

(2016) 01 SC CK 0046

In the Supreme Court Of India

Case No : Civil Appeal No. 585 of 2016 (Arising out of SLP (C) No. 18910 of 2010)

Bihar State Electricity Board and Others

APPELLANT

Vs

Bhola Ram Steel Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49, Section 78
Electricity Act, 1910 — Section 26(7)

Citation : (2016) 160 AIC 267 : (2016) AIR(SCW) 660 : (2016) 2 AIRJharR 371 : (2016) AIRSC 660 : (2016) AII SCR 435 : (2016) 2 AIIWC 2024 : (2016) 1 ApexCourtJudgments(SC) 614 : (2016) 1 BBCJ 302 : (2016) 2 BLJud 1 : (2016) 3 CalHCN 197 : (2016) 2 CivCC 491 : (2016)

Hon'ble Judges : M. Yusuf Eqbal and Arun Mishra, JJ.

Bench : Division Bench

Advocate : Mohit Kumar Shah, Advocate, for the Appellant; S.D. Sanjay, Sr. Adv., Devashish Bharuka and Abraham Mathews, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.—1. Leave granted.

2. The appeal has been preferred aggrieved by the judgment and order passed by the High Court of Judicature at Patna in the writ petition and the appeal, thereby quashing the demand raised by the Appellant for the year 1999-2000. M/s. Bhola Ram Steel Pvt. Ltd. filed a writ application that it was an industrial unit to manufacture iron and steel structure and section like bar roll, place angle, channel, square, tor and round, general fabrication and annulling of sheets it applied as HTIS consumer for a connected load of 500 KVA. The competent authority sanctioned a load of 500 KVA vide letter dated 24.2.1998. The Respondent-industry commenced production w.e.f. 28.3.1998. The Appellant averred that on 23.1.1999 the premises of the Respondent were inspected. Connected load was found to be 495 HP. Appellant submitted that as per the Industrial Policy of 1995 announced by the State Government, Resolution dated

3.9.1996 was passed by the Energy Department of the State Government to grant exemption from payment of minimum guarantee charges to the industrial unit having connected load of 500 KVA and accordingly in exercise of power Under Section 78 of the Electricity Supply Act, 1948 issued directives to the Electricity Board for grant of such incentives. The industrial units commencing production between 1.4.1993 and 31.8.2000 were to be exempted from payment of minimum guarantee charges for a period of 5 years from the date of commencement of production.

3. The maximum demand indicator in the Trivector meter had wrongly shown more than the contracted demand of 500 KVA. The industry also submitted that the meter stopped functioning in the month of January, 2000. It was replaced on 9.2.2000, again the meter was found to be faulty and again replaced on 21.3.2000. Thus the readings of the meter could not be relied upon.

4. The impugned bill was served on the Respondent in May, 2000 which had been questioned in the writ application filed by the industry.

5. It was contended on behalf of the Electricity Board that an agreement entered into on 2.3.1988 for a contract demand of 500 KVA. Appellant installed transformer of 750 KVA. During the financial year 1999-2000 i.e. from April, 1999 to March, 2000 maximum demand of the Respondent has exceeded the contract demand of 500 KVA in as many as six months. In the month of March, 2000, maximum demand reached all time high of 621.06 KVA. Since it was more than 110% of the existing contract demand of 500 KVA the contract demand as per Clause 16.5 of the tariff notification dated 21.6.1993 has been taken to be 621.06 KVA.

6. The maximum demand which is the actual demand of the consumer can never be more than the connected load when expressed in terms of the KVA. The industry has increased its connected load without information to the Board. Thus it has crossed the maximum limit of connected load i.e. 500 KVA and could not be said to be entitled for exemption from payment of minimum charges.

7. It was also contended by the Board that on 29.9.1999 meter test was conducted and it was found to be correct and maximum demand recorded was found to be 508.20 KVA. It was again checked on 8.12.1999. Maximum demand in the month of December, 1999 was recorded as 616.20 KVA which was not disputed by the industry.

8. The Single Bench quashed the demand on the ground that on account of consumption of electricity in excess of contract demand, connected load automatically gets altered, has not been established by the Board. The benefit of exemption from annual minimum guarantee charges could not be denied to the industry. It was not established by the Board that the connected load was more than 500 KVA. The Division Bench has affirmed the order on the ground that greater consumption of power will result in economic development, generation of employment and income and it is better for the State of Bihar. If the industry has

exceeded the connected load or has consumed electricity in excess, it could not be deprived of the benefit of power incentives. It also opined that no evidence on record indicated that the consumption was beyond the connected load. Aggrieved thereby, the Bihar State Electricity Board is in appeal before us.

9. It was submitted on behalf of the Electricity Board that maximum demand indicator has recorded the actual consumption. The High Court has erred in quashing the demand. Reliance has been placed upon Clause 16.5 of the notification of 1993 issued Under Section 49 of the Indian Electricity Act, 1948. It was submitted on behalf of the industry that there was no correlation between the connected load and contract demand and the maximum demand recorded by the indicator. At the time of inspection the connected load was found to be 495 KVA. Thus as per the industrial policy of 1995 when connected load of 500 KVA has not exceeded at any point of time, the High Court has rightly quashed the demand which was raised.

