

(2016) 08 JH CK 0089

In the Jharkhand High Court

Case No : L.P.A. No. 181 of 2005.

Chotanagpur Small Scale Industries Association, having its office at Industrial Area, Kokar, Ranchi through its current President Sri Bikash Kumar Singh son of Sri K.P. Singh resident of Lake Avenue, Kanke Road, P.S Gonda, District Ranchi - Appellant @HAS

Date of Decision : 24-08-2016

Acts Referred:

Citation : (2017) AIR(Jharkhand) 47 : (2017) 1 AIRJharR 620 : (2016) 4 JBCJ 259 : (2017) 2 JCR 191 : (2017) 1 JCR 484

Hon'ble Judges : D.N. Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. M.S. Mittal, Sr. Advocate and Mr. N.K. Pasari, Advocate, for the Appellants; Mr. Ajit Kumar, Sr. Advocate, M/s. Amit Sinha and Navin Kumar, Advocates, for the J.S.E.B; M/s. Manoj Tandon, Shiv Shankar Kumar and Navin Kumar Singh, Advocates, for the B.S

Final Decision : Dismissed

Judgement

D.N. Patel, J.(Oral) - This Letters Patent Appeal has been preferred against the Judgment dated 29th October, 2004 passed in C.W.J.C. No. 644 of 2000(R), whereby the learned Single Judge has relegated the original petitioners to approach the Chairman of the Electricity Board. Challenge in the said writ petition was to a circular, issued by the Respondent-Board dated 14th September 1999 (Annexure-6 to the memo of this Letters Patent Appeal), which tantamount to amendment in the tariff of 1993. Second ground is that the said circular also discriminate between the varieties of consumers. Third ground for challenging the said circular, which has been issued on 14th September, 1999, is that the same has been given retrospective effect from 1st July, 1993. On these three grounds, the circular dated 14th September, 1999 was under challenge. Initially this very writ petition was dismissed by the learned Single Judge vide order dated 27th March, 2000 (Annexure-10 to the memo of this L.P.A.) against which Letters Patent Appeal bearing L.P.A No. 155 of 2000(R) was preferred by these appellants, which was also dismissed by the Division Bench of this Court vide

order dated 9.5.2000 (Annexure 11 to the memo of L.P.A.). Thereafter, Civil Review No. 47 of 2000(R) was preferred by these appellants, which was also dismissed by the Division Bench of this Court vide order dated 28th June, 2000 (Annexure 12 to the memo of L.P.A.), which was further challenged before the Hon"ble Supreme Court in Special Leave Petition, which was admitted and was converted into Civil Appeal No. 3370 of 2001, which was decided by Hon"ble the Supreme Court vide order dated 27th April, 2001 and the matter was remanded and therefore, again the writ petition being C.W.J.C. No. 644 of 2000 (R) was decided by the learned Single Judge vide order dated 29th October, 2004 and being aggrieved and dissatisfied by the said judgment and order, present Letters Patent Appeal has been preferred by the original petitioners.

Arguments canvassed by the counsel for Appellants :

2. Counsel appearing for the appellants has submitted that the writ petition has been preferred for the period running from 1st July,1993 to 31st July,2002 which is governed by the tariff of the year 1993, more particularly, clause 16.10.1 thereof. It is further submitted by the counsel for the appellants that the connected load was 24 H.P and minimum monthly consumption is 70 KWH per BHP per month and thus minimum guarantee consumption was 1680 for appellant no.2 because connected load was 24 HP. This fact will vary from consumer to consumer or member to member of this appellant no.1. One of the bills, issued in favour of appellant no.2, is annexed as Annexure-4 to the memo of this L.P.A. Consumption is sometime lesser than the minimum guarantee and, therefore, for rest of the units, as per tariff, the electricity charges are to be paid, but, not the fuel surcharge, because fuel surcharge is levied only for the energy, consumed or sold. By virtue of the Circular dated 14th September, 1999 the respondents have amended the tariff, which can be done only by publication in the official gazette whereas the circular has never been published in the official gazette. Secondly, the tariff is applicable to the commercial services categories, (CS categories) LT Industrial Service, HT Service, EHT Service and Railway Traction Service, looking to Clause 16.10 of the tariff, 1993 whereas the circular, which was challenged in the writ petition dated 14th September, 1999, was made applicable only to CS categories and LT Industrial Services, excluding its applicability to HT Service, EHT service and Railway Traction Service, which is discriminatory in nature and lastly, it is contended that the said circular dated 14th September, 1999 has been made operative or effective with retrospective effect i.e. from Ist July, 1993.

