

(1997) 07 PAT CK 0015

In the Patna High Court

Case No : Letters Patent Appeal No. 172 of 1996 (R)

Bihar Electricity Board and Others

APPELLANT

Vs

Usha Martin Industries Ltd.

RESPONDENT

Date of Decision : 28-07-1997

Acts Referred:

Electricity (Supply) Act, 1948 — Section 46, 49
Electricity Act, 1910 — Section 26

Citation : (1997) 2 BLJR 1439

Hon'ble Judges : S.K. Chattopadhyaya, J; Nagendra Rai, J

Bench : Division Bench

Judgement

Nagendra Rai, J.—This Letters Patent Appeal is directed against the order dated 10.7.1996, passed in C.W.J.C. No. 1388 of 1996 (R) by a learned Single Judge of this Court, by which he allowed the writ application filed by the writ petitioner-respondent and quashed the bill dated 4.4.1996, contained in Annexure-2 to the writ application, whereby the respondent was asked to pay a sum of Rs. 11, 42, 34, 683, 71 IPS, towards the assessed loss in energy charges from 17.6.1974 to 31.12.1990 and fuel surcharge on energy loss assessed.

2. The respondent is a Public Limited Company incorporated under the Companies Act and is engaged in manufacturing alloy steels billets at its factory situated at Gamharia (Usha Alloys and Steel Division) and for running its factory, it has taken electric connection on contract demand, which was enhanced from time to time and at present it is 19.5 MVA under the HT line and the supply line is of 33 KV, which was taken on 17.4.1974.

3. The Respondent's assertion is that in accordance with the tariff of the Electricity Board, framed under the provisions of the Sections 46 and 49 of the Electricity (Supply) Act, 1948, the Board has raised the bills upon it from time to time and it has paid all the electricity charges up to February, 1996. Therefore, the impugned bill was served upon the respondent on the basis of assessed loss in energy charges and fuel surcharge on such assessed loss. The respondent

challenged the said impugned bill on the ground that the Board has no power under the relevant tariff framed by it to raise supplementary bill on the basis of assessed loss of energy charges. u/s 26 of the Electricity Act, the amount of energy supplied to a consumer or the quantity contained in the supply shall be ascertained by means of a correct meter in the absence of an agreement to contrary and the licensee shall, if required by the consumer, cause the consumer to be supplied with such meter. Under the said provision, it is mentioned that if any difference or dispute is raised as to whether the meter referred to in Sub-section (1) is or is not correct, the matter has to be referred to the Electrical Inspector, who has to determine the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during the period, not exceeding six months and the register of the meter shall in the absence of fraud, be conclusive proof of such amount or quantity of energy supplied to the consumer. Thus, if there was dispute regarding the amount of energy supplied or electrical quantity contained in the supply, the matter should have been referred to the Electrical Inspector u/s 26 of the Act and raising of the bill without taking recourse to the said provision was wholly unjustified. It was also asserted that the action of the Board in raising the bill was arbitrary as the same had been raised without giving an opportunity to the respondent of being heard. The method adopted by the appellant was also unknown method of charging. No demand could be raised against the respondent on the basis of alleged assessed loss.

4. The stand of the appellants, as appears from the counter-affidavit, was that the respondent established Arc Furnace in the year 1974 as a first of its kind in the State of Bihar and as such it was a new consumer of this type for the appellant. In course of time, it was found that the meter - reading at Grid i.e. installed at take-off Structure and Consumers premises was varying widely and beyond technically permissible limit. After enquiry, it was found that the said variations were occurred as the respondent was extracting electricity by way of fraudulent means and, accordingly, an F.I.R. was lodged by the Vigilance Department against the respondent in the year 1989. the contract demand of the respondent is 19.5. MVA. The current of 33 KV will be about 3.50 Amps for the normal type of load. The C.T. having C.T. ratio of 400/5 Amps was quite in adequate. In the case of Electric Arc Furnace, the current drawing pattern is of very peculiar nature. At the time of charging the Furnace, the current goes as high as 180% of the normal rated Current. Considering this the maximum current drawn by this load will be of the order of 600/615 Amps. Considering this aspect of the behaviour of Electric Arc Furnace, the capacity of the C.T. should be about double of the requirement for the normal type of load. The appellants found that there was a fraudulent extraction of the energy for the period 17.6.1976 to December, 1990. Thereafter, the Electronic meter was installed in consumer's premises on 7.1.1991. It was decided that the method to assess actual units consumed for the aforementioned period should be calculated by taking the average consumption during 1991-92 to 1994-95 as correct consumption by

