(1987) 07 PAT CK 0038

In the Patna High Court

Case No : C.W.J.C. No. 196 of 1979 (R)

Divisional Manager (Collieries) of T.I.S. Co. Ltd. APPELLANT

Vs

Asstt. Electrical Engineer and Others RESPONDENT

Date of Decision : 13-07-1987

Acts Referred:
Electricity Act, 1910 — Section 26

Citation : (1988) 36 BLJR 131

Hon'ble Judges : B.P. Singh, J

Bench : Single Bench

Judgement

B.P. Singh, J.—The Divisional Manager (Collieries) of ''the Tata Iron and Steel Company Limited (hereinafter referred to as ''TISCO'') is the petitioner, in the instant writ petition. The Respondent No. 4 is the Bihar State Electricity Board while Respondents 1 to 3 are its officers. Respondent No. 5 is the State of Bihar.

2. The petitioner has challenged the legality of two communications addressed to him being Annexures 3 and 3/a, whereby the petitioner has been called upon to pay an amount of Rs. 13,81,485.12 paise as audit charges, failing which thereat of disconnection has been held out. What has been described as audit charges is really claimed to be the arrears of electricity charges for the period from April, 1974 to December, 1978. The respondents claim that the bills sent earlier had to be revised since they had been submitted erroneously, and it has now been found that the petitioner was liable to pay a much higher amount. The communications, Annexures 3 and 3 (a) are dated 8th March, 1979. On the other hand, the petitioner contends that the demand is wholly illegal and arbitrary, and there is no legal basis of justification whatsoever for the said demand.

3. The relevant facts of this case are not in dispute. TISCO is a public limited Company and the writ petition has been presented by the Divisional Manager of TISCO if incharge of its collieries. TISCO is a lessee of a few captive mines in Jharia coalfield area. To provide accommodation to its employees, TISCO has constructed a large number of resinetal quarters for its workers and staff. Each

quarter is supplied electrical energy by the Respondent-Board, and for this purpose each quarter is fitted separately with an electric meter which has been installed separately to record the quantity of electrical energy consumed by each occupant of the quarter. The bills are required to be raised by the respondent-Board on the basis of meter reading of each quarter separately. According to the petitioner, the residents of the quarters are the consumers, and each one of them is liable to pay the charges of electrical energy actually consumed by them as per meter reading.

4. In view of the fact that there were large number of consumers from whom the charges were required to be collected separately, an agreement was entered into between TISCO and the Respondent-Board to the effect that the Board would prepare the bills on the basis of the reading of the meters installed in the consumers'' premises. The Board thereafter was to deliver to the consumers the bills for the energy consumed during the month through TISCO which was to arrange for collection of the amount of the bills from the salaries of the employees concerned and make payment to the Board within the period mentioned in the bills. To facilitate collection, the Board agreed to furnish a consolidated statement of the bills each month to TISCO along with individual energy bills for each connection. On the other hand, TISCO agreed to make payment of the energy charges and other connected charges in respect of the supply made to each consumer. Since the petitioner as well as the respondent relied upon said agreement, it may be useful to reproduce a few clauses from the said agreement which would make the position clear.

Clause 4 (a) : Separate energy meter on hire will be installed in each of the quarters of the consumers by the Board for measurement of the energy supplied and registered upon the point of supply and such meters shall remain the property of the Board.

Clause 4 (b) : The meters shall be sealed by the Board and shall not be interfered with by the consumers.

Clause 5 (a) : Reading of the meter installed in the consumers premises shall be taken by the Board once in each month or at such intervals or times as the Board shall deem expedient and the Board''s meter readers shall have access to the consumers'' premises at all reasonable time for the purpose of taking such readings. The Board shall within a reasonable time deliver to the consumer the bills for the energy consumed during the month, through the company who shall arrange for collection of the amount of the bills from the salaries of the employees concerned and make payment to the Board within the period mentioned in the bills, To facilitate collection, the Board will furnish a consolidated statement of the bills each month to the company along with the individual energy bills for each connection.

