

(2004) 04 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 12855 of 2002

Golden Polymex (India) Ltd.

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 22-04-2004

Acts Referred:

Citation : (2004) 3 PLJR 301

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Suraj Samdarshi, for the Appellant; Mohit Sah, for Board, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing the order dated 13.9.2002 of the Financial Controller of the Respondent-Bihar State Electricity Board deciding that the Petitioner shall not be entitled for exemption in minimum guarantee (minimum base charge) for the period during which the electric line of the Petitioner remained disconnected. Petitioner's further prayer is to quash the bill dated 4.10.2002 for the period September, 1999 to August, 2000 during which the Petitioner's line remained disconnected.

2. Short facts giving rise to the present application are that the Petitioner was given a licence for establishment of an undertaking for manufacturing Multi-lever Co-extruded Polyethylene Films in the district of Patna. An agreement dated 20.3.1996 was entered into between the Petitioner and the Bihar State Electricity Board (for short the Board) for supply of electricity at the contract demand of 350 KVA. In pursuance of the said agreement electric connection was given to the Petitioner on 19.4.1996. Petitioner commenced its commercial production of plastic sheets and plastic bags from 11.6.1996. Electric line of the Petitioner was disconnected on 25.8.1999.

3. It is the assertion of the Petitioner that in view of the industrial policy it was

not liable for payment of the annual minimum guarantee charges but the Petitioner was served with the bill containing annual minimum charges for the period 1996-97, 1997-98, 1998-99 and 1999-2000 for Rs. 6,17,413/-, Rs. 5,35,157/-, Rs. 7,52,534/- and Rs. 3,56,627/- respectively. According to the Petitioner it protested against raising of the bill of annual minimum guarantee charges, for the period 1996-97 to 1999-2000 but a bill dated 1.9.1999 was raised to the tune of 26,57,260/- which included the annual minimum guarantee charges of Rs. 22,61,731/- for the period 1996-97 to 1999-2000 apart from delayed payment surcharge" and fuel surcharge on the outstanding dues of annual minimum guarantee charges, which was not paid and ultimately the line was disconnected on 25.8.1999.

4. Petitioner was served with a legal notice dated 22.1.2000 for payment of the aforesaid outstanding dues. Petitioner challenged the same by filing a writ application before this Court which was registered as CWJC No. 14950 of 2001 Golden Polymer (India) Pvt. Ltd. Patna City v. Bihar State Electricity Board and Ors. and this Court by order dated 4.3.2002 disposed of the writ application with a direction to the Petitioner to make a representation before the Financial Controller of the Board, who in turn was directed to pass order in accordance with law. As directed Petitioner represented before the Financial Controller who found the Petitioner entitled for exemption from paying minimum guarantee charges as per Board's Circular No. 652 dated 11.10.1996 for a period of five years i.e. from 19.4.1996 to 18.4.2001. However, it held that the Petitioner is not entitled for exemption from paying the minimum guarantee charges for the period during which electric line of the Petitioner remained disconnected due to non-payment of electricity bill.

5. Mr. Suraj Samdarshi appearing on behalf of the Petitioner contends that as the electric line of the Petitioner was disconnected for non-payment of the annual minimum guarantee charges which the Petitioner was not liable to pay on account of the industrial policy of the State as adopted by the Board, hence disconnection was illegal and, therefore, the Board is incompetent to raise demand for annual minimum guarantee charges for the period of disconnection. In support of his submission he has placed reliance on a judgment of the Division Bench of this Court in the case of Electric (Patlipura) Power Equipment Private Ltd. Vs. The Bihar State Electricity Board and Others and my attention has been drawn to paragraph 4 of the judgment which reads as follows:

4. The next question that arises for consideration is that if the Board unlawfully stops supply of the 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.

6. Mr. Mohit Sah appearing on behalf of the Board, however, submits that the Petitioner vide its letter dated 31.8.1999 requested the Board to disconnect its electric line permanently and as such in view of Clause 9(a) of the agreement

entered between the Petitioner and the Board no exemption from payment of the annual minimum guarantee charges can be granted for the notice period i.e. from September, 1999 to August, 2000 during which period there was no production nor the electric line. He further contends that in view of Clause 15.4. (d) and (e) of the Board's Tariff 1993 the stand of the Petitioner that it shall not be liable to pay the annual minimum guarantee charges for the period of disconnection is absolutely misconceived. In support of his submission he has placed reliance on a judgment of a learned single Judge of this Court in the case of Jayanti Industries Vs. Bihar State Electricity Board and Others, and my attention has been drawn to paragraph 12 of the judgment, which reads as follows:

12. I am, therefore, unable to agree to Mr. Bajla's submission that the disconnection of the Petitioner's line being illegal, he was not liable to make payment for the period after disconnection.

7. Having considered the rival sub-Emission, I do not find any substance in the submission of Mr. Shah and the decision relied on is clearly distinguishable. As found by the Financial Controller itself, Petitioner was entitled for exemption from paying the minimum guarantee charges for a period of five years from 19.4.1996 to 18.4.2001. Petitioner's line was disconnected on 25.8.1999 and according to the Respondents' counter affidavit the Petitioner vide its letter dated 31.8.1999 (Annexure-6) had requested for disconnection of electric supply permanently. Thus electric line of the Petitioner was disconnected even prior to the date it made the request. Thus there is no escape from the conclusion that the Petitioner's electric line was disconnected for non-payment of the electrical dues.

8. The Financial Controller has also directed for revision of the bill as per actual consumption for the period from 19.4.1996 to 25.8.1999 i.e. the day from the commencement of commercial production and disconnection of the electric line holding that the Petitioner shall be entitled for exemption from paying minimum guarantee charges. Thus the electric line of the Petitioner was disconnected for non-payment of the electricity bill which has been found to be untenable. Hence the disconnection of the electric line of the Petitioner is on account of non-payment of bill not sanctioned by law and, therefore, illegal. Once it is held so, as held by the Division Bench of this Court in the case of Electric (Patliputra) Power Equipment Pvt. Ltd. (supra) if the Board unlawfully stops supply of energy to the consumer it shall not be entitled to claim annual minimum guarantee charges.

9. Now referring to the decision of this Court, in the case of M/s Jayanti Industries (supra) the same is clearly distinguishable. In that case this Court as a fact found that electric line was not disconnected illegally and on that premise held that consumer shall be liable to pay the annual minimum guarantee charge. This Court nowhere observed that even if the electric line has been disconnected illegally the consumer shall be liable to pay the annual minimum guarantee charges. Accordingly, I am of the opinion that the conclusion arrived at by the

Financial Controller in the impugned order that no exemption in minimum guarantee (minimum base charge) is admissible to the Petitioner during the period electric line remained disconnected due to non-payment of the electricity bill cannot be allowed to stand.

10. In the result, the application is allowed. Impugned bill dated 4.10.2002 to the extent it demands annual minimum guarantee charges for the period of disconnection is quashed. In the facts and circumstances of the case, there shall be no order as to cost.