
(2015) 05 JH CK 0026

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3647 of 2005

Bharat Ingots and Steel Pvt. Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Citation : (2015) 3 AJR 375

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Advocate : Darshana Poddar and Piyush Poddar, for the Appellant; Mukesh Kumar Sinha, Advocates for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar, J.—Petitioner has prayed for following reliefs:

"(a) For quashing the supplementary bill (Annexure-6) raised and realized by the Respondent Board for maximum demand dated 26.02.2004 for Rs. 24,41,607/- for a period of 9 months from April 2003 to December, 2003 on 4002 KVA, which was recorded in the month of January 2004 as against contract demand of 3600 KVA on the basis of clause 14 of Induction Tariff Schedule, 2001 for HT consumers (Annexure-1) AND also for quashing bill for the month of March 2004 dated 1.4.2004 (Annexure-8) to the extent of inclusion of Rs. 2,81,400/- for the month of February 2004 and a further sum of Rs. 2,81,400/- for the month of March 2004 total being 5,62,800/- regarding maximum demands raised and realized on the same basis.

(b) For a direction upon the Jharkhand State Electricity Board to refund/adjust the aforesaid sum of Rs. 30,04,407/- (Rs 24,41,607/- + Rs. 5,62.800/-) illegally realised from the petitioner alongwith interest @ 2% per month, which rate is equal to the rate which is being charged by the Respondent Board from its consumers under clause 16.2 of the 1993 Tariff for delayed payment to be calculated from 7.4.2004 when the aforesaid sum of Rs. 24,48,607/- was

realized and from 20.04.2004 when the aforesaid sum of Rs. 5,62,800/- was realized till the date of refund and or adjustment in future bills.

(c) For any other appropriate writ(s)/order(s)/direction(s) as your Lordships may deem fit and proper for imparting substantial and conscionable justice to the petitioner."

2. It appears that petitioner is a private limited company and running induction furnace and had taken electrical connection from the J.S.E.B. having contract demand of 3600 KVA. It is stated that in the month of January, 2004, petitioner consumed 4002 KVA of electricity, which is excess to the contract demand of the petitioner. Accordingly, on 26.02.2004, a supplementary bill for the period April 2003 to December, 2003 issued, asking the petitioner to pay Rs. 24,41,607/- towards the electric charges. It is pertinent to mention that the aforesaid supplementary bill issued as per the provisions of Clause 14 of Induction Tariff, 2001. It then appears that another bill had been issued on 01.04.2004 for the month of March, 2004 on the basis of same tariff for Rs. 72,62,339/- which includes the arrears of Rs. 24,41,607/- and Rs. 2,81,400/- short assessed for the month of February, 2004. It is stated that petitioner paid the bills under protest as the BSEB threatening to disconnect the electrical connection of the petitioner. Receipts showing payment of the aforesaid amount annexed with the writ application.

3. It is submitted by Mr. Biren Poddar, learned senior counsel appearing for the petitioner that supplementary bill as contained in Annexure-6 has been issued on the basis of tariff of 2001. He submits that the said tariff was issued by the B.S.E.B. on 07.05.2004. He then submits that J.S.E.B. came into existence on 01.04.2001. Thus, any tariff issued by BSEB on 07.05.2001 had no application on the consumers of J.S.E.B. Accordingly, It is submitted that bill raised vide Annexure-6 is illegal. Mr. Poddar further submits that Annexure-8 shows that it was issued on the basis of tariff of 2001. He submits that with effect from 01.01.2004, the tariff promulgated by the Jharkhand State Electricity Regulatory Commission has come into effect. Thus, any tariff issued before 01.01.2004 has no application. Learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court and the Jharkhand High Court in Jharkhand State Elect. Board and Others Vs. Laxmi Business and Cement Co. P. Ltd. and Another, AIR 2014 SC 1820 : (2014) AIRSCW 1656 : (2014) 3 JT 507 : (2014) 2 RCR(Civil) 236 : (2014) 3 SCALE 155 : (2014) 5 SCC 236 : (2014) 4 SCJ 689 , The Jharkhand State Electricity Board Vs. Kumardhubi Steels Pvt. Ltd. and M/s. Bimaldeep Steel Pvt. Ltd. v. Jharkhand State Electricity Board and others (WPC No. 3517 of 2010 and 3881 of 2010) disposed of on 12.02.2015 by this Court. Accordingly, it is submitted that Annexure-8 can also not be sustained. It is then submitted that since petitioner had paid the bill amount under protest, therefore, petitioner is entitled to get refund of the same with statutory interest.

