

(2020) 02 JH CK 0001

In the Jharkhand High Court

Case No : Writ Petition (C) No.1284 of 2014, 5057 of 2015

Jharkhand State Electricity

APPELLANT

Vs

State of Jharkhand And Ors

RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Electricity Act, 2003 — Section 56(2)
Constitution Of India, 1950 — Article 12

Citation : (2020) 02 JH CK 0001

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Ajit Kumar, Mukesh Kumar Sinha, Vikash Kumar, M.S. Mittal, Rahul Lamba, Naveen Kumar,

Final Decision : Dismissed

Judgement

1. As in both the writ petitions the facts and law are similar that is why both the writ petitions have been heard together.

2. W.P.(C) No.1284 of 2014 has been filed on behalf of Jharkhand State Electricity Board [now, Jharkhand Urja Vikas Nigam Limited(JUVNL) and Jharkhand Bijli Vitran Nigam Limited(JBVNL)] (hereinafter referred to as 'Nigam') for quashing of the order dated 09.10.2013 passed by the Electricity Ombudsman, Jharkhand in Appeal No.EOJ/03/2013 and order dated 25.05.2013 passed by Vidyut Upbhokta Shikayat Nivaran Forum, Chaibasa at Jamshedpur in Case No.33/2011/06/2012.

3. W.P.(C) No.5057 of 2015 has been filed for quashing the letter No.2347 dated 17.09.2015 by which a supplementary bill amounting to Rs.22,19,200/- on account of wrongly allowed voltage rebated for the period Aug., 2011 to July, 2015 has been raised. The further prayer is made for quashing the supplementary bill dated 17.09.2015 for a sum of Rs.22,19,900/-which was raised on account of amount of voltage rebate wrongly allowed for the period of Aug.,2011 to July, 2015.

4. Mr. Ajit Kumar, the learned Senior counsel appearing for the petitioner in W.P. (C) No.1284 of 2014 submitted that the respondent no.2 had initially filed a consumer case before the Vidhut Upbhokta Shikayat Niwaran Forum (hereinafter to be referred as 'Forum') Ranchi which was numbered as Case No.33 of 2011 which was subsequently transferred to Forum, at Chaibasa. In that application, respondent no.2 had prayed for a direction upon the petitioner to allow voltage rebate as per the tariff 2010-11. On notice, the petitioner appeared before the Forum. The stand was taken by the Board/petitioner that voltage rebate was being allowed to the respondent no.2 in the light of letter no.226/C.E/Rev dated 26.06.2004 with respect to the tariff order 2003-04 but after coming into force tariff order 2010-11 as issued by Jharkhand State Electricity Regulatory Commission (hereinafter to be referred to as 'Regulatory Commission') voltage rebate and load factor rebate are barred to the consumers who are in arrears. It has been submitted that this fact has not been interpreted correctly by the Forum and the Forum had erroneously held that the respondent no.2 is entitled to get voltage rebate under the new tariff schedule. It has been further contended that the amount of Rs.9,91,621/- on account of fuel surcharge and Rs.2,42,136/- on account of AMG charge for the period 2000-01 along with DPS of Rs.62,995/- was kept in abeyance in the month of 01/2003 related to the above connection and due to above dues which is kept in abeyance, shown in the bill, voltage rebate is not allowed to the petitioner as per the provisions of tariff order 2010-11. But this contention was negated by the Forum. By order dated 25.05.2013 it was decided in favour of respondent no.2 and the petitioner had been directed to issue revised bill from May, 2010 by allowing voltage rebate under the new tariff 2010-11.

5. Aggrieved with this, the petitioner preferred an appeal before the Electricity Ombudsman, Jharkhand under Clause 13 of (Guidelines for Establishment of Forum For Redressal of Grievance of the Consumers and Electricity Ombudsman) Regulation, 2005 which was numbered as EOJ/03-2013. The learned Electricity Ombudsman after hearing the parties decided the appeal by order dated 09.10.2013 and directed the petitioner to issue revised bill to the respondent from May, 2010 by allowing voltage rebate under the new tariff 2010-11 within one month from the date of receipt of the order. It has been contended that it was ordered ignoring by the provision of tariff order 2010-11 issued by Jharkhand State Electricity Regulatory Commission.

6. Mr. Ajit Kumar, the learned Senior counsel appearing for Jharkhand Urja Vikas Nigam Limited (JUVNL) submitted that M/s BMC Metal Cast Limited was in arrear of fuel surcharge amount and which was paid by it after disposal of batch of matters of fuel surcharge by the Hon'ble High Court reported in 2015 (4) JCR pg.88. By way of referring to the order dated 03.11.2015 passed in L.P.A. No.616 of 2015, he submitted that the Division Bench has recorded as under :

"Mr. Mittal, learned Senior Advocate makes statement at Bar that the appellant has already deposited the principal amount. So far as Delayed Payment

Surcharge (DPS) is concerned, the same is, hereby, stayed, till final disposal of the main appeal."

