(2000) 10 PAT CK 0004

In the Patna High Court

Case No : C.W.J.C. No. 9231 of 2000

Bhola Ram Steel Pvt. Ltd. APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 24-10-2000

Acts Referred:
Electricity (Supply) Act, 1948 — Section 78A

Citation : (2001) 1 PLJR 182

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : S.D. Sanjay, for the Appellant; Mihir Kumar Jha, for the Respondent

Final Decision : Allowed

Judgement

R.M. Prasad, J.—The Petitioner is aggrieved by the denial to grant exemption of Minimum Guarantee Charges pursuant to the Government Policies (Annexures 1 and 2) as also adopted by the Bihar State Electricity Board (hereinafter referred to as ''the Board''), vide Board''s Resolution No. 6917 taken in its 43rd meeting and circulated vide Annexure 3.

2. In short, the case of the Petitioner is that for the purpose of industrialization of State and to promote the Industries, the State Government have, time to time, been announcing the Industrial Policy Resolutions. In the Industrial Policy Resolution, 1995, the State Government announced various incentives for setting up of new Industries in the State of Bihar and also expansion and diversification of existing Industries. In pursuance of the said Industrial Policy, the State Government in the Department of Energy came out with Resolution No. 3493 dated 3.9.1996 reiterating the incentives promised in the Industrial Policy Resolutions, 1993 and 1995 to grant exemption of payment of Minimum Guarantee Charges to the Industrial Unit having connected load of 500 KVA besides other benefits and, accordingly, in exercise of the power u/s 78A of the Electricity (Supply) Act, 1948 issued directive to the Board for grant of such incentives, vide Annexure 2. The Board, vide aforementioned resolution

(Annexure 3) granted necessary exemption and it was clearly stated that the Industrial Unit coming into production between 1.4.1993 to 31.8.2000 will be exempted from payment of Minimum Guarantee Charges for the period of five years from the date of its production.

3. The Petitioner set up the Industrial Unit to manufacture iron and steel structure and section like Bar Rol, Place Angle, Channel, Square, Tor & Round, General Fabrication and Annulling of Sheets and applied as HTIS Consumer for a connected load of 500 KVA. The application of the Petitioner was considered by the competent authority and vide letter No. 428 dated 24.2.1998 (Annexure 4), the load was sanctioned. The petitioning industry came into production with effect from 28.3.1998 as is evident from Annexure 5. It is stated that on 23.1.1999 the connected load of the premises of the Petitioner was inspected and it was held to be 494.5 HP and the same was intimated to the Petitioner by the Electrical Executive Engineer vide letter dated 23.1.1999 (Annexure 7). As some typing error was detected in the said report, the same was corrected vide Electrical Executive Engineer letter No. 376 dated 23.2.1999 (Annexure 7/A) by which the Petitioner was informed that the total load was found to be 495 HP.

4. While the Petitioner was expecting a bill without inclusion of the Minimum Guarantee Charges in view of the Industrial Policy, he was served with an Annual Minimum Guarantee bill dated 29.6.1998 for the period 1997-98, vide Annexure 8. The Petitioner represented before the Electrical Executive Engineer, Electrical Circle, Mangles Road, Patna on 20.7.1998 (Annexure 9) protesting against the issuance of the said bill. While the said representation was not disposed of the Petitioner was served with another Annual Minimum Guarantee bill for the period 1998-99 dated 26.9.1999, whereafter he again filed representation before the Electrical Superintending Engineer, vide Annexure 11. In view of the said representation, the amount of Minimum Guarantee Charges was kept in abeyance which continued till the Petitioner was served with the bill up to the period May, 2000. However, on 29.6.2000 the Petitioner was served with another bill (Annexure 13) claiming payment of Minimum Guarantee, whereafter he again filed representation.

5. In the counter affidavit filed on behalf of the Electrical Executive Engineer (Respondent No. 8) it is admitted that the agreement was entered into by the Petitioner with the Board on 2.3.1998 for a contract demand of 500 KVA. It is alleged that an A.M.G. bill for the year 1997-98 was raised on the Petitioner on 29.6.1998 and the same was paid along with the energy bill of July, 2000. According to the case of the Respondent the Petitioner''s installed transformer is 750 KVA. it is alleged that during the financial year 1999-2000 (April, 1999 to March, 2000) the maximum demand of the Petitioner''s electrical connection has exceeded the Petitioner''s contract demand of 500 KVA in as many as six months and in the month of March, 2000 the maximum demand reached to an all time high of 621.60 KVA. It is alleged that since 621.60 KVA is more than 110% of the existing contract demand of 500 KVA, the contract demand for the period

1999-2000 has been taken to be 621.6 KVA, as per the tariff notification Mo. CUM/TAR/1010/ 93-430 dated 21.6.1993. Clause 16.5 of the tariff notification, which is quoted at page 4 of the counter affidavit, reads as follows:

If during any month in a financial year (April to March next year) the actual maximum demand of a consumer exceeds 110 per cent of the contract demand, then the highest demand so recorded shall be treated as the contract demand for that financial year and the minimum base charges, both in respect of maximum demand and energy charge shall be payable on that basis.