taking into consideration the particulars of Energy Conservation Report of the respondent's Director M.T. of Steel Billets. The estimation of units loss of electrical energy was made after taking into consideration the aforesaid facts, on the basis of which a supplementary bill was raised. The Board has power to raise supplementary bill for the wrong and short charging under Clause 6 (b) of the tariff notification No. COM/ Tar-74- 334 dated 13.4.1974. Thus, the supplementary bill dated 4.4.1996 has been raised in accordance with the provisions contained in the tariff after assessing the wrongful loss to the appellants. The assessed loss has been determined by the Board after thorough investigation and scientific and technical examination and after taking into consideration the documents maintained by the respondent. Further stand of the Board is that as the respondent has utilised the energy, it has to pay of the loss of energy determined, which has been extracted and consumed by it in fraudulent manner.

5. The learned Single Judge allowed the writ application on the ground that Clauses (b) and (c) of the tariff don't authorise the appellant to raise a supplementary bill on the basis of assessed loss in energy. He held as follows--

"From a plain reading of the aforesaid Clauses 6 (b) and (c) it would be evident that if the authorities have got any jurisdiction to charge towards assessed loss in energy, only then it is open to them to give supplementary bill, if any short charging was made earlier with respect to such assessed loss in energy. In view of the fact that there is no provision under which the authorities can ask the consumer, like the petitioner to pay towards assessed loss in energy, according to this Court, the respondents have got no jurisdiction to make the demand with respect to the same not they can ask for fuel surcharge over such assessed loss."

6. learned Counsel for the appellants contended that the view taken by the learned Single Judge is erroneous in law as the perusal of the relevant Clause 6 (b) of the tariff clearly shows that the Board has power to raise a supplementary bill in the event of short or wrong charging. In the present case, since short or wrong charging was made due to the deceitful means adopted by the respondent in extracting electricity, the raising of supplementary bill was fully justified. It was also submitted that the provision of Section 26 of the Indian Electricity Act is not attracted in this case as there is an allegation of adoption of fraudulent means by the respondent in extracting the electricity of the appellants.

7. learned Counsel for the respondent combated both the submissions and further submitted that the method adopted by the appellants in determining the assessed loss in energy and fuel surcharge is not permissible in law and as such even assuming hat the appellant-Board has power, it cannot have power to raise a supplementary bill on the basis of the method adopted by it.

8. Clauses 6 (b) (c) of the tariff run as follows--

"6 (b) In the event of any short or wrong charging in any bill of he consumer in respect of charges leviable under the tariff including Electricity duty, the Board

reserves, right to serve a supplementary bill after deduction of the short or wrong charging as the case may be. 6 (c) Non-payment of the bills including supplementary bills on the due date specified therein will be deemed to be breach of the contract, either express or implied by the consumer within the meaning of those terms as used in Article 55 of the Limitation Act, 1963 (Act No. 36 of 1963)."

