

(2000) 11 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 9416 of 2000

Dina Iron and Steel Ltd. and Another	Vs	APPELLANT
Bihar State Electricity Board and Others		RESPONDENT

Date of Decision : 28-11-2000

Acts Referred:

Citation : (2001) 1 BLJR 260

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—As agreed, the matter has been heard for final disposal.

2. In this writ petition, the petitioners have prayed for quashing of the decision of the respondent-Bihar State Electricity Board (hereinafter referred to as the Board") as was communicated to them, vide letter No. 1790 dated 9.9.2000, contained in Annexure 37, in pursuance of letter No. 355 dated 17.7.2000, issued by the Chief Engineer (Commercial) to the Electrical Superintending Engineer, P.E.S.U. (East), whereby and whereunder the capacity of induction furnance of the petitioning Company was fixed at 16 Metrication (M.T.) for the period 1.9.1999 to 20.11.1999 and 13.44 M.T. from 21.11.1999 onwards and thereby directing the Superintending Engineer to send copy of the agreement so executed to the Board for record.

3. In short, the relevant facts are that the petitioner No. 1 is a Public Limited Company and petitioner No. 2 is one of its Directors and its substantial shareholder. According to the case of the petitioners, the Company has an industry consisting of two electricity-operated induction furnances of capacity 6 M.T. each totalling to 12 M.T. The Company is supplied electricity at 33000 volts and was HTS-II consumer under the 1993 Tariff of the respondent-Board. The Company has three transformers for its industry; one each connected to each of the furnances and one for auxiliary load. Furnace transformers are rated at 3600

KVA each and auxiliary transformers at 1500 KVA, It is stated that H.T. agreement in the standard form was executed between the petitioner-Company and the respondent-Board on 1st July, 1997. The line was energized for supply to the petitioner-Company with effect from 4.7.1998 and the agreement clearly stipulated that the contract demand was 6000 KVA.

4. Initially, a sum of Rs. 1,07,35,000/- was deposited as security, but the same was enhanced from time to time and as on date it increased to Rs. 2.05 crore. It is stated that right from the time the industry started production its actual maximum demand as recorded by the Trivector Electric Meter installed by the Board was within permissible limits of the contract demands of 6000 KVA. However, the respondent-Board took a decision to revise the tariff insofar as industries having induction furnaces are concerned and on various negotiations and representations, the Association of the petitioner's industry agreed to certain new norms which were to be applicable to all such industrial units with effect from 1.9.1999. The petitioner filed an affidavit stating that the total capacity of two furnaces is 12 M T.

5. According to the case of the petitioners, a team of Engineers of the Board visited petitioner's Company and measured the capacity of the two furnaces which apparently came to 12 tons. Thereafter, a team of Vigilance Department officials, who are non-technical persons and merely police officials, also came and made measurement, the result of which was not disclosed to the petitioner. The Vigilance officials submitted its report on 23.9.1999, which has been annexed as Annexure B to the counter-affidavit filed on behalf of the respondent-Board and in pursuance thereof, the Electrical Superintending Engineer, vide Memo No. 2433 dated 29.9.1999 (Annexure 4), directed the petitioner-Company to execute a fresh agreement based on the report which showed the furnace capacity of the petitioners at 16 M.T. Immediately on receipt of the letter, the petitioner-Company, vide Annexure 5, protested to the respondent Chief Engineer, pursuant to whose letter Annexure-4 was issued and requested for disclosure of the copies of the alleged report.

6. Having received no response, the petitioners then met and wrote to the respondent-Chairman of the Board drawing his attention to the fact that it was impossible for the industry to survive if the capacity is taken to be 16 M.T. instead of actual 12 MT and requested him to provisionally enhance the contract demand to 7200 KVA based on capacity of 12 MT get the actual measurement done by an independent expert committee. While doing so it gave an undertaking that it would accept the report of such an independent expert committee without any objection and revise its contract demand with effect from 1.9.1999. Thereafter, several discussions took place between the petitioner-Company's representative, the Chairman of the Board, the Member (Finance) and other officials in presence of the respondent Electrical Superintending Engineer. Ultimately, the petitioner-Company brought the said facts discussed in the meeting and the assurances emanating there from on record, vide its letter

dated 15.10.1999. addressed to the respondent-Electrical Superintending Engineer. In the said letter, it was stated that the Company had been assured that an expert committee would be appointed for final measurement within 45 days and a final agreement would be executed based on the report of the said Committee which would be effective from 1.9.1999. It was also stated that the Company was ready for the aforesaid, if the Board confirmed in writing and pointed out that the provisional agreement on the basis of 16 metric ton capacity would lapse on 30.11.1999.