3. Counsel for the appellants has relied upon several decisions which are as under :-

(i) 1994(2) PLJR 103; (ii) 2000(3)PLJR 552; (iii) 1993(1)PLJR 36; (iv) 2003(4)JCR 247; (v) 1994(1)PLJR 853; (vi) (1997)7 SCC 123 & (vii) (2002)5 SCC 203.

4. On the basis of the aforesaid decisions, it is submitted by counsel for the

appellants that previously the issues, which were raised, were decided neither by the writ court vide order dated 27th March, 2000 nor by the Division Bench in L.P.A No. 155 of 2000(R) and hence, the Hon''ble Supreme Court remanded the matter, while finally disposing of Civil Appeal No. 3370 of 2001 vide order dated 27th April, 2001 and despite this remand order, the learned Single Judge has not yet decided the issues which were raised by the appellants and the matter has been relegated to the Chairman of the Respondent Board and hence the order passed by the learned Single Judge dated 29th October, 2004 in C.W.J.C No. 644 of 2000(R) deserves to be quashed and set aside and let the issues raised by appellant be decided in this L.P.A.

5. It is further submitted by the counsel for the appellants that there was one more writ petition along with the writ petition preferred by other parties, which has also been remanded to the Chairman of the Respondent-Board. The Chairman taken a decision that as the earlier circular dated 14th September, 1999 was issued by the then Bihar State Electricity Board, he is unable to do any repairing work on the said circular and has also stated that vide circular dated 13th August, 2002 the fuel surcharge should not have been withdrawn. Withdrawal of the fuel surcharge with effect from 13th August, 2002 has increased the cost of Electricity and ultimately it has resulted into a great financial loss to the Respondent-Board. Counsel for the appellants submitted that be that as it may, these appellants do not want to go to the Chairman of the Respondent-Board otherwise he will pass the same order and hence they have challenged the order passed by the learned Single Judge in this Letters Patent Appeal, so that the issues raised in the writ petition may be decided.

Arguments canvassed by the counsel for Respondents :

6. Counsel for the respondents has submitted that the tariff, 1993, is applicable in the facts of the present case and looking to clause 16.10.1 thereof, the tariff rates have been prescribed and as per clause 16.10.2, the fuel surcharge is also leviable and under clause 16.10.3 of the tariff, 1993 the formula for determination of the fuel surcharge has also been given. In fact, connected/contracted load for every member of appellant no.1 is fixed e.g. for appellant no. 2, who is one of the members of appellant no.1, the connected/contracted load was 24 HP and looking to the tariff, 1993 for Low Tension Industrial and Medium Power consumers, the tariff rate is fixed Rs.60/- per BHP or part thereof per month and energy charge is 111 paise per Kwh with minimum monthly consumption 70 Kwh/BHP/Month. Meaning thereby, for 24 HP connected load, minimum guarantee of electricity units will be $24 \times 70 = 1680$. Thus for every consumer, who is member of appellant no.1, there is connected/contracted load. If they are converted into units, it will come to a fixed units with multiplication of 70. Minimum this much electricity is to be kept ready by the Respondent-Board. Even if this minimum units are not consumed, the expenditures are bound to be incurred by the Respondent-Board to keep such minimum electricity ready, which includes additional fuel cost etc. and, therefore, even for the units, which are not

