
(2002) 03 OHC CK 0014

In the Orissa High Court

Case No : Original Jurisdiction Case No. 12717 of 2001

Hindustan Petroleum Corporation

APPELLANT

Vs

Managing Director, CESCO and Others

RESPONDENT

Date of Decision : 05-03-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 49, 79

Citation : AIR 2002 Ori 137 : (2002) OLR 591 Supp

Hon'ble Judges : M. Papanna, J;B. Panigrahi, J

Bench : Division Bench

Advocate : R. Mohapatra, H.S. Deo and A. Das, for the Appellant; B.K. Nayak and D.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

B. Panigrahi, J.—In this writ petition a challenge has been made against the notice of disconnection No. 2118 dt/- 12-9-2001 issued by the opp. party No. 4 u/s 24(1) of the Indian Electricity Act, 1910 calling upon the petitioner to pay an amount of Rs. 5,85,664/- by 25-9-2001.

2. The petitioner is a Government of India enterprise undertaking in the business of manufacture, refining and distribution of petrol and other petroleum products throughout India and as such decided to set up an Oil Terminal at Paradeep in the year 1994 to cater the demand of its customers of this region.

3. The writ petitioner is aggrieved by the proposed action of the opp. party No. 4 whereby time till 26-9-2001 has been given to disconnect the power supply on the ground of non-payment of the bill. But on the other hand it is alleged by the petitioner that Rs. 43,00,000/- is payable by the opp. party No. 1 to the petitioner on account of excess calculation of electricity bill being charged against them since June, 1994. The O.S.E.B. which was the erstwhile supplier of electrical energy, had entered into an agreement with the writ petitioner for supply of 225 KVA power. Power was to be supplied from the Grid Station where

a meter was installed, as it was being transmitted through the long distance of 8 Kms. In 33 KV line. The agreement was stipulated to be in force for a period of 5 years. But the O.S.E.B. failed to install the Tariff Meter as is required under the agreement which could have indicated exclusively the energy consumed by the petitioner. On 23-2-1994 another agreement was executed by and between the writ petitioner and the O.S.E.B. (now GRIDCO/CESCO) for supply of 480 KVA power. The power was meant to be utilized for the Industry Pump House where the pumps were installed. This facility was common for the petitioner. Bharat Petroleum Corporation Ltd. and Indian Oil Corporation Ltd. The petitioner's unit was energized with electricity pursuant to the agreement on 16-3-1994. Tests were carried out at the petitioner's premises after supply of electricity and O.S.E.B. felt that although the maximum demand was contracted for 25 KVA but on the basis of the installed capacity the petitioner might consume a load of 229 KVA (269 KW). Thereafter O.S.E.B. made a demand against the petitioner's consumption in Oil Terminal from 16-3-1994 to 31-3-1994 whereby it reflected the correct figure according to contract demand fixed at 225 KVA. The Industry Pump House (I.P.H.) was energized with electricity on 19-4-1994 and on the same day the tests were carried out after supply of electricity and O.S.E.B. felt that although the maximum demand was contracted for 480 KVA, but on the basis of Installed capacity, it was assessed that the petitioner should have taken a load of 542 KVA (488 KW). The bill for the period from 1-4-1994 to 18-4-1994 was received from O.S.E.B. by the petitioner. In the bill the contract demand fixed at 225 KVA was correctly reflected, but erroneously consumption of power was assessed on the basis of connected load of 269 KW/299 KVA, showing the demand charge at 239.2 KVA (80% of 299 KVA) instead of correctly reflecting the same to be 180 KVA in accordance with the agreement dated 23-2-1994. If those two bills are to be combined and reflected in one bill, the demand charges would be 564 KVA when the contracted demand was 705 KVA.

4. Pursuant to the test reports, it appears, the O.S.E.B. asked the petitioner to execute fresh agreement for availing the extra load of power for 69 KW and 56 KW, over and above, the contracted demand of 200 KW (225 KVA), and 432 KW (480 KVA) respectively. But the petitioner on 14-5-1999 refuted the demand of the O.S.E.B. for entering into a fresh agreement. It was, inter alia, stated that the O.S.E.B. had no authority to calculate the bills by adopting two methods and raise it in one comprehensive bill. The petitioner, therefore, had claimed that there should be two bills as per the two agreements which required to be served on them. The petitioner consistently received the electric bills from June, 1994 wherein the contracted demand was reflected as 705 KVA along with the connected load of 841 KVA. It is stated that the opp. parties have been erroneously raising the bill on the basis of connected load at 841 KVA, showing the demand charge at 678.8 KVA (80% of 841 KVA) instead of 564 KVA (80% of 705 KVA) and that too separate bills ought to have been raised. The petitioner, therefore, persistently requested the opp. parties to prepare two separate bills by showing the real consumption as per the contract load as agreed to in the two

