

(1991) 04 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 1707 of 1991

Electric (Patlipura) Power Equipment Private Ltd.	APPELLANT
Vs	
The Bihar State Electricity Board and Others	RESPONDENT

Date of Decision : 10-04-1991

Acts Referred:

Citation : (1991) 04 PAT CK 0002

Final Decision : Allowed

Judgement

1. The prayer in this application is to quash Annexure 5, the bill showing an arrear of Rs. 10081.99 paise.

2. The Petitioner is a low tension consumer. It was served with a bill (Annexure 1) making demand of Rs. 5235.28 paise on the basis of 30 per cent load factor. That was challenged in this Court in C.W.J.C. No. 450 of 1989. The application was disposed of on 17.1.1989 holding that the Board had no authority to make demand on the basis of 30 per cent load factor. It appears that the question with regard to annual minimum guarantee charge also arose. The Bench hearing that application observed that the Petitioner, if so advised, may make its claim under Clause 13 of the agreement before the Chief Engineer-cum-General Manager of the Board. The Petitioner accordingly filed its representation under Clause 13 of the agreement claiming that it was not obliged to make any payment for annual minimum guarantee charge for the period when the line was disconnected, not on account of any fault of the Petitioner but on account of illegal disconnection made by the Board and its authority. It appears that the claim of the Petitioner under Clause 13 was rejected by the Chief Engineer-cum-General Manager. This fact was communicated to the Petitioner by Annexure 4 by the Electrical Engineer, Patliputra Supply Division (P.E.S.U.) The bill (Annexure 5) in the circumstance was served on the Petitioner making a demand of Rs. 10081.99 paise for annual minimum guarantee charge for the period beginning from 13.12.1987 to 9.2.1989 when the supply of energy remained discontinued on account of non-payment of the charge as per Annexure 1 which was raised on the basis of 30

per cent load factor.

3. Learned Counsel in support of this application contended that" in view of the decision in the case of Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, , annual minimum guarantee charge can be lawfully levied even after disconnection for a period of one year. But he urged that the dictum that annual minimum guarantee charge can be levied after disconnection for one year, will not apply to cases where the disconnection has been unlawfully made by the Board Mr. Shiv Kriti Singh, on the other hand, says that the Board had issued tariff notification on 16.2.1987 according to which, charge on the basis of 30 per cent load factor, could be levied and as such the amount raised under this head cannot be said to be not due to the Board. It may be relevant at this stage to refer to Section 24 of the Indian Electricity Act, 1910 (hereinafter to be referred to as the Act only). This section provides that where any person neglects to pay any charge due from him to a licensee in respect of the supply of energy to him, the licensee may, after observing certain conditions disconnect the supply of energy without any prejudice to recover the dues in any other lawful manner. Therefore, the question which falls for consideration is as to whether it can be said that the discontinuation of the supply of energy to the Petitioner was lawful. It will be lawful if the discontinuance was made on account of any dues from the Petitioner. But in case there was no dues then the discontinuation was unlawful. What, therefore, constitute "dues" has to be determined. Mr. Shiv Kriti Singh says that if the Board in bona fide manner thought that the amount raised on the basis of 30 per cent load factor was due and if the same was not paid then the disconnection on this ground is valid. Learned Counsel for the Petitioner, on the other hand, says that it is not for the consumer or for the licensee to decide as to whether any amount is due or not. He says that in case there is any disagreement on such issue then the competent authority to adjudicate is the court and the decision of the court is binding on the parties even if it is not to their liking or to their satisfaction. We think, learned Counsel is correct. May be, the Board genuinely felt that it was competent to raise the demand on the basis of 30 per cent load factor, as per its resolution dated 16.2.1987, but that is not sufficient. A bona fide and genuine feeling regarding the demand is one thing and the lawfulness of the same is another. This Court in C.W.J.C. No. 450 of 1989 disposed of on 17.1.1989 (supra) in a very unambiguous manner said "the power to charge on the basis of 30 per cent load factor thus disappears. The bills issued against the Petitioner must be rectified in accordance with law." The dispute between the parties, therefore, on the question as to whether the demand under this head was valid or not was finally adjudicated by this Court and as a result of this adjudication it has to be held that no amount under this head was due from the Petitioner. If no amount under this head was due from the Petitioner then no disconnection could have been made u/s 24 of the Act for non-payment of this amount. It is so because u/s 24 of the Act read with Section 26 of the Electricity (Supply) Act, 1948, the Board can resort to disconnection of electric supply line only if the consumer