6. It is admitted that the industrial policy adopted by the Board clearly states that the benefit of exemption from paying minimum guarantee charges will be available to those industrial units who are having connected load of upto 500 KVA. According to the Board, this load is in terms of KVA independent of power factor. During the year 1999-2000 the Petitioner has availed highest actual demand of 621.60 KVA as recorded by the meter and not disputed by the Petitioner at any point of time. According to the case of the Board, technically the maximum demand which is the actual demand of consumer can never be more than the connected load when expressed in terms of KVA. The Petitioner''s maximum demand having reached 621.60 KVA clearly goes to show that the Petitioner has increased its connected load without intimation to the Board and thus has crossed the maximum limit of connected load i.e. 500 KVA as provided for in the industrial policy for being entitled to grant of the benefit of the industrial policy and thus is not entitled for exemption from payment of A.M.G. charges.

7. In the reply filed on behalf of the Petitioner it is stated that the Maximum Demand indicator in the Trivector meter had shown more than the Contract Demand of 500 KVA which in terms of tariff changed the Contract Demand but this had got no material bearing in the connected load and the Respondent has not disputed this fact that at any, point of time they could find connected load of the Petitioner more than 500 KVA. It is, thus, submitted that the increase and decrease in Maximum Demand in between the period of five years will have no effect but will amount to denial of the promise made in the Industrial Policy. It is further stated that the Petitioner in the month of October, 1999, after it received the Bill for the month of September, lodged a complaint about its meter as the Petitioner suspected that the meter was not functioning properly. However, the authorities of the Board for the first time detected that the meter was stopped in the month of January, 2000 and thereafter the meter was replaced on 9.2.2000. This meter was also found faulty and was again replaced on 29.3.2000 and, thus, according to the Petitioner, the figure shown from the faulty meter during the period September, 1999 to March, 2000 was found to be faulty and cannot be relied upon.

8. The Board has filed rejoinder to the said affidavit in which it has been stated that as per the records available in the Circle Office of P.E.S.U. (W), no complaint was received from the Petitioner with regard to the meter after the Petitioner

received bill for the month of September in the month of October. In fact, on 29.9.1999, meter testing was conducted by the P.E.S.U. (W), MRT and the meter was found correct and the maximum demand as recorded was found to be 508.20 KVA. A copy of the said report has been annexed as Annexure B. Subsequently, the meter was checked on 8.12.1999 and a report was submitted vide Annexure C and the meter was found to be correct. The maximum demand for the month of December, 1999 was recorded as 616.20 KVA during the monthly meter reading for December, 1999 and not disputed by the Petitioner. Thereafter on 27.1.2000 while taking monthly meter reading it was found that the meter was not displaying any information apart from it having been slightly found to be buckled from back. Thus, the meter was replaced on 9.2.2000.

9. Thus, the facts which remain undisputed are that the Petitioner set up its industrial unit and commenced its commercial production from 28.3.1998, which is evident from permanent registration certificate granted by the General Manager, District Industries Centre, Patna, contained in Annexure 5. The Petitioner admittedly applied and was sanctioned load of 500 KVA as HTIS consumer. Admittedly, supply of energy in the industrial unit was commenced on 28.3.1998 and the connected load was verified even subsequently on 23.1.1999 and was found to be 495 HP which is below 500 KVA as required under the Industrial Policy. It is also not disputed that the connected load was never changed. It is true that during the year 1999-2000 the Petitioner availed highest actual demand of 621.60 KVA as recorded by the meter.

10. Thus, the question falls for consideration is as to whether on account of the Petitioner availing highest actual demand of 621.60 KVA during the year 1999-2000 would be deprived of the benefit of exemption for payment of AMG charges as per the Industrial Policy of the State Government and also adopted by the Board.