agreements and on the ground that the Industry Pump House was a common facility which is being availed by the Indian Oil Corporation after it sets up its machineries in the adjoining unit of the petitioner. Several times, the petitioner also demanded for installation of direct meter to the unit during the last seven years. But the opp. parties did not respond to the said request of the petitioner and the petitioner was going on paying the electric bill with protest to avoid disconnection. The opp. parties without modifying the aforesaid defect, issued a notice for disconnection, of power supply for non-payment of the bills vide Annexure-53 as a reason whereof this case has been filed directing the opp. parties not to levy such bills and to correct the bills as per the agreement dated 23rd February, 1994 on the basis of contract demand instead of connected load and for a further direction to instal separate tariff meter at the petitioner's Oil Terminal.

5. The opp. party No. 4 has, however, denied the petitioner's averments that they are liable to calculate the energy bill on the basis of contract demand. It has been further alleged, inter alia, that the calculation for consumption of energy should be on the basis of contract demand and also 80% of the connected load. In so far as the execution of an agreement dated 23-2-1994 is concerned, it is however admitted that there was a contract demand of 225 KVA/200 KW for the purpose of Hindustan Petroleum Corporation Ltd., Oil Terminal. Since the petitioner was the only intending consumer in that area during the said period to avail power supply through a 33 KV Grid sub-section at Paradeep, a meter was to be set up at the power distribution centre, but not in the petitioner's unit. The power supply was given on 16-3-1994 with the metering arrangement at Grid sub-station. On the same day, a joint verification was made at the time of giving power supply. The opp. party No, 4 has claimed that during the verification it was detected that the total connected load of the premises was 269 KW/ 299 KVA. It has been further admitted that in the bill from 1-4-1994 to 18-4-1994 the energy bill was prepared on the basis of contract load and since the petitioner comes under the Large Industries Tariff category, the bill was prepared according to energy charges plus connected load along with other charges as per the tariff.

6. Another agreement was executed on 23-2-1994 for a contract demand of 480 KV/ 342 KW for the purpose of Hindustan Petroleum Corporation Ltd. (in short "HPCL") pump station. Before the second supply of energy of the HPCL pump station, it is stated that the petitioner was informed by the S. E., Cuttack Electrical Circle, Cuttack on 15-4-1-994 that since the common 33 KV line did exist and the common T. V. meter was installed in the sub-station premises, billing as per agreement cannot be made separately until separate H. T. metering arrangement is made. Therefore, both the energy bills were to be amalgamated to one and bill was accordingly raised. The petitioner had to agree formally and accepted such position, The power supply was given on 19-4-1994 with consumer No. MPL-9 and on that day a joint verification was made in presence of the petitioner's representative and it was detected that the connected load was 488 KW. In exercise of powers conferred u/s 79(j) and (k) read with Section 49

of the Electricity (Supply) Act, 1948, the "Orissa State Electricity Board made a Regulation with regard to the General Conditions of Supply of Electricity by the Board. The regulation is styled as The Orissa State Electricity Board (General Conditions of Supply) Regulations, 1981", which was to apply to all persons including the licensees. It is, inter alia, stated that the consumers shall observe and abide by all the terms and conditions stipulated therein. It is further laid down that the consumer shall abide by the terms and conditions of the Regulation as modified from time to time and shall form part of the agreement.

7. If a consumer has installed any additional load without prior permission of the Supply Engineer, the demand charges shall be assessed at 80% of the connected load. In the present case since the connected load was more than the contract demand as indicated in the Joint verification report, the opp. party No. 4 had, therefore, informed the petitioner on 13-5-1994 for executing a fresh agreement for the additional connected load and to deposit the additional security amount. But the petitioner instead of executing a fresh agreement denied to deposit the amount as per the bills raised by the opposite parties. It is the specific case of the opposite parties that the petitioner is liable to pay the energy bills on the basis of connected load. Since the petitioner's connected load was more than the contract demand, the petitioner was accordingly charged as per the provisions of the Regulation which formed part of the agreement. It is further submitted that the excess load was determined/detected in the joint verification as unauthorised load. The opposite parties have, therefore, not committed any mistake in raising the bills on the basis of connected load.

