
(2003) 06 JH CK 0027
In the Jharkhand High Court
Case No : C.W.J.C. No. 1791 of 2001

Bihar Foundry and Castings Ltd.

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

Date of Decision : 26-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 614

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Biren Poddar, for the Appellant; M.M. Banerjee, for the Respondent

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for issuance of appropriate writ directing the respondents to treat the contract demand of the petitioner at 10,000 KVA w.e.f. 1st September, 2000 or in the alternative direct the respondents to issue a formal letter of approval enhancing the contract demand from 6,000 KVA to 10,000 KVA w.e.f 1.9.2000 and further a direction be issued to the respondents not to demand any penal charges from September, 2000 because of the excess drawal of power by the petitioner and treating the contract demand at 6,000 KVA.

2. The facts of the case lies in a narrow compass.

3. The petitioner is a industrial unit engaged in manufacturing steel ingots, ferro alloys etc. Since the units of the petitioner are situated within Damodar Valley falling under the command area of Damodar Valley Corporation (DVC), the petitioner entered into an agreement in 1989 with respondent No. 1 for supply of electric energy in bulk. The contract demand was 4,000 KVA which was increased to 5,000 KVA in 1993 and further increased to 6,500 KVA w.e.f. 1995. The contract demand was further increased to 8,000 KVA in 1995 but subsequently reduced to 6,000 KVA w.e.f. 8.1.1999. The petitioner's case is that on 12.5.2000 DVC served a notice for revision of power supply operation to the petitioner

which was made effective from 1st September, 2000. On 29th August, 2000 the petitioner by letter requested the respondent to increase its contractual demand from 6,000 KVA to 10,000 KVA w.e.f. 1st September, 2000 in view of the enhanced power requirement in its Ferro Alloys Steel Plant. It is stated that thereafter a Senior Divisional Manager and Executive Engineer visited the factory premises of the petitioner on 30.9.2000 and changed the CT ratio of the petitioner from 150/5 to 300/5 to enable it to take the load at 10,000 KVA and above. A joint report was drawn and signed by the officers of the DVC and the representative of the petitioner. The petitioner's further case is that on the changed CT ratio the petitioner understood that it was done with the approval of the competent authority and will amount to enhancing the contract demand from 6,000 KVA to 10,000 KVA. The petitioner thereafter requested the respondent to give a formal sanction of increasing the contract demand as aforesaid. It is alleged that in spite of several letters and reminders the respondents have not issued a formal sanction letter. On the contrary in absence of formal sanction letter respondents are charging penal contract demand charges @ 401.50 KVA in place of normal demand charges @ 365 per KVA on the ground that the petitioner is exceeding the contract demand. The petitioner claims that the respondents are not entitled to charge penal demand charges at the rate aforesaid and the excess amount paid by it is liable to be adjusted.

4. The stand of the respondents in the counter affidavit is that the petitioner desired to enhance their contract demand from 6,000 KVA to 10,000 KVA in order to run their different industry namely Gautam Ferro Alloys Limited for which there is no agreement with the respondents for the supply of electricity. The petitioner illegally extended the electrical power to Gautam Ferro Alloys Limited violating the agreement for which the respondents had disconnected the power supply of Gautam Ferro Alloys Limited. The petitioner thereafter accepted the illegality and agreed to pay the penal charges. On payment of penal charges the power supply was re-connected. It is stated by the respondents that taking advantage of re-connection the petitioner filed a suit in the Court of Munsif, Hazaribagh for grant of injunction restraining the respondent from taking any penal action/disconnection and obtained an interim order of status quo passed by the Munsif, Hazaribagh in Title Suit No. 112/ 2000 ultimately set aside by the District Judge, Hazaribagh in Miscellaneous Appeal No. 2/2000. The petitioner thereafter filed writ petition being WPC No. 5129/2000 and the same was ultimately withdrawn. The petitioner then filed civil revision before this Court being CR No. 344/2000. In the said revision application the petitioner agreed that it will take a separate connection for M/s Gautam Ferro Alloys Limited and for which the petitioner is ready to deposit the necessary amount for fresh connection. In terms of the aforesaid agreement the civil revision application was disposed of. Pursuant to the aforesaid order the petitioner applied for a fresh connection to M/s Gautam Ferro Alloys with a contract demand of 3,000 KVA and further requested to reduce the demand of the petitioner unit from 10,000 KVA to 3,500 KVA. The case of the respondent therefore, is that for the excess drawal

of electricity beyond the contract demand i.e. beyond 6,000 KVA, the respondents are entitled to charge penal rate as per the schedule. It is stated that the changing of CT ratio does not mean increase/revision of the demand of any consumer. The changing of CT ratio is a matter of power system activity on the basis of operating condition. Whenever there is any over loading in any section of system and the CT ratio is found to be inadequate for safety of the system, the CT ratio is changed for smooth operation of Damodar Valley Corporation transmission system.

