(2003) 08 JH CK 0068

In the Jharkhand High Court

Case No : Writ Petition (C) No''s. 1868 and 5980 of 2002 and 986 of 2003

Bokaro Steel Employees Co-operative House Construction Society Member Association and Another — APPELLANT

Vs

Steel Authority of India Ltd.
 Usha Prakash Vs Bokaro Steel Plant and Others
 Bokaro Steel Employees Co-operative House Construction Society Ltd. Vs Steel Authority India Ltd. and Others — RESPONDENT

Date of Decision : 20-08-2003

Acts Referred:

Citation : (2003) 4 JCR 718

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Mihir Kumar Jha, Ajit Kumar, D.K. Pathak and M.K. Sinha, in W.P. C No. 5980/02, A.K. Sahani, in W.P. C No. 1868/02, Ram Balk Mahato, K.B. Sinha and Amitabh, in W.P. C No. 986/02, for the Appellant; K.B. Sinha, (Except W.P. (C) No. 986/03), P.K. Sinha Rajiv Ranjan and Amitabh, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—In all these cases, as comon question of law involved and almost similar prayer has been made, they wee heard together and are being disposed of by this common judgment.

2. The petitioner, Bokaro Steel Employees Co-Operative House Construction Society Members Association (for short ''Association'') through Ramta Prasad Singh and another of WP (C) No. 5980 of 2002 has challenged the bill dated 5th September, 2002 as raised by 6th respondent. Executive Director, P&A Steel Authority of India Limited, Bokaro Steel Limited (for short BSL) whereby it had demanded a sum of Rs. 3,05,65,796.16 paise from Bokaro Steel Employees Co-operative House Construction Society Limited, Bokaro (for short ''Co-operative Society'') on account of arrears on revision of electricity charges w.e.f. May, 1S97. Further prayer has been made to set aside the enhancement of electricity

charges as raised by BSL @ 239 paise/kwh (unit) w.e.f. May, 1997 and @ 332 paise/KWH (unit) w.e.f. April, 2002. The Association has also prayed to direct the respondents not to give effect to the orders dated 13th May, 1998, 8th January, 1999 and 29th January, 1999 whereby the rate of electricity has been enhanced.

Prayer has been made to direct the respondents to charge the electricity rate at par with the rates as being charged on the employees of BSL and to restore concession to the extent supply of 15,000 free units on account of provision of street lights and for restoration of the concessions of energy charges to the retired employees of BSL.

The petitioner, Usha Prakash of WP (C) No. 1868 of 2002 has prayed for direction on the respondents to raise energy bills regularly on the basis of rate fixed by Damodar Valley Corporation . (for short DVC) without adding any other charges.

The 3rd petition, WP (C) No. 986 of 2003 has been preferred by the Co-operative Society (Bokaro Steel Employees Co-operative House Construction Society Limited) which has also challenged the order No. 1000 dated 5th September, 2002 whereby the Executive Director (P&A) raised demand of Rs. 3,05,65,796.16 paise on account of electricity charges and the order No. 93 dated 25th January, 1999 whereby the rate of electricity charges raised to Rs. 2.39 paise per unit w.e.f. 1st May, 1997 and the order No. 533 dated 2nd May, 2002 whereby electricity charges further raised to Rs. 3.32 paise per unit w.e.f. 1st April, 2002.

3. According to petitioner, the Cooperative Society was registered on 17th April, 1968 under Co-operative Societies Act, 1912. On 18th September, 1968, the BSL accorded approval for allotment of land to the Co-operative Society. It members were employees of BSL and most of them have now retired. The BSL decided to supply water and power and to give sewerage facilities to the Co-operative Society vide its decision dated 28th February, 1969, on payment. It was agreed to supply electricity at the rate which would cover the cost of power and distribution charges. An agreement was reached between the Co-operative Society and BSL on 4th December, 1969 for supply of electricity on 90 acres of land of Co-operative Society. Under Clause 3 of the agreement, it was agreed upon that the BSL will have control over electrical installation in the area allotted to the Co-operative Society for which the Co-operative Society will be liable to pay cost with interest @ 6% per annum.

In the bye-laws framed by the Cooperative Society in January, 1973, the Co-operative Society agreed to provide electricity to its members on payment of actual charges for supply of energy as per bills raised by BSL and 5% interest for delayed payment. A rule was also framed by the Co-operative Society on 30th October, 1985 for supply of electrical energy to its members wherein "prevailing rate" of electrical energy was defined as "the rate of electrical energy charged by BSL from time to time".