8. It is further stated by the opposite parties that on 2-8-1996 a separate supply was given to the Indian Oil Corporation Ltd. from the said 33 KV line with separate metering arrangement at its end. Similarly on 31-8-1999 Bharat Petroleum Corporation Ltd. (in short "BPCL") was also supplied energy from the said 33 KV line with separate metering arrangement at its end. Since two separate meters have been fixed for Indian Oil Corporation Ltd. and Bharat Petroleum Corporation Ltd., in the aforesaid background, there would be no difficulty to determine the actual energy consumed by the petitioner after deducting the energy consumed by the other two companies.

9. In paragraph 9 of the counter it has been further admitted that no separate meter could be installed in the petitioner's premises, as it is submitted that it required huge expenditure. The opp. parties have claimed that the petitioner has still to pay Rs. 9,68,607/- by the end of October, 2001 after adjusting all the amount paid by them. By virtue of this Court's order he has only paid Rs. 1,00,000/-, but not the actual energy consumption charges. The question of refund of amount to the petitioner does not arise, since it is obligatory on the petitioner to pay the bill amount on the basis of tariff fixed from time to time. Even assuming that the opp. parties had raised excess amount, the petitioner has been paying such electric charges without any demur for more than seven years. With these averments they have prayed for dismissal of the writ petition.

10. Mr. Mohapatra, learned Advocate appearing for the petitioner has argued with vehemence that the opposite parties are not authorised to raise bills on the basis of the connected load. It has been further contended that the opp. parties are entitled to the amount as per contract demand on the basis of the clauses of the agreement and not beyond. Two agreements were executed on 23-2-1994 and 16-3-1994. The premises were energized with electricity and the maximum demand was contracted to be 225 KVA. On the basis of the installed capacity, the petitioner should have taken a load of 299 KVA (269 KW). Therefore, the Orissa Electricity Board had raised the correct bill from 16-3-1994 to 31-3-1994 on the basis of contracted demand of 225 KVA. The Industry Pump House was energized on 19-4-1994 and tests were carried out on the same day. But in the subsequent bill, it was deliberately shown as 757 KW/841 KVA representing the demand charge at 433.6 KVA (80% of KVA) instead of correctly reflecting the same in two different bills. Even if those are combined, it would come to 564 KVA (whereas the contract demand is 705 KVA).

11. Mr. Nayak, learned Advocate appearing for the opposite parties has, however, supported the stand taken in the counter and justified the bill raised by the opp. parties.

12. After hearing the submissions and counter submissions of both the parties, the only question that has to be determined in this case is whether the petitioner should be liable to pay the charges on the basis of contract demand or on the basis of connected load. Undoubtedly the petitioner is a large industry coming within the definition "Large Industry" stipulated in the agreements. Both the parties have agreed to the assessment of consumption charges on the basis of Clause 7 of the Agreements dated 23-2-1994. In Clause 7 it has been stated as follows :

LARGE INDUSTRIES: These tariff rates shall be applicable to supply of power for industrial purpose, with contract demand of 110 KVA/100 KW and above, at one point or supply at the prescribed voltage under para (b) below.

(b) The monthly charges shall be demand charges at Rs. 65/- per KVA of maximum demand or 80 per cent of contract demand whichever is higher plus energy charges at the following rate on units metered without prejudice to the payment of monthly mini-mum charges as indicated under para (c) below :--

(i) Paise 111 for each unit for industries with contract demand of 100 KW. and above up to but, excluding 500 KW supplied at 33 KV.

(ii) Paise 121 for each unit for industries with contract demand of 500 KW and above up to but excluding 1000 KW. supplied at 132/220 KV.

(c) Minimum Charges:-- The monthly minimum charges shall be calculated at the above rates, on a demand of 80 per cent of contract demand and or units calculated at the average power factor of Order 9 and as average load factor of 20 per cent on the contract demand and shall take into account the charges

prescribed under paras (d) and (e) below:--

(d) When metering is done at the low voltage side of consumer's transformer, the computed transformer losses shall be, added to the reading of the meter both for energy and for demand to arrive at the energy and demand for billing purpose in the following manner.

(i) Energy loss in Transformer:--

Units per month $750 \times \text{KVA rating of transformer}$ -----
100 (ii) Loss in demand:-- One per cent of the rating of transformer in KVA.

(e) The Board at its discretion, may supply power to this category of consumer at voltage other than the specified voltage. In such cases, however, the above tariff in Sub-clauses (b), (c) and (d) shall be increased both in respect of demand and energy as follows :--

(i) By $12\frac{1}{2}$ (twelve and half) per cent for industries with contract demand of 100 KW/ 110 KVA. and above but less than 500 KW/ 555 KVA. when supplied at 400 volt.

(ii) By $2\frac{1}{2}$ (two and half) per cent for industries with contract demand of 500 KW/ 555 KVA and above up to and including 4500 KW/5000 KVA. when supplied at 11 KV.