7. Aggrieved with this, the petitioner has filed this writ petition.

8. He further submitted that in view of the common order passed by Hon'ble High Court on 03.08.1999 in CWJC No.2112/99(R) the fuel rates of fuel surcharge was not paid even by the petitioner-company and the issue remained pending. Relying on observation of the Division Bench in L.P.A. No.616 of 2015 he further submitted that the amount in question was paid in the year 2015 as recorded in the Division Bench order of the High Court. He further submitted that M/s BMC Metal Cast Limited has not produced any order of stay granted by the High Court upon demand of principal amount of fuel surcharge. He further submitted that the consumers including M/s Usha Martin Limited or the petitioner-M/s BMC Metal Cast Limited has been paying lesser rates of fuel surcharge in view of the order passed by the Hon'ble High Court from time to time which are exactly common and thus the issue has been finally decided by the High Court in the judgment of M/s Usha Martin Ltd. in W.P.(C) No.3005 of 2011 which has been annexed as Annexure-11 in W.P.(C) No.5057 of 2015. He further submitted that two kinds of rebates, i.e. voltage rebate and load factor rebate was made permissible to the consumers upon conditions as prescribed in the tariff. He further submitted that in the tariff order, after the head voltage rebate and then load factor rebate, a note was given at the bottom mentioning "note the above rate will be available only on monthly basis and the consumer with arrears shall not be eligible for the above rebates". By way of placing the said tariff he submitted that the voltage rebate as well as the load factor rebate was supposed to be provided to the consumer only on monthly basis and that too with a condition that the said rebate shall not be available to the consumers who are in arrears. He further submitted that in the tariff applicable between 1st May, 2010 to 30th July, 2011 as well as in tariff applicable from 01.08.2011 there are no much difference in the tariffs. In the tariff applicable from 1st May, 2010 a common note was given below the head voltage rebate and load factor rebate and which was made separate in the subsequent tariff applicable from 1st August, 2011 the condition did not change because even under the common note both the rebates were covered and were provided to be available only on monthly basis and further with a condition that consumer with arrears shall not be eligible for the above rebates. In the subsequent tariff order separate Note was given under both the heads. By way of referring the order dated 30.04.2015 passed in W.P.(C) No.1682 of 2015, he submitted that with regard to tariff order 2012-13 it was considered and held that a consumer with arrear shall not be eligible for the rebate. He further submitted that this order has been affirmed in L.P.A. No.254 of 2015.

9. Mr. M.S. Mittal, the learned Senior counsel appearing for the petitioner in W.P. (C) No.5057 of 2015 submitted that the petitioner was a consumer of Jharkhand State Electricity Board and has a single connection namely, Consumer

No.HJAP-71 for a contract demand of 1500 KVA and the supply in the connection is at 33 KVA. He further submitted that the bill in respect of consumer No.HJAP-71 for a contract demand of 1500 KVA for supply in connection at 11 KVA were being raised in the name of M/s BMC Metal Cast Limited, which is the petitioner in this writ petition. After the introduction of Electricity Act, 2003, it was the State Electricity Regulatory Commission which had the power to formulate the Tariff and the individual licensee did not have the authority to issue their own tariffs. It was made that a tariff proposal was to be submitted to the State Regulatory Commission, who after giving public hearing used to finalize the tariff. Accordingly, this 2004 Tariff schedule was issued by the Jharkhand State Electricity Regulatory Commission for the licensee-Jharkhand State Electricity Board which was effective from 01.01.2004. In respect of HT consumer a voltage rebate was granted in accordance with the Tariff approved by the Regulatory Commission.

