
(1996) 01 SC CK 0018

In the Supreme Court Of India

Case No : Civil Appeal No. 2940 of 1996

Bihar State Electricity Board and Others

APPELLANT

Vs

Allied Refractories (Pvt.) Ltd. and Others

RESPONDENT

Date of Decision : 25-01-1996

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49

Citation : (1996) 2 JT 381 : (1996) 4 KarLJ 589 : (1996) 2 SCALE 125 : (1996) 7 SCC 491 : (1996) 1 SCR 987

Hon'ble Judges : K. Ramaswamy, J;G. B. Pattanaik, J

Bench : Division Bench

Advocate : Praveen Swarup and Pramod Swarup, for the Appellant;

Final Decision : Allowed

Judgement

1. Leave granted.

2. Though the respondents have been served twice and respondents 1, 2 and 6 were again served on September 22, 1995, they are not appearing either in person or through counsel. Acknowledgments from respondents 3, 4 and 5 for the second occasion have not been received. We, therefore, declare that they are deemed to have been served.

3. The only question is: whether the respondents are entitled to proportionate reduction of the minimum guaranteed amount for non-supply of the electricity due to disruption by trippings, load shedding and power cuts etc.? Clause (13) of the contract entered into provides that they are entitled to make an application in such a situation and the Board would consider and pass appropriate orders in that behalf. Admittedly, the respondents had not made such an application, but straightaway approached the High Court for the relief. The High Court in the impugned order dated August, 16, 1988 in C.W.J.C. No. 1480 of 1988 directed the appellant to grant them proportionate reduction. The controversy is no longer res Integra. This Court in Bihar State Electricity Board & Anr. vs. M/s. Dhanawat

Rice & Oil Mills, [(1989) 1 SCC 452] rising from the appellant-Board itself had held that u/s 49, an agreement had been entered into by the consumer with the appellant to pay minimum guarantee of charges to the Board. On failure to consume the minimum guaranteed level of electricity due to non-supply of electricity by trippings, load shed-dings or power cuts, the consumer would be entitled to make an application for proportionate reduction of the minimum guarantee. Since respondents had not made such an application, the High Court was not justified in straightaway allowing the writ petitions and directing the grant of the proportionate reduction. The order is set aside. This order does not preclude the respondents to make application accordingly u/s 49 of the Electricity Supply supply Act and it would be open to the appellant-Board to consider and pass appropriate orders within a reasonable time from the date of making the application.

4. The appeal is accordingly allowed, but, in the circumstances, without costs.