(iii) By $12\frac{1}{2}$ (twelve and half) per cent for industries with a contract demand of 500 KW/555 KVA and above up to and including 4500 KW/5000 KVA when supplied at 400 KV.

(iv) By $7\frac{1}{2}$ (seven and half) per cent industries a contract demand above 4500 KW/ 5000 KVA when supplied at 11 KV.

When any of the large industries with a contract demand up to and including 4500 KW/500 KVA is supplied power at BHT, the above tariff shall be reduced by 5 per cent both in respect of demand and energy.

The industries with contract demand from 100 KW/110 KVA. up to and including 4500KW/500 KVA shall be supplied at 11 KV. or 33 KV. while in case of contract demand exceeding 4500 KW/5000 KVA, the supply shall be at 132 KW. or 132 KV or 220 KV. The voltage of supply shall be at the sole discretion of the Board.

(f) There shall be separate tariff for colony consumption.

13. The "Contract Demand" as defined in Clause 3(viii) of the Orissa State Electricity Board (General Conditions of Supply) Regulation, 1981 means "the maximum Killowatt (KW) of Killo-volt-ampere (KVA)" as the case may be agreed to be supplied by the Board and contracted by the consumer.

14. In Clause 3(ix) of the aforesaid Regulations "Connected Load" has been defined as follows :--

"Connected load means "the aggregate of the manufacturer's rating of all the apparatus including portable apparatus on the consumer's premises which is supplied with energy and apparatus in respect of which declaration has been made by the consumer for taking supply." This shall be expressed in KVA, KW or Horse Power (H.P.), as the case may be. If the ratings are in KVA, the same should be converted to KW by multiplying the KVA with a power factor of 0.9. If the same or any of the apparatus is rated by the manufacturer in HP, the HP ratings shall be converted into KW by multiplying it by 0.746."

15. Clause 29(a) of the aforesaid Regulation deals with "Constitution of Service" which reads as follows :--

"Board may classify the service to consumers as follows, and subject to the provisions of Section 49 of the Electricity (Supply) Act, 1984, fixed different tariff and conditions of supply for them."

16. In Clause 28(xii) "Large Industries" has been defined as follows :--

"This supply is meant for industrial production purposes with contract demand of 100 KW/110 KVA., and where power is ordinarily utilised as a motive force. The supply shall be made at a single, point at 3 phase, high voltage or extra high voltage depending upon necessity. The voltage of supply shall be at the sole discretion of Board.

Board, at its discretion, may also supply power to this category of consumer's at 3 phase, 400 volts where the contract demand does not exceed 5000 KVA/4500 KW."

17. Since analogous provisions of the Orissa State Electricity Board (General Conditions of Supply) Regulation 1981 have been incorporated in Orissa State Electricity Board (General Conditions) of Supply Regulations, 1995, we however did not desire to discuss at length about the aforesaid provisions.

18. In Clause 31 of the aforesaid Regulation the Board is empowered unbridled power on the Engineer to charge the tariff and other charges for supply of electrical energy. We found that in a joint verification, the load required to be consumed by the petitioner has been assessed in which the petitioner had signed in token of their acquiescence. It is true that in the agreement no such word as "Connected Load" has been incorporated. But all that has been stated is "Contract Demand" and also "Demand Charges". It has further been stipulated in the agreement regarding assessment of energy consumed by the petitioner. But power of imposition of tariff-contract has been given to the Board after giving, minimum 7 days' notice. In this case, we found that the petitioner has been paying the aforesaid bill with (without) slightest demur for the last 7 years. We are, therefore, not impressed about the petitioner's plea for refund or adjustment of the alleged excess payment.

19. It is the duty of the opposite parties to install a meter in the petitioner's premises. They have unjustifiably avoided to install it on some pretext or other.

We are however, not able to appreciate their stand for avoiding to install the meter. Accordingly, we hereby direct the opp. parties to install the meter in the petitioner's premises so that the actual energy consumed by the petitioner can be determined without any loss of energy on transmission.

20. In our considered view, since the point at issue is on a technical aspect as to whether the petitioner is to be charged on the basis of connected load or contract demand, we therefore, think it appropriate to refer the matter to the Regulatory Commission to determine whether the petitioner shall be charged on the basis of the contract demand or connected load with due reference to the agreements entered into between the parties. If it would be charged as per the connected load, then to determine the connected load it would also be necessary to hold a fresh inspection with the assistance of Chief Electrical Inspector. After such determination of the connected load the bills are to be raised accordingly.

21. With the aforesaid observation, we dismiss the writ petition without, costs. Petition dismissed.