10. Mr. M.S. Mittal, the learned counsel appearing for the petitioner in W.P.(C) No.5057 of 2015 and respondent in W.P.(C) No.1284 of 2014 has submitted that the dispute in question is covered by 2011-12 tariff effective from August, 2011 till December, 2015. He submitted that for the first time the condition was imposed so far voltage rebate is concerned to the effect that if there are any arrear when in that event unless and until they are stayed by the competent court of law, voltage rebate will not be granted. He further submitted that there was no arrear with regard to the petitioner and in the bill it is shown to that effect and the amount was shown as kept in abeyance. He further submitted that the petitioner never delayed in the payment of a single bill and all bills were paid in time and in each and every bill, timely rebate was provided to the petitioner. He further submitted that there were no arrear but certain amount was kept in abeyance which was in relation to fuel surcharge. In view of the general interim order passed by the High Court for all consumer to pay fuel surcharge at particular rates and after the matter was finalized the petitioner made payment of the principal amount of fuel surcharge and the delayed payment surcharge was stayed by the Division Bench of the High Court. To buttress his argument, he also relied on the judgment of the Division Bench of this High Court in L.P.A. No.616 of 2015. He further submitted that issue of fuel surcharge has not been finalized and is still subjudice before this Court. He further submitted that so far the judgment relied by the counsel appearing for the Nigam and W.P.(C) No.1682 of 2015 was with regard to load factor rebate and at that time it was a condition that if there were arrears, no rebate should be granted. He further submitted that this condition has been modified now that if the arrears are stayed by the competent court of law then in that event the rebates can be given. He further submitted that the period in question is of the year 2003-04 tariff which was in relation to load factor rebate and not voltage rebate. He further submitted that before issue of the impugned supplementary bill dated 17.09.2015 no show cause notice was given to the petitioner to the effect as to why the voltage rebate is being withdrawn and no opportunity of hearing was provided. To

buttress this argument, he relied in the case of "Dumraon Textiles Limited v. Bihar State Electricity Board and Ors."-(1993) 2 PLJR 527.

"19. The Board being a public authority discharge Governmental function. A consumer depends upon the authorities of the Board for its day to day amenities which are essential for human existence. It is the State within the meaning of Article 12 of the Constitution of India. It thus require to act fairly, judiciously and in accordance with the principles of natural justice. Its action thus must be fair and conform to the standards of public morality. Its Officers cannot act arbitrarily or raise demand for substantial amount of money without affording opportunity of hearing to the consumer."

11. He further submitted that in spite of interim order of stay the petitioner was forced to make payment of the entire dues. In view of Section 56 (2) of the Electricity Act, 2003 the impugned demand is also barred by limitation. He further submitted that the judgment relied by Nigam in case of "M/s Usha Martin Limited" passed in W.P.(C) No.3005 of 2011 is on another rebate, i.e., load factor rebate and for the tariff of the year 2003-04 and thus, that judgment is not applicable in the facts and circumstances of this case. He further submitted that 2010-11 tariff is very clear which deals with load factor rebate and the word rebates deals with three types of rebates. There is distinction regarding granting of voltage rebate. He further submitted that the petitioner is not in arrears in terms of the condition of 2011-12 tariff and there is no bill in which any arrear has been reflected. By way of placing Black's Law Dictionary, Mr. Mittal, the learned Senior counsel submitted that abeyance means 'a condition of being undetermined or in state of suspension or inactivity'. Relying on the said dictionary, he submitted that the 'arrears' that means money which is overdue and unpaid, e.g., overdue or rent payments. He further relied on for the meaning of 'abeyance' and 'arrear money' and submitted that in view of this the meaning of two words Law Lexicon and Black's Law Dictionary are very clear. Thus, the argument of the Nigam cannot be accepted. Lastly, Mr. Mittal, the learned Senior counsel relied in the case of "U.P. Power Corporation Ltd. And Another v. Sant Steels & Alloys (P) Ltd. And Others"-(2008) 2 SCC 777:

"35. In this 21st century, when there is global economy, the question of faith is very important. The Government offers certain benefits to attract the entrepreneurs and the entrepreneurs act on those beneficial offers. Thereafter, the Government withdraws those benefits. This will seriously affect the credibility of the Government and would show the short-sightedness of governance. Therefore, in order to keep the faith of the people, the Government or its instrumentality should abide by their commitments. In this context, the action taken by the appellant Corporation in revoking the benefits given to the entrepreneurs in the hill areas will sadly reflect their credibility and people will not take the word of the Government. That will shake the faith of the people in the governance. Therefore, in order to keep the faith and maintain good governance it is necessary that whatever representation is made by the

Government or its instrumentality which induces the other party to act, the Government should not be permitted to withdraw from that. This is a matter of faith."

12. By referring all these judgments he submitted that the question of faith is very important and due to that tariff the petitioner-company has come forward to install the factory.

13. Mr. Sudarshan Srivastava, the learned counsel appearing for the respondent no.2-Jharkhand State Electricity Regulatory Commission submitted that in the 'Note' of relevant portion of the tariff order it has been clearly mentioned that consumers with arrears shall not be eligible for the above rebates. The words 'above rebates' are self-explanatory referring the preceding context and may not be read in singular. He further submitted that this has to be read together.

