

(2003) 04 JH CK 0047
In the Jharkhand High Court
Case No : CWJC No. 2729 of 1996 (R)

Hindustan Copper Limited

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 15-04-2003

Acts Referred:

Citation : (2003) 2 JCR 686

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.M. Banerjea and Indrajit Sinha, for the Appellant; V.P. Singh and Rajesh Shankar, for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. M.M. Banerjea, learned counsel for the petitioner and Mr. V.P. Singh, learned counsel for the Electricity Board.

2. The writ petitioner in the instant case has prayed for a direction upon the respondents to give them rebate. According to the petitioners, rebate is given by Damodar Valley Corporation (hereinafter referred to as the "DVC" for the sake of brevity) to the Electricity Board on account of improved power factor. Consequently, the petitioner prays that the Board be directed to forthwith allow rebate to the petitioner. The grievance of the petitioner is that although the petitioner made improvements in the power factor, the respondent Board gets benefit of the amended tariff which includes a rebate to be given but that is not being granted whereas as per the Tripartite Settlement, the petitioner is only required to make payment of the actual amount demanded by the Corporation from the Board on account of power supply made to the petitioner including rebate granted by the DVC.

3. According to the petitioner, it has a factory in Moubhandar and mines at Mosabani. They require electricity and for the aforesaid purpose they had taken electrical connection from the Board. Whenever bills were raised, the petitioner made payments, but it was found that the Board, due to paucity of fund did not

make payment in respect of the electricity supplied to them by the DVC as a result of which the said Corporation either restricted or shed power causing difficulty to the petitioner, Petitioner has further stated that the Grid from which electricity is supplied by the Corporation to the petitioner, most of power coming from the said Grid is consumed by the petitioner.

4. The petitioner has further stated that a Tripartite Settlement was entered into in which the Corporation, the Board and the Petitioner as also the Hon"ble Chief Minister were parties. It was agreed that the monthly bill for power supply to the petitioner shall be prepared indicating the amount payable to the Corporation at the approved rate which were applicable to the Board. It was further agreed that the petitioner would go on making payment through two separate cheques, one drawn in favour of the Corporation and the other in favour of the Board respectively. The cheques drawn in favour of the Corporation will be forwarded by the Board directly to the Corporation. The petitioner states that on the basis of the aforesaid Tripartite Settlement, admittedly the petitioner had to pay an amount which was payable to the DVC at their approved rates and which were applicable to the Board and that whatever amount the Corporation charged, the same had to be paid by the petitioner to the Corporation in the manner Indicated above, i.e., by issuance of cheques. The petitioner has further stated that from a perusal of the Tripartite Settlement it would be evident that the rates at which the DVC is raising the bill to the Respondent Board is payable by the petitioner only to them and any rebate or concession which is being given by the DVC to the Board, the same should also be given to the petitioner. The grievance of the petitioner is that although the petitioner made improvements in the power factor, the respondent Board gets benefit of the amended tariff which includes a rebate to be given but that is not being granted whereas as per the Tripartite Settlement, the petitioner is only required to make payment of the actual amount demanded by the Corporation from the Board on account of power supply made to the petitioner including rebate granted by the DVC.

5. The petitioner has finally stated that in view of the fact that there was no rebate granted in the tariff of the Board, they did not give any benefit to the petitioner. The petitioners have also stated that they have made several representations asking the Board to give the rebate but the Board is not accepting to do so on the ground that there is no such provisions in the tariff and as such the petitioner is not entitled to such benefit.

6. In the counter affidavit filed by the respondent-Board, it has been stated that the writ application is itself not maintainable Inasmuch as the claim of the petitioner is on the basis of a Tripartite Settlement which is not a statutory settlement and as such the same cannot be enforced through a proceeding under Article 226 of the Constitution of India and that the petitioner has an alternative remedy by filing a suit. On merits, the Board has submitted at paragraph 6 of their counter affidavit that the petitioner is availing power directly from the DVC under a Tripartite Settlement and therefore the petitioner would be treated to be

a deemed consumer of the Board and accordingly would be guided by the tariff of the Board. The power supply by the DVC to the Board is covered by the DVC Tariff and the petitioner is supposed to bear the cost of energy in accordance with the Board's Tariff and the DVC is entitled to claim for the power supply to the petitioner at their rate from the Bihar State Electricity Board. Other points have been stated in the counter affidavit but it is not necessary for this Court to enter into the same on account of the fact that the nature of the prayer made in the writ application cannot be decided in an Application under Article 226 of the Constitution of India. The learned counsel for the respondents has submitted that the Tripartite Agreement was not a statutory agreement and that it was just an ad hoc arrangement and therefore the Writ Court should not allow the petitioner to seek benefits arising out of the said Tripartite Settlement. Let it be recorded that this Court, as has already been indicated above, is not in a position to issue a positive writ in favour of the petitioner, considering the fact that whether to grant rebate or not falls within the exclusive domain of the Board, itself. The petitioners have further stated that they have been filing representations after representations which have not yet been decided. In that view of the matter, this writ application is disposed off giving liberty to the petitioner to file a fresh representation before the Chairman of the Jharkhand State Electricity Board within a period of four weeks from today, raising all the points that they wish to do. If such a representation is filed, the Chairman of the Jharkhand State Electricity Board shall look into the same, giving opportunity of hearing to all the parties concerned and pass a reasoned order in accordance with law within a period of four weeks from the date of receipt of such representation.