Clause 5 (b) : The Company has agreed to make payment of the energy charges and other connected charges in respect of the supply made to each consumer in case of failure on the part of any occupant of the quarters to make payment of the energy bills and other connected charges. Every sum that may become duo from the consumers'' occupying the quarters in question shall be payable to the Assistant Electrical Engineer and shall be recoverable from the company by any means legally permissible for such realisation, if not paid by the consumers within the period mentioned in the bills.

Clause 6 (a) : In case of change hi occupancy of the quarters, the name of the consumer shall be changed only after the written consent of the company and the Company shall be liable for payment of all dues together with other connected charges including disconnection and reconnection fees in respect of supply of energy to such quarters irrespective of the fact that the occupant has charged or the payment has not been made by the previous occupant or by the new occupant of such quarters.

Clause 6 (b) : In case the Company request for change in the name of consumer in any quarter, the same will not be done unless the previous consumer has vacated the quarters and all dues in respect of such connection have been paid by the company. To such consumers who will continue to occupy the quarters even after being relieved from the Company''s service or for any other reason : energy bills will be served directly by the Board and not through the Company : provided information about such consumers is given by the Company well in advance. In case of difficulty in disconnecting the supply to such disputed quarters, the Board will draw separate service connection to authorised occupants from the main distributing pole and cost of such additional service connection shall be paid by the Company.

Clause 6 (c) : If the amount of any bill remain unpaid. Board shall discontinue the supply after giving seven days'' notice to the consumers concerned. The service will only be reconnected on receipt of full payment or all obligations pending and a charge for the work of disconnection and reconnection of service.

5. The petitioner has stated that bills were received from time to time in respect of energy charges and the same were paid by TISCO within the time prescribed in the bills. However, the bills of December, 1978 included a sum of Rs. 13,81,485.82 paise, but no details were given for including of the said amount in the bills. The petitioner-Company, therefore, protested and requested for particulars in respect of the said amount. The Respondent-Board forwarded a statement of demand which shows that the amount represented the arrears of energy charges for the period from April, 1974 to December, 1978 based on average consumption of 46 units per month per residential quarter for the entire period, after adjusting the amount paid by the petitioner against the bill earlier furnished. The covering letter forwarding the said statement held out a threat that if the said amount was not paid, the electrical connection will be disconnected. It is this communication and the statement of demand dated 8th March, 1979 which have been challenged in the instant writ petition as being wholly illegal.

6. In its counter affidavit, the Respondent-Board has contended that though each residential quarter is provided with a separate meter by the Board for the purpose of measurement of energy consumed, the employees, who reside in the quarters are not shown in the record of the Board as consumers. It is admitted that the agreement was entered into between the Board and TISCO. It is also admitted that the energy bills, in relation to the employees'' quarters were being delivered to the Divisional Manager of TISCO but the said bills were raised on the basis of average consumption of ten units per residential quarter per month as fixed earlier for payment as per clauses 5 (a) and S (b) of the agreement. It is then stated that after scrutiny the internal audit of the Respondent-Board found that the meter reading was taken after 23 months on 74 August, 1978, after the meters were last read on 22 September, 1978. When the internal audit pointed out this fact, the energy bills in respect of 440 consumers'' quarters were revised and energy consumed was taken to bean average of 46 units per residential quarter per month. The basis for this average of 46 units per residential quarter per month is said to be the actual reading of the meters. It is stated that out of 440 meters, only 236 meters were functional from which meter reading could be recorded, As regards other meters, they were found to be defective. On the basis of the meter reading of 236 meters, average consumption was worked out at 46 unit per month per residential quarter. In the light of these facts the bills were revised and the additional amount was claimed on the basis of energy consumption of 46 units per month per consumer, Annexed with the counter affidavit as appendix B is the meter reading chart in respect of 236 meters which were functional. This document is interesting. It is found that in respect of connection No 901, the units consumed during the period of 23 months is 2776, while in respect of connection No. 1227 it is only 104 units. It is, therefore, apparent that the electrical energy consumed by the occupants of quarters varied from as high as 2776 units to as low as 104 units in 23 months. It is also stated at the bar that if the meter reading chart is analysed, it would be found that out of 236 meters, 139 recorded energy consumption below the everage of 46 units per month. This is obviously so because different employees may consume varying quantities of electrical energy depending upon their life style. There may have been some who possessed modern electrical gadgets and naturally their consumption of electrical energy was high.

