

(2001) 04 JH CK 0010
In the Jharkhand High Court
Case No : CWJC No. 2426 of 2000

H.M.P. Cements Limited

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 20-04-2001

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49

Citation : (2001) 04 JH CK 0010

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : L.K. Bajla and T. Kabiraj, for the Appellant; V.P. Singh and R. Shankar, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by petitioner against the order, communicated vide letter No. 3537 dated 15.6.2000 passed by General Manager-cum-Chief Engineer, Ranchi whereby and whereunder while he disposed of the claim under Clause 13, rejected the prayer for remission of amount for certain period while the factory of the petitioner was stated to be lockout.

2. The case of the petitioner is that the workers of the factory adopted a path of agitation creating a situation of complete lawlessness in and around the factory premises. The then General Manager of the factory was forced to quit due to threat of violence and personal injury. In June, 1994, the workers forcibly took over the production and management of the factory and did not allow the officers of the management to enter the factory premises causing huge lossess of production.

In August. 1994, the workers started coming to the factory intoxicated state and certain workers started working in unauthorised manner according to their own sweet will and desire. A notice was issued on 10.9.1994 by the then General

Manager and was published whereby the workers were asked not to come inside the Company in the drunken State to avoid fatal accident and for smooth running of the factory. The workers, however, continued with their illegal activities, stopped the grinding of the clinkers. cement and despatch of ready cement. On the other hand, they resorted to illegal strikes frequently. It continued in the aforesaid manner and the company suffered huge losses because of illegal activities of the workers and could not pay the monthly bill of August, 1994 as a result of which electrical line was disconnected.

From 30.9.1994 till the reopening of the factory on 13.11.1995 there was no consumption of electricity in the factory of the petitioner.

3. According to counsel for the petitioner, the situation of factory deteriorated to such an extent that it become impossible to protect the property as well as to ensure the safety of the workers and the managerial staff. The management had to publish a notice declaring a lockout with effect from 10.10.1994 with copy to Labour Ministry, Police and other concerned administrative officers. It is only after prolonged negotiations between the management and its workmen a Memorandum of Settlement was signed on 11.11.1995 wherein it was acknowledged by the representatives of the workmen that the lockout was on account of the situation created by the workmen because of which the production came to a grinding halt. Ultimately, with the intervention of the Additional Commissioner, Ranchi and the President of the recognised Mazdoor Union and the management of the factory, a settlement was reached whereinafter the factory reopened on and from 13.11.1995.

In the meantime, the respondent-Bihar State Electricity Board (B.S.E.B.) served the bill of A.M.G. charges for the year 1994-95 for Rs. 57,63,204/- and Rs. 15,52,500/- towards A.M.G. and M.D. charges respectively for the period from October. 1994 to March, 1995. According to petitioner, the aforesaid period is subsequent to the period of disconnection which was made earlier on 30.9.1994 when there was no consumption of single unit of electricity. In addition thereto a sum of Rs. 1,40,31,612/- was charged as A.M.G. and M.D. charges for the period from April, 1995 to September, 1995 though during this period, no single unit was either supplied by the Board or consumed by the petitioner.

The reason for submitting the bill for the period from October. 1994 to September. 1995 was under Clause 9 of the Agreement i.e. after disconnection if the line is not restored in the next 12 months on expiry the period, the agreement stands terminated.

In the background aforesaid according to petitioner, there being agitation, situation of complete lawlessness in the factory, followed by lockout, the petitioner's company being prevented from using electrical energy, in respect to the period, filed claim for remission under Clause 13 of the H.T. Agreement on 16.12.1995 in two parts. The first part in respect to the period April. 1994 to September. 1994 on the ground of proportionate remission for the duration of

non-supply and the second part for the period from October, 1994 to September, 1995 on the ground of lock-out.

It appears that the General Manager earlier rejected the claim on 19, 1996 against which petitioner moved before this Court in CWJC No. 2852/96(R). During the pendency of the said case, the management of petitioner-Company was changed, the assets and liabilities sold to the present management. A Bench of this Court vide order dated 3.10.1997 directed the petitioner to pay the entire due amount of energy charges in 20 monthly instalment and ordered to restore the electrical line. After disposal of the said case, the present management of the petitioner entered into an agreement with the Board on 4.11.1997 for payment of total outstanding dues accrued during the period of old management amounting to Rs. 5,19,00,473/-, in 20 instalment, the first instalment being Rs. 77,86,273/ and the remaining of Rs. 23,21,800/- each.

4. One LPA was preferred by petitioner against the order of learned single judge which was admitted on 9.12.1999. The demand of A.M.G. in the meantime remained pending with the Board, having not included in the amount of Rs. 5.19 crores in the agreement. The petitioner claims to have paid certain amount to the tune of Rs. 3,79,69,673/-.

Another writ petition stated to have been filed by the petitioner being CWJC No. 1308/ 99(R) before this Court for declaration that the petitioner had paid more amount towards energy and no further amount was required to be paid under the agreement. The said writ petition seems to be pending. Subsequently, the General Manager having decided the claim under Clause 13 of the Agreement for the period 1995-96 vide order dated 15.6.2000, the petitioner has challenged the same in the present case.

According to petitioner, the ground for rejection of claim for lockout period is similar to the ground taken for rejection of claim for the period from October, 1994 to March, 1995. It is stated that the order was passed without taking into consideration that the Judgment of predecessor which was sub-justice before this Court in LPA No. 506/97.

5. Counsel for the petitioner relief on the decision of this Court in *Karara Chand Thaper & Bros. Ltd. v. B.S.E.B.* 1997 (1) PLJR 729, to show that the Board had no authority under the law to hold the lockout as illegal but to consider the only question as to whether the person has been prevented from using electrical energy which was reasonable beyond the control or not.

The situation during the period in question was beyond the control of petitioner and it was prevented from using electrical energy was the stand taken by the counsel while placed reliance on the decision of this Court in *Suprabhat Steels Ltd. v. B.S.E.B.* 1994 BBCJ 369.

In respect to failure of Board to supply constant electricity due to tripping, loadshedding and power cut, reliance was placed on the decision of the Supreme

Court in Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, .

6. From the impugned order of rejection communicated vide letter dated 15.6.2000, it will be evident that the Board had not decided the issue as to whether the lockout was illegal or not. It merely took into consideration the period of lockout, to find out as to whether the petitioner has been prevented from using electrical energy because of such lockout or not. It has rightly taken into consideration that the electrical line was disconnected for failure to deposit energy charges on 30.9.1994 i.e. much prior to declaration of lockout on 10.10.1994. Thus, it will be evident that the electrical connection was not available between 10.10.1994 to 12.11.1995, which includes the period in question in the present case and thereby the question of prevention from using electrical energy because of lockout does not arise.

So far as the remission in respect to the period of non-supply, interrupted supply, tripping etc. is concerned, its based on calculation. The matter has been well discussed in detail at para 13 to the impugned order and this Court cannot sit in appeal in respect to such calculation.

Apart from the aforesaid fact, it will be evident that the Board has taken into consideration the action of petitioner though the petitioner was liable to pay certain charges in terms with the earlier order of this Court and agreement but it failed to deposit the total amount as per such order of agreement.

7. In the facts and circumstances, in absence of any error of fact or law, the order issued under Clause 13 being based on calculation, this Court finds no reason to interfere with the same.

There being no merit, the writ petition is dismissed.

8. Petition dismissed.