7. The Electrical Superintending Engineer, vide Memo No. 25,80 dated 15.10.1999 (Annexure 8) confirmed the facts stated in the aforesaid letter of the petitioner and directed them to enter into agreement provisionally for 16 MT capacity, i.e., contract demand of 9600 KVA, which was subject to verification and finalization on the basis of the report of independent agency, which was to be obtained within 45 days and the same was to be applied retrospectively, i.e., with effect from 1.9.1999, the effective date of HRSS tariff. In view of the said letter (Annexure 8), the petitioner-Company entered into a provisional agreement on the same day, i.e., 15.10.1999 for a contract demand of 9600 KVA being 600 KVA per metric ton for 16 metric ton with effect from 1.9.1999, which, as per communication, was valid for 45 days, i.e., up to 30.11.1999.

8. On 20th November, 1999, a team of Engineers from Indian Institute of Technology, Kanpur came to the petitioner's industry and conducted a detailed verification of both the furnaces giving only a copy of the measurement taken to the petitioner-Company's representative and said that the report will be sent to the respondent-Board at whose instance they had come to verify the furnaces capacity. The experts of I.I.T., Kanpur submitted their report on 2.12.1999, contained in Annexure 13, and assessed the total capacity of the two furnaces at 12.8 MT. Though geometrically the furnaces capacity was assessed at 13.44 MT, but considering various practical factors the experts had made an allowance of 5% and thus came to the finding that the total capacity of two furnaces is 12.8 MT. On 1.12.1999, the provisional agreement expired, yet the petitioners received bill for 16 MT which was paid by them under protest and requested for revision of past bill on the basis of the report of I.I.T., Kanpur.

9. The petitioner-Company was again informed vide Memo No. 4010 dated 24.12.1999 (Annexure 17) by the respondent -Electrical Superintending Engineer pursuant to the directions received from the Chief Engineer (Commercial) of the Board that another team of experts would be coming to take accurate measurement, which was apparently notwithstanding the earlier measurement by I.I.T., Kanpur and the report. On 28.12.1999 a group of experts accompanied by the officials of the Board came to the petitioner-Company for re-verification of the furnace capacity for the second time. On enquiry, it was disclosed that this time the inspecting independent team consist of Scientists from the National Metallurgical Laboratory, Jamshedpur requisitioned at the instance of the Board. They again took detailed measurement, copies of which were made available to

the representative of the petitioner-Company. They submitted report on 31.12.1999. They found that the total furnace capacity of the two furnaces of the petitioner-Company was 11 tonnes, still bill for 16 M.T. was being raised to which the petitioners again protested vide letter dated 10.1.2000 (Annexure 19) as according to them, it was highly unfair and requested for immediate action in the matter.

10. On 23.2.2000, senior officials of the Board along with some other persons came to the petitioner's Company. Enquiries disclosed that the independent personnel were scientists from the Indian School of Mines, Ohanbad, who had been called as the third set of independent experts for capacity measurement of the petitioners' furnaces. The officials of the petitioner-Company though would have been well within their rights to protest but decided to co-operate even at this stage. The measurements were taken and immediately based on the said measurements, a report was drawn up by Dr. T. Sharma of the Indian School of Mines, Dhanbad and it was notified that the total furnace capacity of the two furnaces of the petitioners as per his calculation came to 12.369 metric tonnes. True copies of the third independent expert report is Annexure 25. Thereafter, the petitioners continued to meet various officials of the Board for revisions of bills and adjustment from the amount paid on ad hoc basis. Ultimately, on 18.3.2000, the petitioners received Memo No. 515 from the Electrical Superintending Engineer enclosing therein a copy of Memo No. 121 dated 14.3.2000 of the Chief Engineer (Commercial) of the Board communicating the Board's decision that the petitioner-Company would be billed on the basis of 13.44 metric tonnes from 21.11.1999 onwards. For the period prior to that date i.e. 1.9.1999 to 21.11.1999, the Board will take a decision later. The petitioner was then directed to execute an agreement on the basis of 13.44 MT equivalent to a contract demand as per the Board's new provisional tariff of 8064 KVA with effect from 21.11.1999.

11. The grievance of the petitioners is that through vide Annexure 8, the Board agreed to revise the provisional agreement with effect from 1.9.1999 on the basis of the report of the independent expert requisitioned by the Board even after almost six months and even after three-expert committee reports, the Board failed to abide by its promises. It is submitted that the prospective review of bills from 21.11.1999 which was apparently the date when the expert from IIT, Kanpur made the first verification is wholly arbitrary and contrary to the aforementioned promise made by the Board so much so that even while doing so instead of following the report of experts of I.I.T., Kanpur and/or acting in accordance thereof which fixed the capacity at 12.8 M.T. the Board arbitrarily fixed the capacity at 13.44 M.T. and that too instead of making it effective from 1.9.1999, made effective from 22.11.1999. Meanwhile, the petitioners paid the bill under protest as per their calculation. However, when the Board did not take any action in the matter on its representations and undertakings of accepting the report of the independent expert and making it effective retrospectively with effect from 1.9.1999, i.e., the effective date of the HTSS tariff and thereby

denying the petitioners substantial refund while insisting of payments on arbitrary figures, the petitioners filed C.W.J.C. No. 4407 of 2000 16.5.2000 in this Court for necessary protection and relief.

