumer No. HGAP 85 which, according to the petitioner, was illegally disconnected on 3.12.1999 on the basis of an inspection report prepared on the same day by a team of officials of the Board.

3. According to the petitioner an inspection was made in the factory premises of

the petitioner on 3.12.1999 and the only deficiency reported was that one of the seal bits in the CTPT (Current Transformer Potential Transformer) Unit was found broken. On the basis of the inspection report, an FIR was also lodged on the same day i.e. on 3.12.1999 and the allegation made in the FIR, as per the petitioner, is based on three points namely :--

(i) That by tampering the seal bit, the petitioner was indulging in large-scale theft of electricity;

(ii) That the factory of the petitioner was working in three shifts and working on a load of 261.1 kw. On the basis of running of the factory on 22.9 hours per day for full 365 days the petitioner's consumption should have been 1,82,284 units per month but on an average the petitioner's average consumption was 1,14,289 units per month and as such the petitioner was indulging in theft of 1,82,264 --1,14,289 - 66,966 units at the rate of Rs. 3.17 per unit. Thereby, the petitioner had caused a loss of (66,966 units x Rs. 3.17 units x 12 month) = Rs. 25,85,000.00 per year to the Board.

(iii) That against 2.65 units per cubic meter consumption of oxygen gas, the Unit's consumption per cubic meter for the months of October and November, 1999 was 1.46 units per cubic meter which confirms theft of electricity.

4. According to the petitioner, it has not committed any offence whatsoever and the explanation which the petitioner has to offer are as follows :

A. There are total seals in the CTPT units and these seals were put in December, 1998 when the electronic meter was installed. All these seals bits are out in the open wheather and one of the seal bits had broken and fallen in respect of which the petitioner's company had informed the Electricity Department on 1.11.1999.

B. That in relation to the allegation made in the FIR relating to the breaking of seal bits, the petitioner had already informed the authorities of the Board on 1.11.1999 that one of the seal bits had broken and fallen down and the seal bit which was allegedly found tampered and broken during the course of inspection was also in a precarious condition.

C. In relation to the allegation that the monthly consumption should be 1,82,264 units but it was only 1,14,298 units per month thereby proving that the petitioner had indulged in theft of 66,966 units per month, the petitioner has submitted that this allegation is extremely far fetched as calculation has been made on the basis of 365 days a year and that too at the rate of 23 hours per day and no consideration has been taken about the heavy load shedding prevalent in the State, including power tripping, low voltage, gazetted holidays, weekly holidays and/or statutory holidays or strikes or bandhs which are a regular feature. According to the petitioner therefore, this figure is absolutely inflated and imaginary.

So far the allegation regarding consumption of 2.65 units per cubic meter in the month of October, 1999 and 1.46 units per cubic meter in the month of

November 1999, the same have been made in such a manner so that prima facie it seems that the petitioner has indulged in the theft of electricity but the correct fact is that the informant very conveniently did not mention the variation in the units readings. In fact, for the month of October, 1998 the reading was for a period of 43 days and for the month of November, 1999 the reading was for a period of 24 days whereas the reading for October is for the period 27.7.1999 (which is evident from the bill of September 1999) to 9.11.1999 which is evident from the bill of October 1999 i.e. for a period of 43 days and the reading for the month of November is for a period of 9.11.1999 to 3.12.1999 i.e. for a period of 24 days. The informant, while calculating the unit consumption per cubic meter has deliberately not mentioned this fact. According to the petitioner, the mode of calculation should be as per the formula given below which would show that if the unit consumption is reduced or enhanced proportionately to 30 days, then the unit consumption per cubic meter would be 1.84 units per cubic meter for October 1999 and 1.83 units per cubic meter for the month of November 1999 and as such, there is absolutely no discrepancy so far the unit consumption per cubic meter is concerned and it is really a fallacy which the informant has tried to create so as to implicate the petitioner in a false case.

As per the FIR

Allegation : October 99 (10/99) Consumption 2.65 units per cubic meter.

November 99 (11/99) Consumption 1.46 units per cubic meter.

Units consumed by the petitioner for October and November, 99

9.11.1999 -- 43 days = 1,63,763 units.