consumed, the fuel surcharge is always leviable from the date on which the tariff, 1993 came into force i.e. with effect from 1st July, 1993. The Circular issued by the Respondent Board on 14th September, 1999, which is under challenge in the writ petition, is not an amendment in the tariff rather, looking to the very object of the said circular, it is nothing but a clarification. Thus, the whole arguments canvassed by the learned counsel for the appellants that vide the said circular dated 14th September, 1999, tariff, 1993 has been amended, is devoid of any merit, because the circular is nothing, but, a clarification for those, who are ambiguously interpreting the said tariff, otherwise, the tariff, 1993 and especially clause 16.10.1 to be read with further clauses of the tariff, which are absolutely unequivocal and unambiguous. It is further submitted by the counsel for the Respondent-Board that whenever a clarificatory circular is issued, it always has a retrospective effect because the clarification is nothing, but, removal of doubts from the confused minded persons, otherwise, there was no need of any circular to be issued by the Respondent-Board. Fuel surcharge which is leviable is always with effect from 1st July, 1993, even if, clarificatory circulars are being issued later on. Thirdly, it is submitted by the counsel for the respondents that tariff is applicable evenly, to all types of consumers, which are referred to in Clause 16.10.1. However, since there was some confusion in the mind of few of the consumers, the circular was issued, at a belated stage, on 14th September, 1999 only for those few consumers. Circular never excludes other category of consumers. If the Respondent-Board has not issued the bills for fuel surcharge for those other consumers, it is a mistake of the Respondent-Board, otherwise the fuel surcharge is levied, absolutely as per Clause 16.10.1. Not a single category is excluded vide circular dated 14th September, 1999. Confusion was only for CS 1 and CS 2 as well as for LTIS and, therefore, it was by way of clarification to only those consumers and, as such, there is no question of exclusion of other categories from the applicability of Clause 16.10.1. Even otherwise also, it is submitted by the counsel for the respondents that if by mistake few consumers are not issued the bills, rest of the consumers cannot say that issue bills first, to those consumers and thereafter they will make payment of the bills. Mistake of the Board cannot be encashed by these appellants and hence, this Letters Patent Appeal may not be entertained by this court.

Reasons:

7. Having heard counsel for both the sides and looking to the facts and circumstances of the present case, we see no reason to entertain this letters patent appeal, mainly for the following facts and reasons:-

(i) The tariff applicable in the present case is of the year 1993 and the period involved in this case is 1st July, 1993 to 31st July, 2002.

For ready reference relevant part of the tariff is reproduced as under:

"16.10 Operational Surcharge

16.10.1- Tariff rates of CS categories II and III L.T. Industrial service, H.T.

Service, EHT service and Railway Traction Service are subject to operational surcharge i.e. all consumers of the aforesaid categories shall be required to pay operational surcharge at a rate to be determined every year in accordance with the formula given below in addition to the other charges as laid down in the tariff schedule :

16.10.2- Operational Surcharge shall consist of two elements namely :

(a) Fuel Surcharge(s1) &

(b) other operational surcharge(s2)

The operation surcharge(s) in paise per unit would there be $S=S_1+S_2$

16.10.3 Fuel Surcharge: Formula for determining fuel surcharge applicable during the financial year in paise per unit shall be :

$S_1=A_1 \times A_3+B_1 \times B_3+C_1 \times C_3+D_1 \times D_3+E_1 \times E_3+F_1 \times F_3+G_1 \times G_3+H_1 \times H_3....$

$(A_2+B_2+C_2+D_2+E_2+F_2+G_2+H_2+....)$

Whereas S_1 = Average Fuel Surcharge per unit in paise applicable during the financial year.

A_1, B_1, C_1 = Unit generated from PTPS, BTPS and MTPS respectively.

D_1, E_1, F_1, G_1, H_1 = Unit purchased from DVC, UPSEB, OSEB, NTPC, PGC and any other source respectively.

A_2, B_2, C_2 = unit sold out of sent out from PTPS, BTPS and MTPS on which fuel surcharge is leviable.

D_2, E_2, F_2, G_2, H_2 = Unit sold out of purchased from DVC, UPSEB, OSEB, NTPC, PCCL and any other source respectively during the year on which fuel surcharge is leviable.

A_3, B_3, C_3 = increase in average cost of fuel surcharge in paise per unit computed for Board's Generation at PTPS, BTPS and MTPS.

D_3, E_3, F_3, G_3, H_3 = Increase in the average unit rate of purchase of energy from DVC, UPSEB, OSEB, NTPC, PCCL and any other source respectively during the year for which the surcharge is to be calculated. The said increase to be calculated with respect to the year 1992-93."

(Emphasis Supplied)

Low Tension Industrial and Medium Power

(Symbol : Ltis).