12. Thereafter, the petitioners were again served with the bills for the months of April and May, 2000. Though the said bills showed that the maximum demand recorded was 6393 KVA and the unit consumption recorded was 13,07,745 units, the petitioner was billed on the assumed contract demand of 8064 KVA appertaining to furnace capacity of 13.44 MT. Similarly, for the month of May 2000 as against the actual maximum demand of 6369 KVA, the petitioners have been billed on the basis of 8064 KVA. In the meantime, the petitioner-Company was being threatened with disconnection for not entering into fresh agreement on the basis of contract demand of 8064 KVA based on furnace capacity of 13.44 MT. They agreed to sign the agreement under protest with effect from 21.11.1999, but endorsement of the same being provisional one was made on it as it had to be revised for two reasons; (i) final agreement had to be with effect from 1.9.1999 and (ii) the contract demand had to be based on the capacity as assessed by the independent expert and not in ignorance thereof. It is alleged that the endorsement was provisional. Initially, a copy thereof was not made over to the petitioner-Company, but subsequently when it was made available, they noticed the same as provisional on all pages thereof as made by the petitioner-Company was cut by the officials of the Board before returning the same. Later, the petitioner-Company was served with the impugned letter (Annexure 37), whereupon they withdrew the writ petition with the leave to file fresh substantive writ petition which was granted by this Court, vide order dated 14.9.2000, and hence the present writ petition had been filed.

13. A counter-affidavit has been filed on behalf of the respondent-Board in which the aforementioned facts have not much been disputed. It is, however, stated that the petitioner has installed two induction furnaces for which the connection was taken on a contract load of 6000 KVA. The Board, however, received authentic information from the supplier of the induction furnace to the petitioner and other units from which it became apparent that the installed capacity of each of the induction furnace was 8000 Kg. i.e. 8 MT. Thus, on the basis of this information received by the officials of the Board from Asia Brown Boveri Ltd. copy whereof has been made Annexure A, it became manifest that the petitioner's induction furnace unit and the other induction furnace units were availing much more electrical load than the contract load/demand entered by them and, therefore, the inspection was made of these Units to find out the actual load being availed by them. It is further stated that the association of the induction furnace units voluntarily agreed for re-assessment of their contract load as well as for a separate tariff for payment of the electricity charges. In this background, even the induction furnaces of the petitioner Unit was inspected by anti power theft squad on 23.9.1999 and the capacity of the induction furnace installed in the premises of the petitioner was assessed at 16.38 MT. It was on this basis that a decision was taken that the total capacity of the petitioner's

induction furnaces may be fixed at 16 MT. Accordingly, the petitioner was directed to enter into an agreement for 16 MT capacity, for which the load requirement again on the basis of the scientific and established method was 600 KVA for each MT of the capacity of the induction furnace.

14. The Board's decision of requirement of 600 KVA for 1 MT capacity of induction furnace was challenged before this Court in the case of M/s JMD Alloys and the Division Bench finally held that the principle adopted by the Board was not irrational and was backed by some scientific method. However, in paragraph 11 of the counter-affidavit, it admitted that when the correctness of the aforementioned inspection report was challenged by the petitioner, the Board agreed that there would be a re-inspection by an expert agency and ultimately an expert agency was also nominated. The Board accepted the report of I.I.T., Kanpur for a period of 20th November, 1999 onwards as the said inspection was done on the said date. With respect to the earlier period 1.9.1999 to 20.11.1999, it is admitted that the induction furnace new tariff came into force with effect from 1.9.1999 but it was, however, stated that in view of the fact that the Board had an authentic inspection report dated 23.9.99 establishing that the load assessed was 16 MT, the billing for this period was decided to be done on 16 MT basis and that is how the impugned order was communicated. In this background, it is contended that the challenge of the petitioners to a technical report and a finding arrived by the technical committee in respect of the assessment of capacity and consequently electrical load is totally misconceived either in law or on facts. According to the respondents, the Board had acted in a most fair and rational manner by giving the petitioners the benefit of specialized inspection report from the date of the inspection by the I.I.T, Kanpur, experts, but this must be taken into consideration that for the period prior to the IIT inspection, the Board cannot apply the calculation made by the IIT expert and for this period, the Board has to rely on its own inspection report dated 23.9.1999.

