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**(2003) 04 PAT CK 0095**

**In the Patna High Court**

**Case No : C.W.J.C. No's. 13933, 13986 and 14019 of 2002**

Barauni Carbons Pvt. Ltd.

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

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**Date of Decision : 02-04-2003**

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2003) 2 BLJR 963 : (2003) 2 PLJR 519

**Hon'ble Judges :** R.S. Garg, J

**Bench :** Single Bench

**Advocate :** Satyabir Bharti, for the Appellant; Mihir Kumar Jha, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

R.S. Garg, J.—This order shall dispose of all the three Writ Petitions (C.W.J.C. Nos. 13933, 13986 and 14019 of 2002).

2. Heard learned Counsel for the petitioner. Also heard learned Counsel for the Bihar State Electricity Board (hereinafter referred to as "the Board").

3. By these petitions under Article 226 of the Constitution of India, each of the petitioners seeks to challenged the rejection of their claim submitted under Clause 13 of the H.T. Agreement.

4. Learned Counsel for the petitioner submits that the notification i. e., Clause 4 (c) is in relation to avoidance of disconnection and in any case shall not interfere with the petitioner's right to make a representation under Clause 13 of the Agreement nor the authority misinterpreting Clause 4 (c) can reject the representation observing that in accordance with the said Clause 4 (c), 50% of the disputed amount was not deposited within due date and information of intention of filing the claims was also not supplied. Learned Counsel for the Board submits that the stand taken by the Electricity Board is justified.

5. Clause 13 of the H.T. Agreement reads as under :

"13. 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 schedule 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.

Note.--The term Chief Engineer includes Additional Chief Engineer for the area concerned."

6. A perusal of the said clause would show that when the consumer is prevented from receiving or using the electrical energy to be supplied under the agreement then under particular circumstances he would be entitled to reduction in proportion to the ability to take the supply or the Board to supply such power and the decision of the Chief Engineer, Bihar State Electricity Board in this respect shall be final. Clause 13, in fact, confers a right upon the consumer to make an application seeking reduction in the annual minimum guaranteed charges. The agreement is an statutory agreement and has the statutory force.

7. Once such agreement between the parties provides for certain rights in favour of a party then such rights cannot be curtailed except in accordance with law or the statutory powers vested in the Board.

8. Annexure-5 is the notification issued by the Bihar State Electricity Board on 29th July, 1994. The Board in its Resolution No. 6700 dated 20th July, 1994 had approved certain guidelines for settlement of claims under Clause 13 of the H.T. Agreement. From the very opening words of the Gazette Notification it would clearly appear that the notification dated 29th July, 1994 is in fact the guidelines and does not override Clause 13 of the Agreement. In fact, according to the Board, the power to issue the guidelines flows from Clause 13 of the Agreement, if the guidelines are to be framed for due execution of Clause 13 then the said power cannot be used in a manner which is detrimental to the interest of a consumer.

9. Clause 4 (c) contained in the said notification reads as under :

"4. (c) If the consumer deposits a sum representing 50% (fifty) of the amount in the bill for the shortfall in AMG charges, within due date and informs that he intends to file claim for remission then his electric line will not be disconnected for the dues relating to this bill. But interest/DPS will be charged for the balance payable amount as settled under the clause."

From the very language of Clause 4 (c) it would clearly appear that in case 50 percent of the amount in bill for the short fall in AMG charges is deposited by the

consumer within due date and at the same time he informs the State Electricity Board that he intends to file a claim for remission then the electric supply would not be disconnected for the AMG dues. Thus 50% deposit and information of the intention of the consumer is only to avoid the disconnection and has nothing to do with the claim of the petitioner which is otherwise to be decided under Clause 13 of the Agreement. If a consumer does not deposit 50% then the Board shall be free to disconnect the supply but cannot refuse to adjudicate upon the claim made by the said consumer, if the said claim has been filed in accordance with the terms of Clause 13 itself and within the period prescribed for filing the same.

10. The respondent General Manager-cum-Chief Engineer was absolutely unjustified in rejecting the claims of the petitioners on the ground that they did not deposit the 50% of the bill amount or did not express their intention of filing the claim. The orders passed by the Chief Engineer-cum-General Manager in each of the case are set aside.

11. It is hereby directed that the Chief Engineer shall decide the matter in accordance with law without being obsessed by the fact that his order has been set aside by this Court. The petitioners may appear before the Chief Engineer on 28th April, 2003 along with a copy of this order. The Chief Engineer shall be obliged to give due opportunity of hearing and shall further be obliged to pass a speaking order in the matter.

12. In the result, all the three writ petitions are allowed.