4. Shri Ajit Kumar, learned senior counsel appearing for the respondents submitted that J.S.E.B. had, in fact, adapted the tariff dated 07.05.2001 issued

by Bihar State Electricity Board. He submits that the aforesaid fact is clear from the letter No. 814 dated 28.05.2001 issued by Secretary, J.S.E.B. to Electrical Superintending Engineer, Deoghar. Photocopy of the aforesaid letter has been produced by Sri Ajit Kumar for my perusal. Sri Kumar submits that in view of the fact that tariff dated 07.05.2001 has adapted by J.S.E.B. there is no illegality in issuing the bill as contained in Annexure-6. He further submits that the tariff issued on 07.05.2001 will also applicable in the year 2004 in view of Clause 1.4 of the terms and conditions of the Tariff of 2004. Accordingly, Sri Kumar submits that there is no illegality in issuing the aforesaid bills. Thus, this writ application is liable to be dismissed.

5. Having heard the submissions, I have gone through the records of the case.

6. Admittedly, the bill as contained in Annexure-6 has been issued on the basis of Induction Tariff, 2001 and the same has been annexed in the writ application as Annexure-1. From perusal of the same, I find that said tariff was issued by B.S.E.B. Patna. Thus, it is clear that said tariff was issued by the BSEB for its own consumers. It is an admitted position that as per provisions of Bihar Re-organisation Act, the J.S.E.B. came into existence with effect from 01.04.2001. Under the said circumstance, any rule or regulation or tariff issued by B.S.E.B. after 01.04.2001 has no application in the State of Jharkhand, where B.S.E.B. is not in operation. The contention of Sri Ajit Kumar that said tariff has been adapted by the J.S.E.B. can not be accepted, because there is no provision in the Bihar Re-organisation Act, which gives power to the State of Jharkhand or J.S.E.B. to adapt any tariff issued by B.S.E.B. after creation of J.S.E.B. The letter produced by Shri Ajit Kumar does not show that in fact J.S.E.B. has taken any decision for adapting the tariff. From plain reading of the aforesaid communication, it appears that the Secretary had asked the Superintending Engineer, Deoghar to presume for the time being that the J.S.E.B. had adapted the tariff issued by B.S.E.B. Even after giving the repeated opportunity, the learned counsel for the Board, has not produced the notification by which the aforesaid tariff adapted by the J.S.E.B. In that view of the matter, I find that the tariff issued by B.S.E.B. on 07.05.2001 is not applicable in the State of Jharkhand and the J.S.E.B. has no power to raise bill on the basis of aforesaid tariff. Accordingly, I find that bill issued by J.S.E.B. as contained in Annexure-6 and 8 are illegal.

7. It has been held by Hon"ble Supreme Court in Jharkhand State Electricity Board and Others. v. Laxmi Business and Cement Company Private Ltd. and Another (Supra) and different Benches of this Court in Jharkhand State Electricity Board Vs. M/s. Kumardhubi Steels Pvt. Ltd. and M/s. Bimaldeep Steel Pvt. Ltd. v. Jharkhand State Electricity Board and others (Supra) that with effect from 01.01.2004 the tariff of 1999 and 2001 has no application in the territory of State of Jharkhand, because by that time, the Jharkhand State Electricity Regulatory Commission had already issued tariff, which is applicable in the State of Jharkhand. In that view of the matter also the bill raised by J.S.E.B. as

contained in Annexure-8 is illegal.

8. It is an admitted position that petitioner had paid the entire amount as contained in Annexure- 6 and 8 vide receipts annexed with the writ application. Since, I came to the conclusion that aforesaid bills have been illegally raised, therefore, in my view, petitioner is entitled to get refund/adjustment of the excess amount, with interest as provided under Clause 11.10.3 of Electricity Supply Code Regulation, 2005.

9. In view of the discussions, made above, this writ application is allowed and the impugned Annexure-6 and 8 are quashed. Respondents are directed to refund/adjust the excess amount paid by the petitioner with interest as per provision contained under Clause 11.10.3 of the Electricity Supply Code Regulation of 2005.