1. Applicability :- (I) For use of electrical motors and other industrial appliances and medium power of less than 80 HP. If consumer desires to take more than one LT connection in the same premises the total installed load shall be below 80

HP. The use of Arc Welding Set, Electric Motors in Public Water Works, Flour Mills, Oil Mills, Dal Mills, Rice Mills, Atta Chakki Rollers, Spellers, etc. will also be covered under this category.

(II) Existing consumer having load of 80 HP and above will be charged at rates applicable to HTS-1.

2. Character of Service : LTIS-I, AC 50 Cycles, Single Phase supply at 230 volts or three phase supply at 400 volts for connected load upto 25 BHP.

LTIS-II, AC 50 Cycles, three phase supply at 400 volts for connected load above 25 BHP.

3. Tariff Rates :

(a) For LTIS-I :- Fixed charge Rs.60.00 per BHP or part thereof per month.

Energy Charge : 111 paise per Kwh. Minimum monthly consumption 70 Kwh/BHP/ Month.

(b) For LTIS-II:- Fixed Charge: Rs.80.00 per BHP or part thereof per month.

Energy charge: 130 paise per Kwh. Minimum monthly consumption 70 Kwh/BHP/ Month.

Note : In the case of Arc Welding Set where the name plate is missing then the capacity of the Set will be treated as 15 BHP and billed accordingly.

4. Rebate :- As per Clause 16.1

5. Interest for Delayed Payment :- As per Clause 16.2

6. State Electricity Duty :- As per clause 16.3

7. Meter Rent :

(I) Rs. 10.00 per month or part thereof for a single phase energy meter.

(II) Rs.30.00 per month or part thereof for a three phase energy meter.

8. Operational Surcharge : As per Clause 16.10 and 17

9. Power Factor Surcharge : As per clause 16.6."

(Emphasis Supplied)

(ii) It further appears from the facts of this case that for every member of appellant no.1, there is a fixed connected load, which is also equal to the contracted load e.g. for appellant no.2 connected load or contracted load is 24 H.P. If this is converted into minimum guarantee units, it will be $24 \times 70 = 1680$, in view of tariff 1993, as quoted herein above.

(iii) Now the difficulty starts, with a consumer that if the said consumer is consuming less than the minimum guarantee unit, then for rest of the units, the

consumer, who is the appellant no.2, and likewise other members of appellant no.1 has to pay minimum guarantee units, for which there is no dispute at all in this matter. Now the question has been raised by the appellants that for the units, which are not consumed by the members of appellant no.1, whether they are liable to make payment of fuel surcharge on the said unconsumed units.

The answer is in affirmative because the minimum guarantee units are to be kept ready by the Respondent-Board and the Board has to incur expenses for the same. The concept of fuel surcharge is that every now and then, the tariff is not being amended, whereas, manufacturer of the electricity has to pay the enhanced cost towards the fuel etc. and, therefore, to compensate these additional expenses, the fuel surcharge is to be levied. For the minimum guarantee units, the Respondent-Board has to keep this much units ready, for which the Respondent-Board has to incur expenses towards fuel etc. and, therefore, even if the minimum guarantee units are not consumed, they are bound to make payment of the fuel surcharge.

(iv) In fact, the circular dated 14th September, 1999, which is under challenge in this writ petition, is not an amendment in the tariff, rather it is merely a clarification. This circular never amends the tariff, 1993.

(v) Clause 16.10.1, is applicable to Commercial Service Categories II and III, L.T. Industrial service, H.T. service, EHT service and Railway Traction Service. There might have been some confusion for CS Categories II and III and LT Industrial Service, otherwise the tariff, 1993 is explicitly clear and there is no ambiguity at all. Clauses 16.10.1, 16.10.2 and 16.10.3 are unambiguous and unequivocal. Sometimes, It happens that few consumers are making hue and cry for their liability and, therefore, circular is to be issued for few of them, which is by way of clarification, but, that does not mean that the circular dated 14th September, 1999 is applicable only to those consumers, for whom clarification is made. Applicability of tariff, 1993 is to be adjudged from Clause 16.10.1 and not from the circular dated 14th September, 1999. Thus, there is no amendment in tariff at all vide the circular dated 14th September, 1999.