11. Learned Counsel for the Petitioner has submitted that in the present case, the Respondents right from the very beginning acted in mala fide manner in raising the Annual Minimum Guarantee Charges when admittedly, they were exempted from payment of the same for five years since the date of its production. According to the learned Counsel for the Petitioner, the alleged increase in availing of the electricity during the year 1999-2000 was due to (sic) meter which was changed by the Board. Moreover, the availing of actual maximum demand will not disqualify the Petitioner for the benefit of exemption from payment of AMG Charges in the light of the Industrial Policy, in asmuch as in view of Clause 16.5 of the Tariff notification that if during any month in a financial year the actual maximum demand of a consumer exceeds 110 per cent of the contract demand, then the highest demand so recorded is to be treated as the contract demand for that financial year and the minimum base charges, both in respect of maximum demand and energy charges is payable on that basis, but there cannot be any question of change in connected load which is completely different from contract demand. In support of this he referred to the definition of

''Installed Load'', ''Connected Load'' and ''Contract Demand'' from the Indian Standard Electro technical Vocabulary Part XXXVII, according to which ''Installed Load'' means the sum of the rated inputs of the electrical apparatus installed on the consumer''s premises; ''Connected Load'' means that part of the installed load of consume/ supplied by the supply undertaking and ''Contract Demand'' means demand fixed by agreement that the consumer may not exceed except according to the conditions of the tariff.

12. Mr. Jha, learned Counsel appearing for the Board has submitted that the learned Counsel appearing for the Petitioner is not correct in his submission that once the meter was found defective, it was replaced, that the meter testing at the instance of the Petitioner was conducted twice. In fact on 29.9.1999 meter testing was conducted by the P.E.S.U. (W), MRT and the meter was found correct. Thereafter the meter was checked on 8.12.1999, when again it was found correct and the maximum demand for the month of December, 1999 was recorded as 616.20 KVA. However, on 27.1.2000 while taking monthly meter reading it was found that the meter was not displaying any information apart from it was slightly found to be buckled from back and thus the meter was replaced on 9.2.2000. Thus, the consumption of electricity beyond the contracted demand by the Petitioner, as is also evident from the recording in the meter, clearly shows that the Petitioner increased its connected load without intimation to the Board and thus has crossed the maximum load i.e. 500 KVA, for which he was entitled to grant of the benefit of exemption from payment of A.M.G. Charges under the Industrial Policy during the year 1999-2000. According to Mr. Jha, the consumption of electricity by the Petitioner in excess of the contract demand put strain on the transformer and supply of electricity un-authorisedly and as such, the Petitioner is not entitled for any exemption under the Industrial Policy.

13. This Court finds it difficult to accept the said submissions of the learned Counsel for the Respondent Board. Learned Counsel appearing for the Board has failed to show any provision under which on account of consumption of electricity in excess to the contract demand, the connected load automatically gets altered and the same will disqualify a person from getting the benefit of exemption from payment of A.M.G. Charges under the Industrial Policy. In such a case, the only clause referred to by the learned Counsel for the Board is Clause 16.5 of the Tariff Notification of 1993, which provides that if during any month in a financial year (April to March next year) the actual maximum demand of a consumer exceeds 110 per cent of the contract demand, then the highest demand so recorded shall be treated as the contract demand for that financial year and the minimum base charges, both in respect of maximum demand and energy charge shall be payable on that basis. ''Contract Demand'' as defined in Electro technical Vocabulary means demand fixed by agreement that the consumer may not exceed except according to the conditions of the tariff. Thus, it is evident that the condition in the tariff is only that if during any month in a financial year the actual maximum demand of a consumer exceeds 110% of the contract demand,

then the highest demand so recorded shall be treated as the contract demand for that financial year and the minimum base charges, both in respect of maximum demand and energy charge shall be payable on that basis which has nothing to do with the connected load which, according to the definition of Electrotechnical Vocabulary means that part of the installed load of consumer supplied by the supply undertaking.

14. Thus, in my opinion, installed load has nothing to do with the demand fixed by the agreement. Moreover, even assuming that on account of the Petitioner''s availing electricity more than the contract demand which may have some bearing on the connected load, then the Board can take appropriate steps for change in the connected load and consequently apply the Industrial Policy accordingly but so long that is not done, in my opinion, the consumer will be entitled for the benefit of exemption from payment of AMG charges under the Industrial Policy and cannot be disqualified on account of mere availing of highest actual demand recorded in the meter in a particular financial year. Learned Counsel for the Petitioner has rightly pointed out that the Board authority from time to time verified the load of the Petitioner and found the connected load less than 500 KVA.

15. Under such circumstances, this Court finds no valid reason to deny the benefit of exemption of A.M.G. Charges under the Industrial Policy to the Petitioner.

16. Accordingly, the writ petition is allowed and the Respondents may raise bill accordingly. In the facts and circumstances, there shall be no order as to costs.