neglects to pay any charge for energy due from him. In this case the electric bill itself was quashed by this Court holding it to be illegal. Therefore, the Petitioner cannot be said to have neglected to pay charges within the meaning of Section 24 of the Act empowering the Board to effect disconnection.

4. The next question that arises for consideration is that if the Board unlawfully stops supply of energy to the consumer then as to whether it can, still lawfully claim annual minimum guarantee charges. The answer is emphatic "No". None can be allowed to take advantage of its own wrong or fraud. To hold otherwise will mean giving premium to the wrong committed by the Board.

5. There is still Anr. stronger reason for holding the above view. Clause 13 of the L.T. Agreement meant for low tension consumers reads as under:

In case where the consumer is prevented from taking or using energy either in whole or part owing to causes beyond his control, e.g. strikes, lockouts, flood, stoppage of supply by the Board for long duration on account of breakdown of machinery or plants and otherwise, etc., the actual minimum charges will be reduced proportionately to the number of days the power could not be used, provided the consumer intimates such interruption to the Asstt. Elecl. Engineer/ Elecl. Executive Engineer of the Supply Subdivision/Supply Division concerned immediately and period of such interruption is verified by him. The remission will be sanctioned only by the Electrical Superintending Engineer incharge of the Supply Circle. This connection will not, however, apply to industrialists who are prevented from taking supply for reasons incidental to business or on account of stoppage of supply by the Board for reasons which may be attributable in whole or in part to the consumer as well. Decision of the Elecl. Superintending Engineer of Supply Circle concerned on points arising under this clause shall be final and binding.

6. A reading of the aforesaid clause makes it abundantly clear that if the consumer is not able to consume any part of electric energy due to any circumstance beyond his control, then he will be entitled to proportionate reduction in respect of annual minimum guarantee charges. While considering a similar provision, the Supreme Court in the case of *M/s Northern India Iron and Steel Co. v. The State of Haryana and Anr.*, reported in 1976 S.C. 1101 (Pr. 9) has held that the inability of the Board to supply electric energy due to power cut or any other circumstance beyond its control as per the demand of the consumer according to the contract will be reflected in and considered as a circumstance beyond the control of the consumer which prevented it from consuming electricity as per the contract and to the extent it wanted to consume. The Supreme Court accordingly in this case directed for proportional reduction in respect of the annual minimum guarantee charges. Similar view has been taken by the Supreme Court in the case of *Bihar State Electricity Board and Anr. v. M/s Dhanawat Rice and Oil Mills*, reported in 1989 S.C. 1030.

7. In the present case, as held above, the electric supply was illegally

discontinued to the Petitioner by the Board thereby depriving him from consuming electric energy for no fault of his. But still his claim under Clause 13 has been rejected. The order of rejection has been communicated by the Respondent Electrical Executive Engineer under his letter No. 189 dated 8.2.1991 (Annexure 4) saying that the claim does not fall within the purview of Clause 13 of the L.T. Agreement. The view taken by the Respondents is obviously wrong and unsustainable. In our opinion, the Petitioner is entitled to full remission of electrical charges for the period of disconnection which was from 13.12.1987 to 8.2.1989. We, accordingly, quash the impugned electricity bill (Annexure 5). If the Petitioner is found liable for paying any other charges then it will be open for the Respondents to serve fresh bills in accordance with law. The writ application is accordingly allowed. There will be no order as to costs.