10. The fact is not in dispute that the contract demand sanctioned was 500 KVA as is apparent from the agreement entered into between the parties.

11. The basis of claim is notification dated 11.10.1996 issued by the Bihar State Electricity Board pursuant to Industrial Policy of the State Government of 1993 and 1995, relevant portion is extracted hereunder:

The industrial units which commence production or engage in defined expansion/diversification in between the period 01.04.1993 to 31.08.2000 and whose connected electricity load is upto 500 KVA will be exempted from payment of minimum guarantee (minimum base charges) for a period of five years from the date of connection.

12. Before dilating further it is appropriate to take note of Clause 16.5 of the statutory notification of 21.06.1993 issued Under Section 49 of the Indian Electricity (Supply) Act, 1948. Clause 16.5 is extracted hereunder:

If during any month in a financial year (April to March next year) the actual maximum demand of a consumer exceeds 110 percent 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.

13. The installed load means a sum of the rated inputs of the electrical apparatus installed on the consumer's premises. Connected load means that part of the load of consumer supplied by the Supply Undertaking and contract demand means demand fixed by the agreement that the consumer may not exceed except according to the conditions of the tariff.

14. It is not in dispute that the maximum demand indicator meter hereinafter referred to as MDI meter was installed which is a device to measure the maximum demand at a particular half an hour cycle of running of the machinery in the factory; meaning thereby it measures the maximum demand of the

electrical energy in the cycle of half an hour in a month. The electricity actually consumed is recorded in the MDI meter. The demand in the instant case has been raised by the Electricity Board on the basis of reading recorded by the MDI meter. The MDI meter has recorded the consumption of energy in excess of the contracted load on the basis of which demand has been raised. There was excess drawal of electrical energy than the actual permitted load. The MDI meter is also called Trivector meter. As per the readings recorded by the MDI meter it is apparent that consumer has availed and drawn electricity in excess of the contracted load in contravention of the agreement with the Electricity Board. The reading of MDI meter is indicator of total connected loads, the total load demanded and availed of during the course of actual consumption of energy. In the facts of instant case it is apparent that for six months in the year 1999-2000 the MDI meter has recorded excess load. Thus we find that the High Court has erred in the facts of the instant case in holding that it has not been established in the instant case that the connected load was more than 500 KVA.

15. This Court in *Orissa State Electricity Board and Anr. v. IPI Steel Ltd. and Ors.*, (1995) 4 SCC 320 has noted how a trivector meter works and efficacy of MDI meters. It has been followed by this Court in *Bhilai Rerollers and Ors. v. M.P. Electricity Board and Ors.*, (2003) 7 SCC 185. This Court in *Bhilai Rerollers* (supra) has referred to MDI meters and the decision of Orissa State Electricity Board (supra). Relevant portions are extracted hereunder:

16. We have carefully considered the submissions on behalf of parties on either side. This Court, in the decision reported in *Orissa SEB case*, (1995) 4 SCC 320 though in dealing with the rights of the Electricity Board for enforcing payment of maximum demand charges and minimum monthly charges noticed about the utility of MDI meter also called "trivector meter" and observed as hereunder at para 10: (SCC pp. 326-27)

Every such consumer is provided with two meters. One is called the "trivector meter" and the other is the normal meter which records the total quantity of energy consumed over a given period - which is ordinarily a month. The meter which records the total consumption requires no explanation or elaboration since we are all aware of it. It is the other meter which requires some explanation. Now every large-scale consumer knows the amount of energy required by him and requests for it from the Board. If the Board agrees to supply that or any other particular amount of energy, it makes necessary arrangements therefor by laying the lines to the extent necessary and installing other requisite equipment. It is obvious that if a factory uses energy at a particular level/load and for a particular period, it consumes a particular quantity of energy. The trivector meter records the highest level/load at which the energy is drawn over any thirty-minute period in a month while the other meter records the total consumption of energy in units in the month. Let us take the case of the Respondent to illustrate the point. The maximum demand in his case is up to but not exceeding 7778 KVA. That is his requirement. In the normal times, he is entitled to draw energy

at that level/load. That is his maximum demand under the agreement. But he may not always do so. Say, in a given month, he draws energy at 6000 KVA level only, even then he has to pay the minimum charges as stipulated in the agreement. But if he draws and consumes energy exceeding eighty per cent of the energy, he pays demand and energy charges for what he utilises. Now, let us notice how the trivector meter i.e. the meter which records the maximum demand works; the meter is so designed that it only records the maximum load/level at which energy is drawn over any thirty-minute period in a month. It only goes forward but never goes back until it is put back manually. To be more precise, suppose the Respondent has drawn energy at 7770 KVA for a thirty-minute period on the first day of the month, the meter will record that figure and will stay there even if the Respondent consumes at 7000 or lesser KVA level during the rest of the month. From this circumstance, however, one cannot jump to the conclusion that it is an arbitrary way of levying consumption charges.