9. Fixation of tariff is a legislative function. There is no dispute that the Board has power to frame or fix tariff from time to time for different consumers. Respondent is one of the consumers covered by the tariff of the Board. Clause 6 (b) of the tariff empowers the Board to raise a supplementary bill in case of short or wrong charging in any bill of the consumer. Wrong or short charging may be on several grounds. The grounds have not been enumerated in the aforesaid Clause and, in our view, rightly, as it is not possible to visualise all the situations. The legislature has used wide words, namely, "wrong or short charging". The said words have to be given a wider meaning so that a licensee may not suffer due to non-payment of electrical charges due to wrong or short charging. The situations are many where wrong or short charging can be made. It may be made due to bona fide mistake on the part of the appellants or due to connivance of the employees of the Board with the consumer or by adopting deceitful means by the consumer.

10. Thus, it has to be held that whenever there is a wrong or short charging in any Bill of the consumer by the Board for any valid reason, then it has power to raise supplementary bill. In our view, the learned Single Judge was not justified in holding that Clause 6 (b) of the tariff was not attracted in this case. Thus, the order of the learned Single Judge is not sustainable in law.

11. The learned Counsel for the respondent has submitted that even the Board has power to raise supplementary Bill, the Board should have taken recourse to the provision of Section 26 of the Act. The Board's case from the very beginning is that the short or wrong charging was made due to the deceitful means adopted by the respondent in extracting electricity, which, in our view, is covered by Clause 6 (b) of the tariff. Section 26 of the Act is not attracted in this case as there is an allegation of adoption of fraudulent means by the respondent in extracting electricity. Thus, the said submission of the respondent has no force.

12. However, the determination of the aforesaid questions does not conclude the matter. There is a serious controversy between the parties as to the methodology adopted by the appellant-Board in determining the actual consumption of electricity by the respondent. According to the appellants, as stated above, they have determined the assessed loss in energy by taking the average consumption during 1919-91 to 1994-95 as correct consumption by taking into consideration the particulars of Energy Conservation Report of the respondent's Director and the quantum of Electricity consumed for producing M.T. of Steel Billets. According to the respondent, the aforesaid methodology adopted by the Board is not sustainable in law and in this connection, it has filed the reports of the different

experts. The basis to determine the assessed loss in electrical energy is hotly contested by the parties and both the parties have referred to several documents to justify their respective stands. The question cannot be decided only from the legal point of view. The technical aspect of the matter has also to be gone into. We wanted to take the option of the experts on the said point but during the course of hearing, the parties agreed that on view of the controversy as to the methodology, which was adopted by the appellants for raising the supplementary bill and other points, the matter should be referred to a Board of Arbitrators consisting of three persons, the Chairman, who should be a retired Judge of the Supreme Court and two technical experts. The parties also agreed that the Arbitrators should be appointed by the court and they will abide by the decisions arrived at by the Board of Arbitrators. The remuneration of the Board of Arbitrators shall be borne by the parties equally. In view of the fair stand taken by the parties, we appoint following persons as Chairman and Members of the Board of Arbitrators--

(i) Shri B.P. Jeevan Reddy, Retired

Judge of the Supreme Court.--Chairman

(ii) Director, National Physical

Laboratory, New Delhi.--Member

(iii) Head of the Department of Metallurgical Engineering, I.I.T., New Delhi.--Member

13. It is made clear that except the point, which have been decided by us, namely, the applicability of Clauses 6 (b) and (c) of the tariff and Section 26 of the Indian Electricity Act, the parties will be entitled to raise all legal and technical points, including the methodology adopted by the appellants for raising the supplementary bill, before the Board of Arbitrators. The Board of Arbitrators will render a reasoned award, which will be final and binding on the parties. The award is to be made within a period of six months from the date of their entering into the reference. In case the award is made by the Board of Arbitrators and any amount is payable by the respondent to the appellant - Board, the same would be paid in for monthly equal instalments within a period to be fixed by the Board of Arbitrators. Till the matter is finally decided by the Board of Arbitrators, the appellant-Board will not take any coercive measure for the realisation of the amount mentioned in the supplementary bill.

14. With the aforesaid observation and direction, this appeal is disposed of.