7. The question is whether in the facts and circumstances of the case, the Respondent-Board can demand a sum of Rs 13,81,485.82 paise on the basis of average consumption of 46 units per months pet employee''s quarter.

8. Normally a consumer is required to pay for the electrical energy actually consumed by him according to the tariff which is in force from time to time. The tariff provides for payment at particular rates for different categories of consumers, and is based on the meter reading for assessing the quantity of energy consumed. This is required to be done at regular intervals. The statutory provision which is relevant in this regard is Section 26 of the India Electricity Act, 1910, which leaves no room for doubt that the amount of energy supplied has to

be ascertained by means of a correct meter. In case of defective meters, the charge have to be ascertained in the manner laid down in Sub-section (b) of Section 26. Nothing to the contrary has been shown to me in the tariff which may have been in force at the relevant time. It may be that by a special arrangement it may be possible to raise demands on some other agreed basis. That, however, does not solve the problem. In the instant case the agreement between the Board and the TISCO is quite to the contrary.

9. Clause 4 (a) of the agreement provides that a separate electrical meter shall be installed in each of the quarters of the consumers for measurement of the energy supplied. The meter shall be sealed by the Board. Clause 5 (a) provides that such meters shall be read once in each month or at such intervals or times as the Respondent-Board shall consider expedient. The same clause provides that the Board shall deliver to the consumers the bills for the energy consumed during the period through the Company who shall arrange for collection of the amount of the bills from the salaries of the employees concerned and make payment to the Board. Clause 5 (b) emphasised the fact that the Company has agreed to make payment of the energy charges and other connected charges. It will thus be apparent from a careful reading of clause 4 and 5 of the agreement that the occupant of each quarter is described as a "consumer" and each such consumer is liable to pay electrical energy charges on the basis of the actual consumption of electrical energy as assessed by the meter reading. This also becomes evident from reading clause 6 (a) of the agreement which provides that in case of change in occupancy of the quarters, the name of the consumers shall be changed only after written consent of the Company. Clause 6 (b) further confirms this view.

10. Reading the agreement as a whole, it is quite clear that it provides for (a) installations of a separate meter in such employee''s quarter : (b) payment of charges by reference to electrical energy actually consumed as recorded in the meter installed for the purpose ; (c) the consumers are the occupants of the quarters and separate bills are to be prepared for each consumer, and (d) a consolidated statement is to be prepared to facilitate the payment by TISCO on behalf of large number of its employees/consumers, from whom TISCO may recover the charges.

11. I am of the considered view that this writ petition must be allowed. As provided in Section 26 of the Indian Electricity Act, 1910, in the absence of an agreement to the contrary, the liability to pay for electrical energy is a liability to pay for the electrical energy actually consumed. In the instant case the agreement is also to the same effect. There is no scope for working out average consumption of electrical energy and uniform billing of consumers, as is sought to be done in the instant case. Each consumers is liable to pay for the electrical energy actually consumed by him. It would be highly arbitrary if a consumer who has consumed much less is required to pay for more merely because another consumer in the same locality has consumed such more. The procedure of

working out average consumption and billing each consumer on average basis is unknown to law, nor is it contemplated under the agreement upon which parties have placed reliance. It is not the case of the respondent-Board that the amount claimed represent the charges for electrical energy actually consumed by each consumer based on the reading recorded in the meter installed in the premises occupied by him. It is admitted by the Board that only 236 meters out of 440 were read and the figures collected. Thereafter the average was worked out in respect of all the 440 consumers and a demand raised accordingly. The method followed by the Respondent-Board is arbitrary. It may be that TISCO is required to pay the bills and later collected the charges from the consumers, but before any payment is demanded from TISCO, the liability on each consumer in respect of electrical energy actually consumed has to be fixed. If the bills raised against the consumers are illegal, the question of TISCO paying the said bills under the agreement does not arise.

12. Apart from the fact that the provisions of the Indian Electricity Act as also the agreement in question provide for payment of electrical energy charges based on electrical energy actually consumed, it also appeals to reason that a consumer must beheld liable to pay only for the electrical energy actually consumed by him. He cannot be compelled to pay more by reason of the fact that others in the locality have consumed more If the average energy consumed per consumer is worked out, it may be higher than the quantity of energy actually consumed by a consumer Consequently, those who may consume more than the average so. Worked out, may be required to pay for less.