15. Learned Counsel for the petitioner has contended that the said stand of the Board is wholly arbitrary and is based on non est ground inasmuch as it is not the case of the respondents that before the inspection was made by the experts of I.I.T., Kanpur, induction furnace installed was different from that which were inspected by the expert agency of I.I.T., Kanpur. Thus, according to the learned Counsel, for the petitioner, there cannot be any justification to deny the benefit of the report of the expert agency of I.I.T., Kanpur for the period prior to their inspection made on 20th November, 1999, more so because the Board agreed, vide letter contained in Annexure 8, whereby the petitioners were requested to enter into an agreement for 16 MT capacity, i.e., 9600 KVA with the Board provisionally and actual verification of load will be done by an independent agency within a period of 45 days from the date of execution of the provisional agreement. It was further informed that if the actual load is found different by the said agency, it may be rectified with retrospective effect as per provisional agreement. Learned Counsel for the petitioners submitted that in fact, the Board is not legally justified to partially accept the report of the experts of I.I.T., Kanpur

(Annexure 13) and consequently fix the capacity of induction furnaces at 13.44 MT since 21.11.1999. Moreover, the expert committee considering the fact that lining erosion is non-uniform and temperature and dimension fluctuations may take place found that the furnace capacity can be slightly on the lower side and an allowance of 5% can be made and, accordingly, rated the total capacity of the two furnaces as 12.8 tons, but the Board arbitrarily accepted 13.44 tons, being total capacity of the furnaces.

16. On the other hand, learned Counsel for the Board has submitted that the petitioners cannot be allowed to raise these contentions in view of the agreement entered by them on 15th October, 1999 for 16 MT with effect from 1.9.1999, vide Annexure 9. However, the Board in all fairness while accepting the report of the expert committee of the I.I.T which inspected on 21.11.1999 agreed to fix 13.44 MT found by the expert committee to be the total capacity of induction furnaces installed in the premises of the petitioners with effect from that date and with respect to the earlier period, it has been submitted that the Board is justified in treating 16 MT. as the capacity of the induction furnaces in the promises of the petitioners pursuant to the authentic information from the supplier of the induction furnaces to the petitioners and the inspection report submitted by anti-power theft squad of the Board, However, he has not disputed that the Board agreed that there would be re-inspection by an expert agency and ultimately, the expert agency was also nominated thrice to assess the capacity of the induction furnances installed in the promises of the petitioners. The respondent-Board has not disputed Annexure 8 in which it is clearly mentioned that the agreement for 16 MT was provisional and that the actual verification of the load will be done by an independent agency within a period of 45 days from the date of execution of the provisional agreement. It further mentioned that if the actual load is found different from that, it may be rectified with retrospective effect as per the provisional agreement.

17. Under such circumstances,, this Court does not find any justification for the Board to deviate from the promise made. In fact, this Court has doubt that it was permissible for the Board to have accepted the report of the expert committee nominated by them only partially for which there is no explanation given by the Board and ignored that part of the report (Annexure 13), wherein the experts, considering the fact that lining erosion is non-uniform and temperature and dimension fluctuations may take place, the furnace capacity can be slightly on the lower side and an allowance of 5% can be made, rated that total capacity of the two furnaces as 12.8 tons. The Board could have either accepted the report of the experts in to or for justifiable reasons accepted it only partially.

18. Be that as it may, in the facts and circumstances, this Court does not find any justification on the part of the Board to have accepted the report of the expert committee only from 21.11.1999 and not from the date when the new tariff came into existence, i.e., with effect from 1.9.1999, more so when it is not their case that any change in the induction furnaces was ever made before

21.11.1999.

19. This Court finds it difficult to accept the pleas raised on behalf of the Board for treating 16 M.T. as the capacity of the induction furnaces in the premises of the petitioners pursuant to the so-called information of the supplier of the induction furnaces and the inspection report submitted by the anti-power theft squad of the Board, which was seriously disputed by the petitioners and on that the Board agreed for getting the inspection made by experts of independent agency and the same was also acted upon by the Board. In my opinion, the Board cannot be permitted to turn around and partially rely upon the so-called information from the supplier and the inspection report by anti-power theft squad of the Board when it was the Board which nominated the expert committee of I.I.T., Kanpur and their report has been accepted by it.

20. In the result, the writ application is allowed and the impugned orders, contained in Annexure 37, are quashed. The respondents are directed to act according to the report of the expert committee of I.I.T., Kanpur, which has been accepted by them for the entire period, i.e., with effect from 1.9.1999 and make necessary adjustments and raise fresh bill accordingly. In the facts and circumstances, there shall be no order as to costs. Application allowed.