
(2003) 03 JH CK 0035
In the Jharkhand High Court
Case No : CWJC No. 636 of 1998 (R)

Bhawani Press Metal and Body Building Pvt. Ltd.	APPELLANT
Vs	
Bihar State Electricity Board and Others	RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Citation : (2003) 2 JCR 278

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

Vikramaditya Prasad, J.—Heard both sides and perused the writ, counter affidavit and rejoinder.

2. The questions to be answered in this writ are :

(a) Whether on the expiry of one year of notice to determine the high tension agreement, the agreement ceases to exist and the respondents are duly bound to issue the bills on the basis of low tension tariff,

(b) whether respondents are bound to raise the bills from the month of February, 1996 on the basis of low tension tariff especially when the respondents have been all along accepting the bills

(c) whether respondents are duty bound to take average consumption on the basis of three months' average when the meter was working properly i.e. March, April and May 1995 or on the basis of three months' average when the new meter may be installed in the premises of the petitioner.

3. Earlier the petitioner vide Annexure-1 and 2 wrote letter to the respondents for conversion of HT agreement into LT agreement. When it was not done, the petitioner filed a writ (CWJC No. 976 of 1996 (R), which was disposed of by order

contained in Annexure 3. By that order letter dated 14.2.1995 was directed to be considered as a notice determining the said HT agreement, orders were also passed restraining the respondents from disconnecting the power supply, if the petitioner paid the arrears of bill as per direction given in that writ.

4. According to the petitioner, as the letter dated 14.2.1995 (Annexure-2) was treated to be a notice for determination of the HT Agreement, after expiry of the period of 12 months of the said notice, the agreement ceased to exist and stood determined and consequently, after that the respondents cannot raise bills as per HT Tariff, rather, bills should have been raised as per LT Tariff. The further case of the petitioner is that the petitioner went on paying the bills and it was accepted by the respondent, therefore, any demand of surcharge, levy and interest on the accumulated bills as per HT Tariff cannot be charged by the respondents and as the respondents have accepted the payment as per LT Tariff, they cannot claim payment as per HT Tariff. Further case of the petitioner is that the meter remained defective from June 1995 onwards but the bills were raised even thereafter on the basis of MMG or on the basis of Minimum Base Charges though the respondents should have raised the bills on the three months average basis when the meter was working properly i.e. for the months of March, April and May, 1995. The petitioner's further case is that the petitioner made payment in order to evade any coercive step by way of disconnection. Consequently, the petitioner prayed (i) for revising bills as per LTS Tariff w.e.f. February, 1996 on the basis of LT Tariff, in view of his application for conversion (ii) a direction to the respondents to change the meter and to raise bills on average of three months" when the meter was in order or the average of three month"s of the reading of the new meter to be installed with a further prayer to quash the bills for the month of January 1998 and also the arrears for January 1998 onwards which was calculated as per HT Tariff.

5. The respondents appeared and contested the claim of the petitioner by filing counter affidavit. According to the respondents, the conversion of HT agreement into LT Agreement was neither permissible nor practicable/possible as the petitioner at no point of time reduced his load and even during an inspection on 10.2.1998 made in the presence of the petitioner, the petitioner was found to be using a load of 75K.VA. or 80 H.P. and, therefore the respondents were compelled not to reduce the load from HT to LT. With regard to acceptance of payment, the case of the respondents is that the petitioner was allowed to pay the bills in part till the formalities from the end of the petitioner was complete and the LT agreement was executed, but the petitioner did not get any LT agreement executed, nor did he reduce the load. With regard to the defective meter, it has been stated by the respondents that the petitioner was directed to bring a new meter, but the petitioner did not do it, so the bills were raised as per Tariff.

6. The petitioner filed a reply to be counter affidavit stating that the formalities of conversion had to be adhered by the respondents and even if the load during

inspection was found to be higher than HT agreement then the respondents could charge for extra 5.4 HP. It was further stated that new meter had been installed by Board on 18.7.1998.

7. Now I proceed to examine the effect of the notice of determination (Annexure-2). As per Clause 9 of the Agreement after expiry of the period of 12 months, the agreement ceases and stands determined. Determination in the legal sense means, "the determination is something as termination. Coming to an end in any way of the act". When a particular term is used in a clause of the agreement then that has to be given the legal meaning. As per decision *B.S.E.B v. Bihar 440 Volt Vidyut Upbhokta Sangh*, (1997) 11 SCC 380, the HT consumers and low-tension consumers cannot be equal as these are two distinct and separate classes. Even after the expiry of that period there is nothing on record to show that the petitioner stopped deriving energy from that source, so even by conduct, petitioner did not treat that in fact the agreement had been determined and, therefore, he should not take energy from that source. There is no showing on the part of the petitioner that he applies for a fresh LT agreement. In absence of any postulation/any term in the agreement for substitution of the existing agreement by a new agreement, his request for conversion could not be permitted i.e. no novation of contract is permissible under the terms of the agreement.