(vi) Second contention raised by the counsel for the appellants is that the said circular has been made effective with retrospective date because the Circular has been issued on 14th September, 1999 and given effect from 1st July, 1993.

It ought to be kept in mind that whenever any "clarificatory circular" is issued, it clarifies the original clauses of the Act, Rules or tariff etc. for which the said circular is issued. Clarification is not an amendment at all. Clarification is always having retrospective effect because it clarifies, the concept of confused minded persons. What was written in Clause 16.10.1 in the tariff, 1993 has been reiterated in the circular dated 14th September, 1999. Nothing has been added or taken away vide the circular dated 14th September, 1999 from Clause 16.10.1 of tariff, 1993.

(vii) Lastly, it is submitted by the counsel for the appellants that the said circular

is discriminatory in nature, because the said circular is not applicable to rest of the consumers, which are referred to in Clause 16.10.1.

We are also not in agreement with this contention, mainly for the reason that the circular dated 14th September, 1999 is only clarifying the position for CS I & II and LTIS, because there was some confusion for few such type of consumers repeatedly before the Board, otherwise, there was no need of such circular to be issued at all and there may not be any confusion in the mind of rest of the consumers. Otherwise, there would have been one more circular for rest of the consumers also. In fact, clarificatory circulars are being issued always later on, upon the doubts raised. The doubts having been raised by the CS I & II and by LTIS consumers, and hence the circular dated 14th September, 1999 has been issued, which does not mean that clause 16.10.1 is ceased to be applicable to rest of the consumers viz. HT service, EHT service and Railway Traction Service. It may also happen with the Government Corporation or Electricity Boards that by mistake few consumers are not issued the bills properly. The Government or Boards have to take work from honest hands and dishonest hands. The Government Corporations have to take work from the enthusiastic persons and lethargic persons. There may be permutation and combination of both, also Dishonest persons may be enthusiastic and honest persons may be lethargic. Be as it may, if few consumers are not being issued the bills towards the fuel surcharge, either by mistake and misinterpretation or by mistake of aforesaid type of combination of the employees of Respondent-Board, that does not mean that these appellants are not liable to make payment of fuel surcharge for the unconsumed minimum guarantee units and hence, none of the arguments canvassed by the counsel for the appellants is tenable at law.

(viii) The formula, as per Clause 16.10.3, for determining the fuel surcharge, applicable during the financial year, in paisa per unit shall be:

$$S1=A1 \times A3+B1 \times B3+C1 \times C3+D1 \times D3+E1 \times E3+F1 \times F3+G1 \times G3+H1 \times H3....$$

$$(A2+B2+C2+D2+E2+F2+G2+H2+....)$$

Where S1= Average Fuel Surcharge per unit in paise applicable during the financial year.

A1,B1,C1= Unit generated from different units from the Respondent-Board.
D1,E1,F1,G1,H1= Unit purchased from different Corporation/Board and any other source respectively.

(ix) Looking to the aforesaid formula, it appears that for the members of appellant no.1, well in advance, either those many units of electricity, which is a minimum guarantee units, has to be generated from different manufacturing units of the respondents or those many electricity units are to be purchased by respondent No. 1. This minimum guarantee electricity units, compels the respondents either to generate or to purchase the electricity, which has direct nexus upon value the figure of A1, B1, C1 and/or D1, E1, F1, G1, H1,

irrespective of the fact that whether appellant no.1 or any member of appellant no.1 is consuming such units or not. This minimum guarantee units enhances the value of factors A1, B1, C1 and/or factors D1, E1, F1, G1, H1. If the formula of calculation is to be seen of the fuel surcharge, all these variables viz. A1, B1, C1 and/or D1, E1, F1, G1, H1 have been mentioned in the numerator and hence the total calculation will be more, if these figures of A1, B1, C1 and/or D1, E1, F1, G1, H1 are to be maintained, keeping in mind the Symen's minimum guarantee units of electricity for all the members of appellant no.1 and, thus, these appellants are bound to make payment of fuel surcharge, even for the units which are not consumed by them. It is argued that if any consumer, consumes less than minimum guaranteed units, then all those left out units fixed electricity charges are to be paid by the consumers, but, not the fuel surcharge. Hence the value of A1, B1, C1 and/or values of D1, E1, F1, G1, H1 will be reduced pro rata.

