(2006) 01 JH CK 0019

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4916 of 2005

Incore Metals and Cement Pvt. Ltd. APPELLANT

Vs

Jharkhand State Electricity Board and Others RESPONDENT

Date of Decision : 25-01-2006

Acts Referred:

Citation : AIR 2006 Jhar 97 : (2006) 1 JLJR 469 : (2006) 2 JCR 274 : 2006 AllIndCaS 42 849 : (2006) 2 AIRJharR 529

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Lalit Kumar Bajla, for the Appellant; Rajesh Shankar, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Heard the parties on merits for final disposal at this state.

2. Petitioner prays for quashing the revised bills raised on the basis of hundred per cent of the contract demand, for the first 12 months, from the date of commencement of supply of electrical energy.

3. It is submitted on behalf of the petitioner that the Tariff notification dated 15.3.2000, (Annexure-B) did not change the second part of stipulation contained in Clause 4(c) of the Agreement (Annexure-1). It is further submitted that on the basis of the agreement dated 14,9.2004, read with the tariff applicable, petitioner was liable to pay the maximum demand charges for the first 12 months of the commencement of supply (i.e. 13.9.2004), on the actual recording of maximum demand for the month. It is further submitted that for the first seven months, the bills were issued correctly le. on the actual recording of maximum demand but thereafter the impugned demands have been served. In support of his contention, learned Counsel appearing for the petitioner, relied on a decision of the Supreme Court in case of Indian Aluminium Company Vs. Kerala State Electricity Board, .

4. Learned Counsel appearing for the Board, supporting the impugned demand submitted that the said Tariff providing the terms and conditions of supply of the "Induction Furnace Consumers". He further submitted that where there is a conflict between the tariff and the agreement, the tariff will prevail.

5. To appreciate the rival contentions, it will be useful to quote the relevant clause of the agreement.

4(c) Maximum demand charges for supply in any month, will be based on the maximum KVA demand for the month or 75 per cent of the contract demand whichever is higher subject to provision on Clause 13. For the first twelve months service the maximum demand charges for any month will however be based on the actual maximum demand for that month.

6. Clause 3 of the said tariff dated 15.3.2000, prescribes the rates of demand charge and unit charge. Clause 5 of this Tariff provides that the demand charge mentioned in the said Clause 3 shall be levied on actual maximum demand recorded in the meter during the month or 100 per cent of the Contract demand, whichever is higher.

7. I am unable to accept the contention of the respondents that the said tariff dated 15.3.2000, was a complete tariff in respect to the consumers running Induction Furnace. This tariff was issued in partial modification of earlier Tariff notifications. One of the changes effected was that the percentage, mentioned in Clause 4(c) of the agreement was enhanced from 75% to 100%. But the second part of Clause 4(c) that for the first 12 months'' service, the maximum demand charges for any months will, however, be based on the actual monthly maximum demand for that month'', has not been altered and is kept intact. There is no conflict between Clause 4(c) of the Agreement and Clause 5 of the Tariff Notification dated 15.3.2000.

8. In the circumstances, noticed above, it has to be held that petitioner is liable to pay the maximum demand for the first 12 months from the commencement of supply i.e. 13.12.2004 on the actual maximum demand recorded in the meter, and thereafter he is liable to pay the maximum demand on the basis of hundred per cent of the Contract demand or the actual demand recorded in the meter, whichever is higher.

9. In the result, this application is allowed. The impugned demands are set aside. Respondents are directed to revise the demands as aforesaid and adjust the excess payment made by the petitioner, if any, in the future bills.