4. According to petitioners, by its decision dated 16th February, 1990, the BSL agreed to give the following benefits :--

"(A) To exclude maximum demand charges, which was 26 paise per unit W.e.f. 1.4.1987.

(B) To reduce transmission and handling losses of BSL from 20% to 5.5% right from 1972-73.

And

(C) To give concession to Co-operative Society of 15000 units per month for street lighting in place of Rs. 10,000/- per month."

According to counsel for the petitioner-Association of WP (C) No. 5980 of 2002, the benefits aforesaid were given by BSL for the following reasons :--

(i) The maximum demand charges arises due to fluctuating loads of Rolling Mills in Plant.

(ii) The distribution system and Low Tension lines are owned and maintained by the Society.

(iii) Depreciated value, maintenance and operational cost of equipments and switching plant of BSL for supply of power is at 11 KV to society.

(iv) To obviate their reduction in effective concessional units due to future enhancement rate of electricity.

Further case of petitioners is that the BSL also extended the aforesaid facilities to retired employees, who are members of the Co-operative Society vide its decision dated 14th December, 1990 and decided to supply electricity at the rate the BSL supply electricity to its serving employees.

5. A fresh tariff rate was announced by BSL on 26th July, 1991 w.e.f. 1st April, 1991 for its employees, members of the Cooperative Society and others :--

"(i) For Co-operative Society; 87 paise/kwh from April, 1981 to June, 1991 and 91 paise/kwh for the period from July, 1991 onwards.

(ii) For others : 137 paise/kwh for the period from April, 1981 to June, 1991 and 152 paise/kwh from July, 1991 onwards.

(iii) For commercial purpose; 139 paise/kwh for the period from April, 1981 to June, 1991 and 154 paise/kwh from July, 1991 onwards.

According to counsel for the petitioners, the aforesaid lesser rate was fixed for the members of the Society on account of exclusion of Maximum Demand Charges and reduction of transmission and handling losses as per decision dated 16th February, 1990.

The electricity rate was again revised by BSL on 31st July, 1995, as follows :--

"(i) For members of the Co-operative Society- 105 paise/kwh upto March, 1995 and 156 paise/kwh from April, 1995 onwards.

(ii) For others- 152 paise/kwh upon March, 1995 and 187 paise/kwh from April, 1995 onwards. And

(iii) For commercial purpose- 154 paise/kwh upto March, 1995 and 191 paise/kwh from April, 1995 onwards."

Subsequently, the rate of electricity was reduced for the members of the Cooperative Society from 156 paise to 105 paise per KWH vide order dated 18th December; 1995.

This reduction, according to petitioners, is because of benefit of concession given by BSL vide its decision dated 16th February, 1990.

An office order was issued by BSL on 13th May, 1998 whereby it decided to revise the electricity charges from 105 paise/kwh to 270 paise/kwh for the employees living in the Co-operative Society for consumption of electricity beyond certain limits. It was decided to charge 40 paise/kwh upto the limit, as shown below

Type of place Limit ''A'' 350 units ''B'' 290 units ''C'' 220 units ''D'' 200 units ''E'' 180 units But it was made clear that the electricity rate upto limit mentioned above shall be applicable only to the employees so long they are on the roll of the company.

Revised rate of electricity was issued for non-employees and employees living in the quarters/hostel of BSL vide an order dated 19th November, 1998 :--

Sl. No. Category Revised Rate

Rs.

1. Non-Employees 2.71/Unit

2. (a) SAIL/BSL Employees (In Company''s Qtrs.) 1.00/Unit

(b) CISF (In Company''s Qtrs) 1.00/Unit

3. Hostel 1.00/Unit

Camps 1.00/Unit

L.H. 125.00/ Month"

It appears that on the request of the Co-operative Society, the BSL brought down the rate of electricity from 270 paise to 239 paise/unit (KWH) for the members of the Co-operative Society by its order dated 5th January, 1999. It was, however, made clear that the employees of BSL, who were residing in their own houses in the Co-operative Society, shall be charged at par with concessional tariff applicable to BSL employees living in company''s quarters. It was informed that the free supply of electricity upto 15000/kwh (Units) per month for street lights for the Co-operative Society as was allowed earlier vide Officer Order No. 265/A.O. dated 16th February, 1990 shall be stopped forthwith. It was also made clear that the aforesaid revised rate was subject to revision of electricity charges as and when DVC will revise their power tariff.