This contention of appellants is not accepted. If the argument of these appellants is accepted, the figure of fuel surcharge after the aforesaid multiplication and division will be much lesser, because the values of most important variable have reduced. This can be explained in mathematical formula, which is as under :-

e.g. "X" is the minimum guarantee units. "Y" is the consumed units.

If the fuel surcharge is to be calculated as per argument canvassed by the counsel for the appellants then the same will be calculated on "X" ? "Y" units only.

On these units there shall be no fuel surcharge as per the arguments canvassed by the learned counsel for the appellants. "X" ? "Y" = "Z". Thus, for units = value of "Z", there will be no fuel surcharge as per argument canvassed by the counsel for the appellants.

Now looking to the formula of clause 16.10.3 even A1, B1, C1 are units generated and D1, E1, F1, G1, H1 are the units purchased from DVC and/or other surrounding Electricity Board of UP, Odissa, NTPC, PGC etc. The value of these variable will be reduced by the value of "Z ". Thus, the formula, if the argument of the counsel for the appellants is accepted, will be as under :-

$$S1=(A1-Z)A3+(B1-Z)B3+(C1-Z)C3+.....$$

$$(A2+B2+C2+.....)$$

Thus numerator is reduced substantially, if value of "Z" is deducted, whereas, respondent no.1 has to either produced or has to purchase the minimum guaranteed units. Thus for respondent No. 1 value of A1, B1, C1 will be higher.

Thus the whole formula will be changed, if the argument canvassed by the counsel for the appellants is accepted. In the aforesaid illustrations, we have given only one example for one consumer. The value will be "Z" for all the members of appellant no.1. The value of "Z " will be multiplied by those members, because those members who have not used the minimum guarantee

units, in advance, the Respondent-Board cannot presume that for a particular month, the consumption will be less than the minimum guarantee. Whenever, there is minimum guarantee units assured to be purchased by the Industrial units, who are the members of appellant no.1, then in all such type of cases, those many electricity units either to be generated (even A1,B1,C1) or deficit units are to be purchased from DVC, UPSEB, etc. (D1,E1,F1,G1,H1). The values of these variables cannot be reduced in advance by the Electricity Board because the Board is not supposed to know in advance that the Industrial Units are not going to utilise minimum guarantee units. Moreover, electricity purchased or generated, if not consumed by these consumers, who are the members of appellant no.1, has guaranteed by themselves such generated electricity or purchased electricity will go in waste and therefore, they are bound to make the payment of electricity charges as well as the fuel surcharges.

(x) In the facts of the present case, it is admitted by the counsels for both sides that basic electricity charges, even for unconsumed electricity units, which are less than the minimum guarantee units, are bound to be paid by the consumers.

(xi) We see no reason to hold that the appellants are further liable to make payment of the fuel surcharge for the unconsumed units, because the Board has already generated or purchased those many units, which are minimum guaranteed units. Consumption of electricity by industries depends upon several factors prevailing at the industrial units. There may be availability of the raw materials or may not be. For final product, there may be a demand or these may not be; there may be industrial unrest or these may not be; there may be financial capabilities with the manufacturing units or there may not be. There are several permutation and combination of varieties of such factors for actual consumption of the electricity by the industry, despite the minimum guarantee is given by such industrial units to the Electricity Boards, but, the fact remains that the Board has to generate those many minimum units of electricity and if they are not capable, they have to purchase from other electricity generating units and therefore, consumers are liable for the basic electricity charges as well as fuel surcharge for those electricity units, which are not consumed and which are consumed, but, are less than the minimum guarantee units. The formula given in clause 16.10.3 will be absolutely changed, if the arguments canvassed by the counsel for the appellants is accepted. Hence, there is no substance in the argument canvassed by the counsel for the appellants that the appellants are not liable to make payment of fuel surcharge for those electricity units, which are falling short of, the minimum guarantee units.