3.12.1999 -- 24 days = 86,571 units.

Production--Calendar month--only oxygen

Units consumed by the petitioner for October and November, 99

9.11.1999 ? 43 days = 1,63,763 units.

3.12.1999 ? 24 days = 86,571 units.

Production?Calendar month?only oxygen

For October, 1999 = 1,63,673 units for 43 days

..... = 2.65 units/Cum

61,728.5 Cum for 30 days

For November, 1999 = 86,571 units for 24 days

..... = 1.46 units/Cum

If the unit consumption is reduced and enhanced proportionately to 30 days then the unit consumption per cum. is as follows :

For October, 1999 = 1,63,673 units for 43 days.

Proportionately for 30 days =

1,63,673 units

$43 \times 30 \div 1,14,190$ units.

1,14,190 units

61,726/Cum = 1.84 units/Cum

For November, 1999 = 86,571 units for 24 days

Proportionately for 30 days =

86,571

$24 \times 30 \div 1,08,213$ units

Therefore consumption per cum

1,08,213 units

58,892 = 1.83 units/Cum

5. This what the petitioner contends is that the respondents not having adhered to the mode of calculation referred to above, the impugned bill and the order are both liable to be set aside.

6. Mr. Vijay Pratap Singh, learned counsel for the respondents has submitted that a bill for Rs. 71,51,351.00 was raised after the aforementioned FIR had been Instituted. This bill became a subject-matter of challenge vide CWJC No. 3625 of 1999 (R) and by an interim order dated 22.12.1999 the Board was directed to restore supply subject to the condition that the peittioner deposited a sum of Rs. 15,00,000/-. That order was subsequently modified while disposing off the writ application on 28.1.2000 wherein a direction was made that if the petitioner deposited Rs. 10,00,000/-, then the line shall be immediately restored whereafter the balance Rs. 5,00,000/- shall be deposited within 30 days thereafter.

7. While disposing off the writ application, the High Court by reason of its order dated 28.1,2000 quashed the bill in question and gave liberty to the Board to raise a fresh bill after giving opportunity of hearing the petitioner. The petitioner was directed to file such representation before the respondent No. 2 within one week from the date of passing of the order and upon receipt thereof, the General Manager was directed to consider the said representation and dispose off the same by passing a reasoned order after giving opportunity of hearing to the petitioner. Mr. Vijay Pratap Singh further submitted that all the points which the petitioner is now agitating was already taken in that Writ Application and the High Court, while disposing off the Writ Application did remand the matter for a fresh consideration but the remand was limited only to the extent of giving an

opportunity of hearing to the petitioner before passing a final reasoned order. Therefore, according to Mr. Singh the petitioner should not be allowed now to come up before this Court and raise a plea that Clause 16.9 is not applicable because those have been specifically dealt with by the respondent No. 2 while passing the final order and which is sought to be impugned in this Writ Application. The submission to the effect that it was a limited remand cannot be accepted on account of the fact that whenever the High Court remands without mentioning that it was for a limited purpose, it always means that the remand is an open remand. Here also, the remand was made for passing a reasoned order after giving opportunity of hearing to the petitioner. This submission of Mr. Singh is therefore rejected.

8. However, the Writ Application must be dismissed for another reason. From a perusal of the order which has now been passed pursuant to the direction of the High Court referred to above and also from a perusal of the Supplementary Affidavit filed by the petitioner on 31.3.2003 annexing therein a photocopy of the representation filed by the petitioner before the respondent No. 2, it is apparent that all the points that have been raised herein including the point relating to the mode of calculation was specifically pleaded by the Writ Petitioner and only thereafter the respondent No. 2 dealt and considered the same in the impugned order as contained at Annexure-10. The bill which was earlier raised has now been reduced to 16,51,690.00 and, therefore, it does not lie in the mouth of the petitioner to go on agitating the same point over and over again and that too when the matter relating to theft of energy is subjudice before a Court of competent criminal jurisdiction. Consequently, the submissions made by Mr. Mittal cannot be accepted.

In that view of the matter, this Court holds that there is no merit in this Writ Application. It is accordingly dismissed.