(2002) 08 PAT CK 0083

In the Patna High Court

Case No : C.W.J.C. No. 2767 of 2002

Jayanti Industries APPELLANT

Vs

Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 26-08-2002

Acts Referred:
Electricity Act, 1910 — Section 24

Citation : (2002) 3 BLJR 2090 : (2002) 4 PLJR 400

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The petitioner before this Court is a partnership firm which was running an industrial unit, manufacturing plastic containers under ire name of M/ s. Jayanti Industries. The petitioner firm has filed this writ petition challenging the action of the Board in disconnecting the high tension electrical connection given to its unit on 15.7.2000 for non-payment of dues and in raising a demand for Rs. 6,38,754,54 paise vide letter No. 779/Rev, dated 6.9.2001 issued by the Electrical Superintending Engineer, Muzaffarpur Circle, Muzaffarpur. According to the petitioner, the disconnection of its electrical line was illegal because it was effected without giving the firm seven clear days notice and the demand raised by the Superintending Engineer was also illegal, invalid and unenforceable against the petitioner.

2. The facts of the case are brief and without any controversy. The petitioner firm had an industrial unit manufacturing plastic containers from before. In the year 1997 the firm undertook expansion of the unit. On 17.4.1998 it entered into a high tension agreement with the Board with the contract demand of 150 KVA. The supply of electricity under the agreement commenced from 27.5.1998. It is significant to note here that in terms of the Industrial Policy, 1995 of the State Government and the circular issued by the Board in pursuance to the Industrial Policy the petitioner firm was granted exemption from payment of Annual

Minimum Guarantee Charges.

3. It is also to be noted that Sub-clauses (a) and (b) of the Clause 9 of the agreement provides that the agreement would remain in force for a period of three years from the date of commencement of supply of electricity and the consumer, in order to terminate the agreement, would be obliged to give one year''s notice to the Board.

4. The firm''s venture in the expansion of the unit perhaps did not yield the desired results and the petitioner firm, therefore, decided not to continue with the 150 KVA connection taken by it from the Board. The petitioner, accordingly, gave a notice under Clause 9 of the H.T. Agreement on 29.6.2000. It is to be noted here that the three years period from the date of commencement of the supply was to come to an end on 26.5.2001 and the one year notice period under the notice, dated 29.6.2000 would come to an end on 28.6.2001. The provisions of Clause 9(a) and (b) would have been satisfied therefore, had the notice asked for disconnection of the line w.e.f., 29.6.2001, i.e., on the expiry of the notice period. But in this notice the petitioner made a request for immediate disconnection of the 150 KVA line with the offer that its liability for the notice period may be adjusted against the security deposit made by the firm. In the notice a further request was made for replacement of the 150 KVA line by a low tension connection of 25 H.P. for which it was stated that the petitioner firm would be making an application separately. The notice given by the petitioner is rather important and it will be, therefore, useful to reproduce it in extenso:

Regd. Post 29th June''2000. The Electrical Executive Engineer Hajipur Electric Supply Division Hajtpur Sub: Notice for termination of agreement dated 17.4.1998 Consumer No. HT 26. Sir,

We hereby give you notice for termination of the agreement dated 17.4.1998 executed between the Bihar State Electricity Board (hereinafter called the Board) & ourselves, under Clause 9(a) thereof.

The Electric supply under this agreement was commenced on 27.5.1998 and the first three years of compulsory availing of supply shall expire on 26.5.2001. whereas this twelve month''s notice shall expire on 31st July 2001. We shall have no liability under this agreement after 31st July 2001.

We are already exempted from payment of minimum base under the tariff in terms of the instruction contained in the Board''s letter No. 652 dated 11.10.1996.

We are making a separate application for giving Electric Supply to 25 H.P. load under L.T.I.S. agreement and shall be grateful if you will kindly close our accounts and send us statement of accounts charging the liability of the notice period, if any, and outstanding dues after crediting the security deposit and interest accrued thereon; so that the parties may discharge their respective lawful liability on closing of the Accounts.

The supply to the 25 H.P. load under LTIS tariff, being separately applied for, may kindly be done simultaneously with the disconnection of supply under the present agreement, as the notice period extends upto July 2001.

Yours faithfully Sd/- Partner,

Sd/- (Signatures of the person who executed the agreement)

Copy to Electrical Supdt. Engineer, Muzaffarpur Electrical Circle for information and necessary action.

