

(1995) 07 PAT CK 0044
In the Patna High Court
Case No : C.W.J.C. No. 6622 of 1994

Hind Agriculture Farm and Another

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 10-07-1995

Acts Referred:

Citation : (1995) 07 PAT CK 0044

Final Decision : Allowed

Judgement

1. This application arises out of a claim made by the Petitioners under Clause 13 of the High Tension Agreement for proportionate remission in the Annual Minimum Guarantee and the Maximum Demand Charges for the hours of non-supply of electricity during the period 1978-79 to 1991-92.

2. It appears that initially the authorities refused to entertain the Petitioners' claim for proportionate remission on the grounds that the Petitioners failed to furnish the details regarding the day-to-day disruptions in the supply of electricity and that the claim had not been filed in the prescribed forms. The Petitioners admitted not having maintained any record of the hours of non-supply of electricity for the period in question and, hence, their inability to produce any record maintained by them. They however, claimed that they were entitled to the same remission as allowed in the case of one M/s Ganga Solvent on the plea that both the H.T. consumers (that is, Petitioner No. 1 and the aforesaid M/s Ganga Solvent) were situated within the same premises, had the same contract load of 100 KVA and received their supply of electrical energy from the same feeder.

3. Having failed to get any order on their claim for remission the Petitioners came to this Court earlier in C.W.J.C. No. 3006 of 1994 which was disposed of by a Bench by order, dated 08.04.91 (copy at Annexure-8). In that case it was admitted before this Court that though the Petitioners were unable to produce any record maintained by them regarding the hours of non-supply of electricity during the period in question, such records were maintained by the Bihar State Electricity Board on its own and as statutorily required. It will be useful to

reproduce here the directions given by this Court in that case:

In the peculiar facts and circumstances, the General Manager-cum-Chief Engineer may not insist on representation being filed by the Petitioners in the prescribed proforma. The General Manager-cum-Chief Engineer shall proceed to dispose of the claim of the Petitioners on the basis of the records maintained by the Bihar State Electricity Board. He may also take into consideration the orders passed in this regard in favour of M/s Ganga Solvent. This order we have passed in view of the fact that Mr. Bajla states that the Petitioners has (sic) not maintained any records. In that view of the matter, the Petitioners shall only be entitled to such remission which would be available from the records maintained by the Board in respect of its inability to supply electrical energy and not the inability of the Petitioners to use the same.

4. Following this Court's direction the Petitioners' claim was forwarded to the General Manager-cum-Chief Engineer, Kosi Area Electricity Board, Saharsa, who by his order, dated 02.06.94 (copy at Annexure-1), disposed of the Petitioners' claim allowing remission in the A.M.G. charges to the extent of 22,101 units and the Maximum Demand charges to the extent of 19.69 percent. It is this order which comes under challenge in this application.

5. Mr. L.K. Bajla, learned Counsel appearing on behalf of the Petitioners, submitted that the General Manager-cum-Chief Engineer having found that the hours of non-supply were to the extent of 19.69 percent of the total hours for the year 1978-79 erred in allowing remission only for 22,101 units in respect of the A.M.G. charges. Learned Counsel contended that the procedure adopted by the General Manager-cum-Chief Engineer was neither sanctioned by Clause 13 of the Agreement nor was it in conformity with the directions of this Court in the earlier writ, petition.

6. Taking the year 1978-79 for his calculations, the General Manager-cum-Chief Engineer found, from the Board's records, that the hours of non-supply of power added upto 1725 hours which was 19.69 percent of the total hours in the whole year. On this finding he did not reduce the Annual Minimum Guarantee units by 19.69 percent but proceeded to observe that even in case the supply of power during the whole year was wholly uninterrupted" Petitioner No. 1 could have consumed 1,12,245 units only as against the Annual Minimum Guarantee of 1,75,200 units as per the contract demand. Then, deducting the units actually consumed during the year (90,144 units) from the units it could have consumed, according to the impugned order (1,12,245 units), in case there was wholly uninterrupted supply of energy for the whole year the impugned order arrived at the figure of 22,101 units and held the Petitioners entitled to remission only to that extent.

Clause 13 of the H.T. Agreement is as follows:

If at any time the consumer is prevented from receiving or using the electrical energy to be supplied under this agreement either in whole, or in part due to

strikes, riots, fire, floods, explosions, act of God or in other case reasonably beyond control or if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all of the clauses mentioned above then the demand charge and guaranteed energy charge set out in the schedule shall be reduced in proportion to the ability of the consumer to take or the Board to apply such power and the decision of the Chief Engineer, Bihar State Electricity Board, in this respect, shall be final.

(Emphasis added)

7. Having heard learned Counsel for the parties and having perused the impugned order, we are of the opinion, that though the mode of calculation adopted by the General Manager-cum-Chief Engineer may be called ingenious, it does not have, the sanction of Clause 13, as quoted above. The material provision in the H.T. Agreement provides that a consumer is entitled to remission proportionate to the Board's inability to supply power; the twist introduced in the impugned order that had the supply of energy been wholly uninterrupted even then the total units consumed by the consumer would have been less than the minimum guaranteed units appears to be a consideration extraneous to the provision of the statutory contract and, therefore, any calculation made on that basis cannot be sustained in the eye of law.

8. Mr. Shiv Kriti Singh, learned Counsel for the Board, did not seriously resist this position. He however, very strenuously contended that the writ petition itself was not maintainable. Mr. Singh submitted that the General Manager-cum-Chief Engineer derived authority to take a decision on a claim of remission from an agreement entered into between the parties and, hence, his decision was not amenable to challenge in a writ petition before this Court. He relied upon a number of decisions, in this regard, some of which are reported in Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others,

9. Mr. Bajla, on the other hand, contended that the General Manager-cum-Chief Engineer was a public servant, discharging a public duty under a statutory agreement and, hence, an illegal decision rendered by him could surely be set aside/corrected by a writ Court. He relied upon the decision reported in The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh,

10. We have noted the rival submissions advanced-by the counsel for the parties only for the sake of record as in this case we are not inclined to enter into this controversy and we leave this question open to be decided in an appropriate case.

11. As noted above, the matter had earlier come to this Court when the General Manager-cum-Chief Engineer was given specific directions to decide the Petitioners' claim and was also given the guidelines regarding the manner in which the claim was to be decided. This Court had directed that the Petitioners shall only be entitled to such remission which would be available from the record maintained by the Board in respect of its inability to supply electrical energy and not the inability of the Petitioners to use the same.

12. From the impugned order it is evident that the decision of the Chief Engineer is not in conformity with the directions of this Court but is quite contrary to it.

13. We are of the opinion that, on this score alone, the matter warranted an interference by this Court.

14. We, accordingly, set aside the impugned order contained in Annexure-1 and remit the matter back to the Chief Engineer to decide the question of proportionate remission in the Annual Minimum Guarantee and the Maximum Demand charges afresh on the basis of its finding that, the hours of non-supply of electricity added up to 19.69 percent of the total hours for the year 1978-79. The Chief Engineer shall take the decision on the basis of Clause 13 of the H.T. Agreement and in the light of the observations made in this judgment. A final order, in this regard, should preferably be passed within two months from the date of production/receipt of a copy of this order.

15. In the result, this application is allowed. No order as to costs.