5. I have heard Mr. Biren Poddar learned counsel appearing for the petitioner and Mr. M.M. Banerjee, learned counsel appearing for the DVC. Mr. Poddar mainly contended that by reason of changing the CT ratio enabling the petitioner to consume power of 10,000 KVA from September, 2000, the respondents is only to comply the technical formalities by issuing a formal letter increasing the demand of the petitioner. The action of the respondent in not enhancing the contract demand of the petitioner from 6,000 KVA to 10,000 KVA w.e.f 1st September, 2000 was wholly unjustified.

6. The admitted facts which emerge from the affidavits filed by the parties are that since before September, 2000, petitioner extended the electric power to its another industry namely M/s Gautam Ferro Alloys Limited violating the terms of the agreement which resulted in disconnection of power supply to the petitioner industry. Petitioner thereafter sent fax message dated 6th July, 2000 to the respondent Board admitting the wrong committed and agreed to pay penalty. The extract of the fax message reads as under :

"BIHAR FOUNDRY & CASTINGS LIMITED

33-A, Jawaharlal Nehru Road (Chatterji-INT Centre) 11th Floor, Apartment-7,
Calcutta-700071

6th July, 2000

Fax msg for Mr. J.D. Ambastha, Chairman

REFERRING DISCUSSION ON 4700 PERTAINING TO GAUTAM FERRO ALLOYS OUR OWN UNIT USING POWER FROM BFCL POWER(.) WE ARE AGREEABLE TO BEAR ANY PENALTY BEING IMPOSED BY A GOODSELF TO SEE THAT POWER LINE TO GAUTAM FERRO ALLOYS IS NOT DISCONNECTED (.) AND REGULARISED (.)

S.M. LATH DIRECTOR

7. Immediately thereafter, petitioner wrote a letter to the Chief Engineer, Damodar Valley Corporation to increase his contract demand from 6,000 KVA to 10,000 KVA with effect from 1st September, 2000 in view of the enhanced power requirement in its Ferro Alloys Steel Plant. Xerox copy of letter dated 29th August, 2000 has been annexed as Annexure-2 to the writ application. Respondent-Damodar Valley Corporation sent a team of Divisional Engineer, Ramgarh Sub-station and Executive Engineer, CRITM who visited the factory

premises of the petitioner on 30th September, 2000 and changed the CT ratio of the petitioner from 150/5 to 300/5 to enable it to take load at 10,000 KVA and above. A joint report was drawn and signed by the officers of the DVC which is Annexure-3 to the writ application. For better appreciation, the report reads as under :

"Damodar Valley Corporation

Office of the Executive Engineer

RAMGARH SUB-STATION, GOMD-V

P.O. Ramgarh Cantt, Distt. Hazaribagh, Bihar-829122

No. EE/RAMGARH/GOMD-V/Date 30.9.2000

Due to increase in load of M/s BFCL the Meeting CT ratio at consumer end has been changed from 150/5 to 300/5. For the above work the feeder was switched off at 12.00 hours of 30.9.2000 with TVM readings as follows :

KWH-286511

KVAH--45124.2

KVARH-673809.8

After changing the CT ratio the feeder has been charged at 15.00 hours of 30.9.2000. For the above change the M.F. of TVM will be 200 and that of PMG will be 80 from the time of charging. The initial reading after implementation of new M.F. will remain as above :

Illegible Illegible Illegible (N.K. Chauha) (J.Datta) (P.K. Datta) Consumer's E.E.
CRITM S.D.E. Representative RAMGARH

S/S

8. After the aforementioned change in the CT ratio petitioner sent several letters for formal sanction increasing the contract demand from 6,000 KVA to 10,000 KVA with effect from 1st September, 2000. It is, therefore, clear that the reason for increase in the CT ratio was due to increase in load of the petitioner industry and not for providing power to the sister concern of the petitioner namely, M/s Gautam Ferro Alloys Limited. In my opinion, therefore, the contract demand of the petitioner ought to have treated as 10,000 KVA with effect from 1st September, 2000 but the petitioner was liable to pay panel charges for the period the electric was supplied by the petitioner to M/s Gautam Ferro Alloys.

9. Taking into consideration the entire facts and circumstances of the case, I am of the opinion that the reason assigned in the joint report changing the CT ratio was to increase the load of the petitioner but it will not amount to allowing the petitioner to supply electric power to M/s Gautam Ferro Alloys Limited. However, admittedly, petitioner agreed to take separate connection for M/s Gautam Ferro

Alloys Limited. The respondents therefore, treat the contract demand of the petitioner from 6,000 KVA to 10,000 KVA with effect from 30th September, 2000 but at the same time recovers panel charges from the petitioner for the period petitioner exceeded the contract demand before September, 2000 and supplied electric power to M/s Gautam Ferro Alloys Limited. In the light of this finding, respondent No. 3 Chief Engineer (Commercial), Damodar Valley Corporation, Kolkata shall issue a fresh demand of penal charges after giving opportunity of hearing to the petitioner. Needless to say that petitioner shall be liable to pay such panel charges that may be raised by the respondents.

10. With the aforesaid observation and direction this writ application is disposed of.