Subsequently, the revised rate of 239 paise/kwh was given retrospective effect from 1st May, 1997 by an order issued by BSL dated 29th January, 1999, Revised bill was raised on 9th March, 1999 from retrospective date.

A Title Suit No. 32/99 was filed by three members of the Co-operative Society in the Civil Court, Bokaro. In the said case, learned Court passed an order of injunction on 26th August, 1999 restraining realization of electricity charges as per revised rate. Later on, the order of injunction was vacated by appellate Court on 2nd September, 2002 in Misc Appeal No. 40/99. After vacation of injunction order, the respondent- BSL raised demand on 5th September, 2002 for Rs. 3,05,65,796.16 paise.

The BSL raised energy bill @ paise/ kwh for the members of the Co- operative Society w.e.f 1st May, 1997 in terms with order dated 29th January, 1999. Delayed payment Surcharge @ 2% per month was charged. This apart, 9% interest per annum was charged on certain outstanding dues.

The BSL further revised the electricity rate w.e.f 1st April, 2002 vide its order dated 2nd May, 2002, as shown below :--

"1. Central and State Government

(i) Residential Quarters-Rs. 1.68 paise/Unit

(ii) Office-Rs. 3.32 paise/Unit

2. PSU and Bank-3.32 paise/Unit

3. Other establishment-3.32 paise/ Unit

4. Commercial and non-commercial-Rs. 3,32 paise/Unit."

The Co-operative Society represented before the BSL against the rate and bill as per observation of the appellate Court. It was rejected on 3rd September, 2002. Subsequently, the Co-operative Society agreed to pay the total amount in installment. It gave its undertaking vide letter No. CHC/ 885/02 dated 12th September, 2002 to pay the arrears in six equal monthly installments. The undertaking given by Cooperative Society to pay the arrears in six equal monthly installments was accepted by BSL vide their letter dated 29th September, 2002. Inspite of such undertaking, the Co-operative Society did not deposit the total amount and moved before the Deputy Commissioner, Bokaro to settle the dispute, On 16th November, 2002, it was agreed upon by Co-operative Society to pay the dues in 20 installments.

According to petitioners, the Delayed Payment Surcharge (for short DPS) was charged for the first time on 4th March, 2003 but it is not in dispute that the Co-operative Society failed to keep their promise to pay the arrears in six installments i.e., by March, 2003 as per their letter dated -12th September,

2002. It also failed to pay the total amount in twenty installments, as promised before the Deputy Commissioner, Bokaro.

It appears that the Co-operative Society gave falls undertaking just to delay the matter keeping the BSL in dark. Instead of keeping their word, their members and the Co-operative Society moved before this Court against the demand in question.

6. The grounds taken by petitioners in favour of their claim, are as follows :--

"(i) The BSL cannot take into consideration the element of maximum demand charges without rescinding their earlier decision dated 16th February, 1990, nor it can take away the benefit of 15000 free units granted for street lights, (this plea has been taken by petitioner-Association of WP (C) No. 5980/02).

(ii) There being no provision in the DVC. Tariff for delayed payment surcharge and actually delayed payment surcharge having not raised by DVC, nor paid by BSL, the BSL cannot charge 2% interest towards. DPS. There is no prove that the BSL has actually paid DPS to DVC.

(iii) The DPS/interest become payable only after raising of the bills and if the consumer fails to pay the dues within time. The DPS/ interest prior to the period of raising bill cannot be charged by BSL.

(iv) In absence of any provision to charge DPS @ 2% per month, the BSL, at best can charge 6% interest per annum as per agreement reached between the Co-operative Society and BSL.

(v) The revised rate of 239 paise/ kwh (unit) cannot be charged from retrospective date of 1st May, 1997, at best it can be charged from prospective date on which it was modified.

(vi) The rate of 332 paise/kwh having not been notified for the members of the Co-operative Society, even if it is made operational, it cannot be given effect prior to 2nd May, 2002 (this plea has been taken by petitioner-Association of WP (C) No. 5980/02).

(vii) The charging of 82 paise/kwh for maintenance of supply system as being charged by Co-operative Society should be waived as the BSL is supplying, electricity to others at the same rate of 332 paise/kwh inclusive of maintenance charge (this argument against the Co-operative Society has been raised by petitioner-Association of WP (C) No. 5980/02).