8. The learned counsel for the petitioner relied on *Automobile Ancillary Industries v. Bihar State Financial Corporation* 2001 (2) JCR 122. In that case there was a HT agreement for 280 KVA and the prayer had been made for reduction of the load to 135 KVA and ultimately a notice was served. The learned Single Judge held "that the Court is of the view that when the Board can execute additional agreement even before expiry of 3 years why not the consumer will have the liberty to approach the Board for execution of additional agreement before expiry of three years. Clause 9(a) of the Agreement shall be equally applicable to both the Board and the Consumer". It is noticed that in that case the class of the consumer was not changed even though a new prayer has been made for an additional agreement. Now if in this case an additional agreement is permitted then that will mean that at the same time there will be a HT agreement and also a LT agreement in the same premises which can not be permitted. In that view of the matter if the petitioner either by conduct or by completing the formalities to enter into LT agreement went on using power, it cannot be said that the old agreement stood automatically converted into LT agreement for the simple reason that there is no provision in the agreement or in the Electricity Act for conversion of HT agreement into LT agreement.

9. One question may be raised that if the respondents accepted the bill then whether it will be deemed that they conceded to the request of the petitioner that HT agreement has been converted into LT agreement. Here it may be stated that the petitioner is an Industry and definitely even in case of actual determination, Stop gap arrangement has to be made for the Industry.

Therefore, if the respondents accepted the bills i.e. only to help and accommodate the petitioner so that he completes the formalities, there is nothing wrong. Rightly this stand has been taken by the respondents-Board. But this acceptance was misconceived by the petitioner that HT agreement stood converted into a LT agreement. Even for taking LT agreement, it is the petitioner who has to fill up a particular application as per his requirement then as per his requirement a LT agreement could be executed. Nowhere the petitioner has said that he had disclosed his requirement therefore, it is clear that no formality had been initiated by the petitioner for a new LT agreement. It was wishful on the part of the petitioner to say that the bills which were accepted by the respondents were on the basis of LT agreement. The petitioner relied on 1999 (2) PLJR 334 and LPA No. 472 of 1999 (R) decided on 14.8.2002 in support of his contention that the contract agreement was determined by virtue of notice given by the petitioner. In 1999 (2) PLJR 334, the notice has been given and consequent thereto the agreement has been determined. In LPA No 472 of 1999 (R) the maximum demand of 12000 KVAS was sought to be reduced to 8000 KVAS. Thus in this case the nature of agreement has not been changed because even after reduction the agreement remained in HT tariff and consequently, an additional agreement could be executed. Such is not a fact in this case 1995 (2) PLJR 715 deals with a case where the petitioner had requested for disconnection of the line, in fact, disconnection was not made and the petitioner was using power which is also a fact in this case because despite the notice of conversion/determination the petitioner went on using the power. In that case it has been held that the petitioner was liable to pay the charge. This decision helps the respondents more. Since the petitioner undisputedly was using the energy from that very source, he is liable to pay charges according to that tariff, i.e. HT Tariff.

10. In the aforesaid circumstance, I am of the considered view that in absence of any provision in the HT agreement for conversion/novation of a contract in absence of any formality completed by the petitioner for a new LT connection, there was no LT agreement even by implication between the petitioner and the respondents, rather the conduct shows that the petitioner even after expiry of the agreement period, continued to extract load higher than agreed. Reply of the petitioner that the respondents could have charged as per enhanced load of 5.4. H.P. cannot be accepted and appreciated in the law, therefore, it is held that despite expiry of the period of notice in fact the agreement did not stand terminated and the bills were not accepted by the respondents under any tacit consent that it was being received as per LT Tariff. Question Nos. 1 and 2 are answered accordingly against the petitioner and in favour of the respondents and it is held that in fact the H.T. agreement did not stand terminated with effect from February 1996 and in absence of any LT tariff agreement having been executed the petitioner's claim, that bills had been raised as per LT tariff cannot be accepted, the acceptance of bills subsequent to February 1996 by the respondents is not a circumstance to prove that the respondents had accepted even impliedly that the bills are being received as per LT tariff.

11. So far Question No. 3 is concerned, it is admitted by the petitioner that new meter has been installed on 18.7.1998. In respect of defective meter and the bills in that circumstance raised by the respondents, the petitioner relied on 2002 PLJR 510. In that case the old meter had gone out of order. The board billed on the average of 130 units per month. The petitioner found that it was high rate of unit. The petitioner wanted a new meter at his own cost. The meter was installed on a particular date. Still inspite of raising bill on the basis of the reading in the new meter, the Board went on raising demand on the basis of average that was raised earlier. Therefore, in the circumstances the Court held in that case that the delayed surcharge were levied even for the period after installation of the new meter. Since in this case the bill was wrongly raised, therefore, it was revised by the respondents themselves consequently there was no question of demanding delayed surcharge by the respondents. Here bill has not been revised and the petitioner has not got new meter installed till it was really Installed. The calculated amount made in Annexures 7 and 11 is not legally acceptable because it is a calculation in absence of any LT agreement and not binding on the respondents. I am in the agreement with the learned counsel for the respondents that amount have accumulated in the bills of the petitioner due to his fault and not of the fault of the respondents.

12. In the result I do not find any merit in this writ. It is accordingly, dismissed.