17. The provisions contained in Sub-section (7) of Section 26 of the Indian Electricity Act, 1910 envisage the installation of additional meters and checking apparatus, in addition to the meter for ascertaining the amount of energy supplied and quantity consumed. By and large it seems to be that the utility of MDI meter to record effectively and correctly the drawal of power at a continuous block period of 30 minutes in a month by a consumer has come to stay as a reasonably safe method with due credibility and recognition in the field and appears to be in vogue even at the global level. The question as to whether it can also safely be relied upon as the basis for investigating and determining the excess quantity of load said to have been availed of by a consumer over and above the contracted load as per the agreement is concerned, in our view admits of no doubt and we could find no reasonable or tenable and valid objection to exist so far as its relevance, utility and purpose of determination are concerned. If the reading by such a device installed could provide a sound basis and yardstick as accepted by this Court in the decision noticed supra for adjudging liability to pay the maximum demand charges/minimum monthly charge, it should in our view be considered to be equally efficacious for the purpose on hand also in adjudging the issue as to whether the consumer has at any given point of time, in contravention of the agreement with the Board, availed and drawn electricity in excess of the contracted load.

18. Electrical motors are designed to run up to a stipulated capacity of horse power. At the same time as disclosed from the communication from Bhilai Steel Plant (an undertaking of the Steel Authority of India: a Government of India enterprise) brought on record, so far as the motors used in rolling mills are concerned, they are said to have an overload capacity in the range of 2 to 2.5 times their rated capacity and at times even about 3 times, but only for a very short duration and at any rate such a situation cannot be sustained like that continuously for a duration of 30 minutes. Hence, it is stated that an MDI meter which measures the demand in KW and integrating over a period of 30 minutes should/will register a demand value in KW which is either less than or equal to

the motor-rated KW. Therefore, if in these cases, MDI meter disclosed such higher rate of demand, it would be futile for the Appellants to contend that there was no overdrawal in excess of the contracted load, since such excess drawal stands substantiated by the actual overdrawal in excess from the readings of MDI meter and the motor-rated KW as claimed by the Appellants are not either genuine or correct. The object of the Appellant in making reference to lock rotor test also does not seem to be relevant since the said test could, it appears, only help to determine the capacity of the motor and not of the total connected load or the total load demanded and availed of during the course of actual consumption of energy."

16. This Court has in *Bhilai Rerollers* (supra) held that the reading of the MDI meter could provide a sound basis and yardstick to pay maximum demand charges and for adjudging the issue as to whether the consumer at any given point of time of the agreement has availed and drawn excess electricity. This Court has also indicated that lock rotor test is normally held to determine the capacity of the meter and not the total connected load or the total load demanded and availed of during the course of actual consumption of energy. Merely in an inspection in January, 1999 if the connected load was found to be of 495 HP when for six months in a subsequent period of April, 1999 to March, 2000 maximum demand has increased beyond the contracted load of 500 KVA and it is not disputed that it was more than 110% of the contract load. Thus as per Clause 16.5 of the notification dated 21.06.1993 issued under the Electricity Supply Act, 1949 in our opinion the Electricity Board was well within its rights to realize the amount as per tariff notification. We find that the High Court has erred in holding in the facts of the case that there can be no correlation with the maximum demand and the connected load. Similarly the High Court has proceeded on irrelevant consideration while it has observed that entrepreneur has stepped up production, which will result in economic development, generation of employment and income and higher consumption is better for the State of Bihar. This was not a question to be gone into by the High Court. The High Court was required to consider the reliability of the MDI meter and frequent violation of contract demand and the tariff notification dated 21.6.1993. There is material on record indicating that the connected load has been exceeded as reflected in the meter reading. It could not be due to wrong recording of meter or short circuit etc. as MDI meter records excess capacity drawn over a continuous period of 30 minutes" duration during a month. The MDI meter's method is well recognized and widely accepted one. The plea taken that there was defect in the meter and they were changed in January, 2000 and again in March, 2000 has no legs to stand. However MDI meter readings for earlier periods too indicated demand exceeding 500 KVA and in the month of November 1999, the meter was found to be in order and maximum demand exceeded contract demand. Once maximum load drawn had exceeded the contracted load, in the fact of the case, it can safely be held that there is violation of the permissible connected load. The recording in MDI meter is more credible and

reliable than the stand of the industry that the meter was faulty, set up just to escape from the liability.

17. In the circumstances we have no hesitation in setting aside the orders passed by the Single Bench and Division Bench of the High Court. The impugned demand is held to be legal and valid. Let the outstanding amount calculated as on today, be paid as per norms of the Board within a period of six weeks from today. The appeal is allowed. The impugned judgment and orders are set aside and writ petition is dismissed. Parties to bear their own costs.