(viii) The charging of 239 paise/kwh from the members of Co-operative Society is arbitrary and discriminatory. The BSL is charging lower rate of 133 paise/kwh from other residents like its employee, State Government employee, CISF employee etc."

The stand taken by BSL are as follows :

"(i) The BSL is a sanctioned holder u/s 28 of the Indian Electricity Act and DVC is the licencee.

(ii) The DVC does not make any distinction in its supply to BSL, such as High Tension and Domestic Tariff. The BSL takes bulk supply for the Bokaro Steel Plant from DVC at the uniform High Tension rate from which supply is made to others including members of Co-operative Society.

(iii) The BSL supplies energy to the members of the Co- operative Society on cost and no profit basis by only recovering its purchase price and the transmission and handling losses and the electricity duty and surcharge which is the statutory liability.

(vi) Certain concession given in electricity supply, the subsidies rate to the members of the Co-operative Society in the past have been with drawn because of financial ill health of the Bokaro Steel Plant, BSL, SAIL.

(v) The Co-operative Society has less than 78 serving employees with every house having about 9 to 10 sub-tenants and, therefore, instead of 468 consumer holders for 468 plots, there are more than 4000 consumers within the Cooperative Society.

(vi) The action of BSL is not arbitrary, nor discriminatory. There are good grounds to supply electricity at a lower rate to the CISF, State Government or Central Government employees residing in BSL quarters.

8. The question whether electricity tariff can be revised from retrospective date or not fell for consideration before a Division Bench of the Patna High Court in the case of Bihar State Electricity Board and Others Vs. State of Bihar and Others, . The Court held that in absence of any power allowing the Board to make the tariff effective retrospectively, making tariff from retrospective date is bad in law.

In view of the aforesaid decision, this Court was of the opinion that the BSL, at least, should not give effect to revised rate of electricity from retrospective date. Further the Co-operative Society having agreed earlier to pay the bill amount @ 239 paise/kwh in six installments vide their letter dated 12th September, 2002, this Court adjourned the case for BSL and the Cooperative Society to sort out the dispute outside the Court.

To negotiate the matter, a meeting was held on 15th June, 2003 between the Cooperative Society and BSL, wherein Mr. P.N. Roy, Chairman, Mr. B.B. Jaipuriar, Hony. Secretary and Mr. S. Prasad, Member signed on behalf of Co-operative Society and three General Managers, namely, Mr. S.K. Mehrotra, Mr. G.D. Pandeya and Mr. M.D. Sinha signed on behalf of BSL apart from Mr. S.S. Bharadwaj, DPLO, BSL and the BSL Management agreed to grant the concession :--

"(a) Interest @ 9% per annum on the outstanding amount has been waived.

(b) Demand for revised electricity rate was raised in August, 1998. Management decided to charge Delayed Payment Surcharge (payable to DVC) only from August, 1998 onwards.

(c) It is again reiterated that Management is not charging Delayed Payment Surcharge prior to August, 1998 i.e., from May, 1997 to July, 19,98.

(d) The calculation of DPS was shown and explained to the Society, copy of the calculation has also been handed over to the Society for records.

The negotiation concluded with above observations."

9. Mr. Ram Balak Mahato, learned senior counsel for the Co-operative Society while requested the Court to direct the respondents to accept the arrears in installment, submitted that the DPS @ 2% per month is in the higher side, he accepted that the Co-operative Society, otherwise, agreed with the concession given by the management of the BSL to the Co-operative Society in its meeting held on 15th June, 2003. Similar plea was taken by the counsel for the petitioner, Usha Prakash of WP (C) No. 1868/02. However, the petitioner-Association of WP (C) No. 5980/02 being not satisfied with the concession given by BSL to the members of the Co-operative Society, their counsel placed their case for decision on merit.

10. The Tariff/rate of electricity cannot be revised from retrospective effect is the finding of Division Bench of the Patna High Court in the case of Bihar State Electricity Board and Others Vs. State of Bihar and Others, . Therefore, the decision of BSL dated 29th January, 1999 to revise electricity charges @ 239 paise/kwh w.e.f. 1st May, 1997 for the members of the co-operative Society cannot be upheld.

The BSL revised the rate of electricity @ 270 paise/kwh vide its order dated 13th May, 1998 and, therefore, the BSL can raise the bill in the revised rate w.e.f. 13th May, 1998. It having lower down the rate from 270 paise/kwh to 239 paise/kwh, it is open to the BSL to raise bill @ 239 paise/kwh w.e.f. 13th May, 1998. After negotiation, the BSL having agreed to raise revised bill @ 239 paise/kwh w.e.f. 13th May, 1998, it cannot be held arbitrary.