13. The absurdity of the situation becomes apparent if one peruses the meter reading chart produced by the respondent-Board, as appendix B to its counter-affidavit. If a consumer who had consumed 2776 units is required to pay the same charges as one who bad consumed 104 units only it only be described as highly unreasonable and arbitrary. By adopting such a procedure many consumers are being compelled to pay for much more than what they have consumed, while on the other hand, many are required to pay for much less than what they have consumed. This cannot be permitted in law. The only basis on which the Respondent-Board can raise the bills is the electrical energy actually consumed by a consumer as recorded in the meter installed for this purpose by the Board. In a situation where the meter becomes defective, other provisions have been made but m principle the liability of the consumers is limited to the quantity of electrical energy actually consumed by him. On who has consumed more should not be asked to pay for less, and conversely one who has consumed less should not be asked to pay for more. This would be the result if the demand raised by the Respondent-Board is upheld The demand in the instant case is against the provisions of the Indian Electricity Act, 1910 as also against the terms of the agreement between the Board and TISCO I, therefore, hold that the demand made under Annexures 3 and 3/a by the Board calling upon the petitioner Company to pay a sum of Rs. 13,81,485. 82 paise is wholly unjustified and illegal since the demand is not in respect of electrical energy actually,

consumed, but based on a notional figure by working out an average on the basis of reading of some of the meters in the colony which were found functional It was illegal on the part of the Board-earlier to raise bills on the basis of ten units per consumer per month, and it is illegal now to claim at the rate of 46 units per month per consumer. One does not know whether the average consumption may not be revised in future, and as rightly pointed out by Mr. Chatterjee appearing for the petitioner, many of the consumers may not be available then for realisation of the additional liability. Where meters have been separately installed and the consumers are separate and distinct, and their figures of consumption also vary, the only basis on which the Respondent-Board can raise bills for electrical energy is the actual consumption as recorded by meters installed for this purpose. This has not been done in the instant case and the demand, therefore, is illegal. Annexures 3 and 3/A are hereby quashed.

14. It is unfortunate to find that the Respondent-Board functions in a most casual manner. Things are done in every manner except one prescribed by law. The result is that the Board has generated more litigation than electrical energy. In the instant case, it has been pleaded that earlier, instead of reading the meters, the bills were being sent on the basis of average consumption of ten units per consumer per month. It is not disclosed on what basis this figure was arrived at. Even if it was done, in was clearly illegal and contrary to law since the bills have to be raised only on the basis of the consumptions recorded in the meters. Obviously no one cared to read the meters as that entails labour. It is pathetic that in the Bihar State Electricity Board where large number of meter-readers are employed no one even cares to read the meters for 23 months. In this case, they woke up from their slumber only when the internal audit pointed out this fact. This is a matter of serious concern. Those who were responsible at the relevant time to see that the meters were read regularly and bills sent accordingly are guilty of gross dereliction of duty. The matter requires to be enquired into. It is only on account of the apathy of the employees of the Board that the Board has at times to suffer serious financial loss, as in the instant case. 1 do hope that in larger public interest, the Board will consider the desirability of making a detailed enqiry into this matter, so as to fix responsibility for the lapses on the part of the employees of the Board. The employees of the Board will not perform their duties seriously unless they are made aware of the fact that negligence on their part resulting in loss to the Board may receil on them and they may be asked to bear the burden of the loss. I have no doubt that the Board will consider the matter from this angle and fix responsibility for the lapses in this case. In such cases where loss is caused to the Board on account of gross dereliction of duty on the part of its employees, after fixing responsibility, it should be open to the Board to realise the loss from those who are found guilty and are responsible for the loss on account of gross dereliction of duty.

15. In the result, the writ application is allowed and Annexures 3 and 3/A are quashed. I however, make it clear that it will be open to the Board to raise bills on the basis of actual energy consumed by the consumers but not on the basis of

average consumption as has been done in the instant case. Let a copy of this order be communicated to the Chairman, Bihar State Electricity Board for necessary action.