(xii) Counsel for the appellants has relied upon several decisions as referred herein above. None of these judgments are helpful to these appellants, looking to peculiar facts of the present case, which are as under :-

(a) Electricity tariff 1993, made effective from 1st July, 1993 and special Clauses 16.10.1, 16.10.2 and 16.10.3 are explicitly clear, unambiguous and unequivocal;

(b) Clarificatory circular dated 14th September, 1993, merely clarifies Clauses 16.10.1, 16.10.2 and 16.10.3, especially for CS I & II consumers as well as LTIS consumers, but, this circular never ousts, the applicability of Clauses 16.10.1, 16.10.2 and 16.10.3 for HT service, EHT service and Railway Traction Service;

(c) Clarificatory circular dated 14th September, 1993 is nothing, but, a clarification and not an amendment in tariff. Half of the judgments are pertaining to the amendment in the tariff with which, this case is not concerned;

(d) There is no question of the procedure to be followed for the amendment in the tariff and hence there is no need of any notification to be issued for clarificatory circular dated 14th September, 1999;

(e) Clarificatory circular is for CS I & II consumers as well as for LTIS consumers, to remove the doubts in the mind of those consumers, otherwise applicability of clause 16.10.1 remains intact as it is;

(f) Clarificatory circulars are always with retrospective effect because it merely interprets the original clause or tariff.

(xiii) Aforesaid peculiar facts of the present case makes this case different from the facts of the case, upon which reliance is placed by the counsel for the appellants. In one of the judgments (2002) 5 SCC 203, which has been relied upon, concept of electricity has been narrated wherein it has been held that electricity sold is equal to electricity consumed. We are fully in agreement with the ratio propounded by Hon'ble Supreme Court in the aforesaid decision, but, looking to the facts of the present case, we are not concerned with the concept of electricity consumed is equal to electricity sold. Here, we are concerned with units of electricity, for the purchase of which guarantee was given by the industry, but, not purchased and which are falling short of, the minimum guaranteed units, and the fuel surcharge is to be paid there upon.

(xiv) In fact, there were two writ petitions before the learned Single Judge, W.P. (C) No. 2626 of 2001 along with present C.W.J.C. No. 644 of 2000(R). In W.P.(C) No. 2626 of 2001 also learned Single Judge has decided the matter which was challenged in Letters Patent Appeal and the Division Bench in the said Letters Patent Appeal, which is arising out of the judgment and order passed in W.P.(C) No. 2626 of 2001, relegated the party to the Chairman of the Respondent-Board and the Chairman of the Respondent-Board has taken a decision on 5th December, 2007, which is at Annexure-2 to the supplementary affidavit filed in this matter. Chairman of the Respondent-Board has stated in his order that earlier circular dated 14th September, 1999 was issued by the then Bihar State Electricity Board before bifurcation of the State of Bihar and therefore, he is not ready to do any modification or repairing work therein. Secondly, he has mentioned in his order dated 5th December, 2007 that subsequent circular issued on 13th August, 2002 for withdrawal of the fuel surcharge with effect from 1st August, 2002 was absolutely unnecessary because the Respondent-Board had to incur sizable expenses of fuel etc. to keep ready the minimum guarantee units

for those industrial units, who have entered into such contract. Such expenses will be for very huge number units of electricity, may be in thousands and lakhs. All these units which are minimum guaranteed, must be kept ready by the Respondent-Board, either by generation of the electricity from their limited sources or they have to purchase from the surrounding manufacturing Corporations like DVC, UP State Electricity Board, NTPC etc. The Board has incurred the expenditure, for preservation of these minimum guaranteed units because in case of demands by the industrial units, the said minimum guarantee units can be supplied to them, in that eventuality, there is no need for the Respondent-Board to withdraw the fuel surcharge circular dated 13th August, 2002. Respondent-Board is an instrumentalities of the State, owned, managed and controlled by the State. It is like a Department of the State. Basic expenditure has to be recovered from the industrial units. It cannot be waived normally because consumers are not doing any charitable work. They are commercial units. Profit & Loss depends upon the ability of the managers thereof. These observations are being made because initially there are two matters before the learned Single Judge. One has taken chance to the Chairman and another has preferred this Letters Patent Appeal.

8. As a cumulative effect of the aforesaid facts and reasons, there is no substance in this letters patent appeal. Hence, the same is hereby dismissed.