5. From this notice it is evident to this Court that in making the request for an immediate disconnection of the H.T. line, even without waiting or the remaining period of the agreement and the one year notice period, the petitioner made a grave error and miscalculation which has landed the firm in its present predicament. It is noted above, that the petitioner was enjoying exemption from payment of Annual Minimum Guarantee Charges in terms of the 1995 Industrial Policy read with the Board''s circular issued in pursuance of the Government policy. It was assumed by the petitioner that notwithstanding the disconnection of the H.T. line before the expiry of the agreement period on his request the firm would continue to enjoy the exemption for the remaining period of the contract. If that were the position then all that the petitioner Would have been required to pay at that stage would be the dues standing on the date of disconnection because after disconnection the petitioner will not be using any energy hence, there would be ho energy charges and the exemption granted to the firm would provide the cover against payment of Annual Minimum guarantee charges for the remaining period of one year during which the agreement was to remain in subsistence. The security deposit made by the petitioner and the interest accrues on that deposit would add up to an amount in excess of the dues against the unit and thus, in effect, as a result of disconnection of the H.T. line, the petitioner instead of paying anything would get something from the Board as refund of the security deposit after adjustment of the dues.

6. In this assumption, however, the petitioner was clearly wrong. The exemptions under the Industrial Policy, including the exemption from payment of A.M.G. charges, are allowed with the object to increase the industrial production and to bring industrial prosperity to the State. If the petitioner was not able to run the expanded industry even for the full period of the agreement, the firm was clearly not entitled to any exemption, at least for the remaining period of the contract Taking any other view would be contrary to the aims and objects of the Industrial policy and also encourage many unhealthy practices; for example, a unit might get exemption as being newly set up or on the basis of expansion and after a few months may close down or go back to its old position and still claim exemption for a full period of five years as provided in the Industrial policy.

7. This is exactly what happened in this case. The Board denied the petitioner''s unit any further exemption from payment of A.M.G. charges and the demand raised by the Board mainly represents, apart from the dues standing at the time

of disconnection, guaranteed energy charges and guaranteed demand charges for the remaining period of the contract as would be evident from the statement of account enclosed with the impugned letter at Annexure-18. The statement in substance shows the petitioner''s account as on the date (29.6.2000) the petitioner gave the termination notice PLUS the A.M.G. charges for the one year remaining period of the contract. This latter the petitioner had not bargained for but as noted above the petitioner proceeded in this matter on a completely incorrect premise.

8. Mr. Bajla next contended that the disconnection of the petitioner''s line on 15.7.2000 was illegal because it was effected without giving the petitioner seven clear days notice and the disconnection being illegal/the petitioner was not liable to make any payment for the period subsequent thereto. In this regard, Mr. Bajla drew my attention to the notice, dated 9.7.2000, a copy of which is at Annexure-5. This is a notice u/s 24 of the Indian Electricity Act and in this notice a sum of Rs. 94,552.14 paise is shown as due against the petitioner with the stipulation that failure to pay the due amount on or before the 13.7.2000 will lead to disconnection of line. According to Mr. Bajia, the notice was received by the petitioner on 15.7.2000 and on the same date the line was disconnected Mr. Bajla stated that the petitioner was given another notice, dated 14.7.2000 (Annexure-6) in which the same amount was demanded with the stipulation that failure to pay the dues on or before 22.7.2000 lead would to disconnection of the electricity line. From these two notices it appears that the petitioner was not given seven days'' clear notice for the disconnection of the line but the writ petition does not refer to an. earlier notice, dated 6.6.2000, a copy of which is brought on record as Annexure-A to the counter affidavit, In the notice dated 6.6.2000 it was stated that a sum of Rs. 63,236.96 paise was due against the petitioner; the notice asked the petitioner to make payment by 13.6.2000 failing which the electrical connection would be disconnected.

9. Mr. Mihir Kumar Jha, learned Standing Counsel submitted that the petitioner''s line was disconnected in pursuance of this notice after many more days than the seven days required u/s 24 of the Indian Electricity Act, 1910.

10. Mr. Bajla submitted that the notice dated 6.6.2000 must be deemed to have been superseded by the subsequent notices, dated 9.7.2000 and 14.7.2000.

11. I am unable to accept the submission, it is not the case of the petitioner that payment was made of the dues demanded by the notice, dated 6.6.2000. It is also not the position that the earlier notice of 6.6.2000 had become too old or stale to be given effect to on 15.7.2001. In these circumstances it cannot be contended that the notice dated 6.6.2000 must be deemed to be superseded by the issuance of the subsequent notices.

12. I am, therefore, unable to agree to Mr. Bajla''s submission that the disconnection of the petitioner''s line being illegal, he was not liable to make payment for the period after disconnection.

13. On the basis of the aforesaid discussions, I find no merit in this writ petition. It is accordingly dismissed.