So far as Delayed Payment Surcharge (for short DPS) is concerned, strictly speaking, the BSL being not a licencee, cannot charge any amount towards DPS. However, if for delayed payment, the DVC charges DPS @ 2% per month, it is open to the BSL to recover such interest amount of the same rate from the defaulter consumer for payment in favour of DVC or to adjust the interest amount of DPS, if already paid after recovery from the defaulter consumer.

11. Mr. P.K. Sinha, learned senior counsel for DVC brought to the notice of the Court that the DVC charged DPS @ 2% per month which is being recovered from consumer, if the consumer fails to pay the amount in time.

It was brought to the notice of the Court that the first bill in the revised rate of 239 paise/kwh was raised in August, 1998 but the amount was not paid by

Cooperative Society for one or other ground including interim order of stay passed by civil Court in a suit. Thereafter, for certain period, the revised bill could not be raised because of the stay order but it was raised after the stay order was vacated. In this background, if bill has been raised to recover the amount of DPS from the date of first demand i.e., August, 1998, which the Co-operative Society agreed to pay earlier and also in the meeting held on 15th June, 2003, it cannot be held to be illegal or arbitrary.

It has been brought to the notice of the Court that the DVC raised bill towards DPS for the period from November 1998 to August, 2002 @ 2% per month and the BSL has been asked to pay DPS of Rs. 88,66,50, 750.00 paise.

12. The BSL has given reason to raise the charge @ 239 paise/kwh, details of which have been shown as follows :

"Particulars Amount Remarks

(Rs.)

(a) Average purchase cost from the DVC 212.7

(b) Anticipated increase In fuel surcharge 4.00

(c) Distribution and Handling loss @ 5.5% as per office order 11.91 For others 20%

(d) Electricity duty 8.00

(e) Electricity duty Surcharge 2.00

Total 238.61 Round of 239 paise

The members of the Co-operative Society cannot claim supply of electricity at a subsidies rate as a mater or right. It is for the sanctioned holder to decide the rate. The Court can only look into the question whether the revised rate is excessive, arbitrary or not. The BSL having justified why they are charging electricity @ 239 paise/ kwh, this Court cannot interfere with the rate.

Further, the BSL having no jurisdiction, it cannot fix the rate of electricity (tariff), nor can earn profit. But in the present case, as the BSL is supplying electricity on cost and no profit basis @ 239 paise/kwh, it requires no interference.

13. Mr. P.K. Sinha, learned senior counsel for the BSL explained the reasons to supply electricity at a concessional rate of CISF or the State Government employees. It was pointed out that the CISF constables are posted in Bokaro Steel Plant for its safety and security. The State Government employees have been allowed to retain quarters as they are maintaining law and order and doing other administrative job. The State Government having made the land available to BSL, it was decided to supply electricity at a concessional rate.

The classification as shown above being valid and as the members of the

Cooperative society as a matter of right cannot claim supply of electricity at a subsidies rate, their prayer for supply of electricity at a concessional rate is rejected.

14. So far as Maximum Demand Charge is concerned, the petitioners cannot derive any benefit out ,of decision dated 16th February, 1990, as BSL cannot charge Maximum Demand Charge being not a licencee. This apart, the element of Maximum Demand Charges having not been added in the revised rate of 239 paise/kwh as noticed above, it is not necessary to decide this issue.

So far as charge of 82 paise/kwh for maintenance of supply is concerned, it is a dispute between the members of the Co operative Society and the Co-operative Society. The BSL is not charging the amount. The aggrieved person may approach the appropriate forum such as Registrar, Co operative Societies, if they are aggrieved against the decision of their Co-operative Society.

15. In the aforesaid background, the concession having already been granted by BSL to the members of the Co-operative Society in its meeting held on 15th June, 2003, no further relief can be granted. If the Co-operative Society and its members intend to avail the concession, should pay the energy charges as per concession of BSL within the period of one month and the interest amount loosely called as Delayed Payment Surcharge, within one month thereof i.e., the total arrears with interest within a period of two months from the date of receipt/ production of a copy of this judgment.

16. All the writ petitions stand disposed of, with the aforesaid observations. However, there shall be no order, as to costs.