14. In view of the above facts of the two cases and rival submission of the parties, it transpires that two issues needs to be taken into consideration for deciding the dispute of these cases, thus:

(i) Whether M/s BMC Metal Cast Limited (petitioner in W.P.(C) No.5057 of 2015) shall be

treated to be 'in arrears' during August, 2010 to July, 2015 on account of it having not paid admitted amount of fuel surcharge throughout, and

(ii) Whether in view of the provisions of the tariff

effective from 1st May, 2010 and another applicable from 1st August, 2011 the said petitioner shall be held to be entitled to get the aforesaid voltage rebate and load factor rebate or not?

15. For deciding the above issue, it is necessary to consider the tariff which is in dispute with regard to applicability of the rebates which is as under:

HT Special Service (HTSS)

Applicability:

16. This tariff schedule shall apply to all consumers who have a contracted demand of 300 KVA and more for induction/are Furnace. In case of induction/are furnace cosumers, the contract demand shall be based on the total capacity of the induction/are furnace and the equipment as per manufacturer technical specification and not on the basis of measurement. This tariff schedule will not apply to casting units having induction furnace of melting capacity of 500 Kg or below:

17. For billing, the demand shall be the maximum demand recorded during the month or 75% of the contract demand, whichever is higher. Tariff:

Consumer category

Fixed Charge

Energy Charge

Rate (Rs./Kwh)

Minimum Monthly Charge Rate(Rs/Kwh)

HTSS-11 KV

RS.330 per kVA Per month

Rs./kW

2.50

Nil

HTSS-33 KV

RS.330 per kVA Per month

Rs./kW

2.50

Nil

HTSS-132 KV

RS.330 per kVA Per month

Rs./kW

2.50

Nil

Voltage Rebate: Voltage rebate to the HTSS consumers will be applicable as given below:

Consumer category

Voltage Rebate

HTSS-33 kV

3.00%

HTSS-132 kV

5.00%

HTSS-220 kV

5.50%

HTSS-440 kV

6.00%

Load Factor Rebate: Load Factor rebate to the HTSS Consumers is proposed as given below:

Load Factor

Load Factor Rebate

40-60%

Nil

60-70%

7.5%

70-100%

10%

Note: The above rebate will be available only on monthly basis and consumer with arrears shall not be eligible for the above rebate.

18. From the Note of the above tariff it is clear that the above rebate will be available only on monthly basis and the consumers with arrear shall not be eligible for the above rebates. Thus, there is no dispute that the above rebate will be available only on monthly basis and the consumers with arrears shall not be eligible for the above rebates.

19. The consumers who are in arrears shall not be eligible for the above rebates this needs to be read in continuity and not bifurcating it for the said rebate. It takes this Court to correct interpretation of Note. In this regard, reference may be made to the case in "Grid Corporation of Orissa Limited And Others v. Eastern Metals And Ferro Alloys And Others"-(2011) 11 SCC 334.

"25. This takes us to the correct interpretation of Clause 9.1. The golden rule of interpretation is that the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision?

(iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the

provision is capable of more than one construction. (See Bengal Immunity Co. Ltd. v. State of Bihar and Kanai Lal Sur v. Paramnidhi Sadhukhan and generally Justice G.P. Singh's Principles of Statutory Interpretation, 12th Edn., published by Lexis Nexis, pp. 124 to 131, dealing with the rule in Heydon case)"

20. This Note is reasonably capable of two interpretations that the above rebate will be available only on monthly basis and the second is the consumer with arrears shall not be eligible for the above rebates. These two interpretations arise only if it is not being read in entirety and if it is being read in its entirety it is clear that the above rebate will be available only on monthly basis and the consumers with arrears shall not be eligible for the above rebates. This has also been admitted by the learned counsel appearing for the respondent-Jharkhand State Electricity Regulatory Commission. Reference may be made to the judgment of Hon'ble Supreme Court in the case of "Adoni Ginning Factory And Others v. Secretary, Andhra Pradesh Electricity Board, Hyderabad And Ors."-(1979) 4 SCC 560 wherein interim order passed by the Court has been considered at paragraph no.5 of the said judgment, which is quoted hereinbelow:

"5. The primary submission of the learned counsel was that there was no default on the part of the appellants in view of the injunction granted by the Supreme Court. We are unable to agree. The injunction granted by this Court restrained the Government from realising the arrears of enhanced charges. For the purposes of these appeals we may proceed on the assumption that the order of injunction bound the Electricity Board also. All that the injunction did was to restrain the Board from realising the arrears which meant that the Board was restrained from taking any coercive action such as disconnection of supply of electricity etc. for the realisation of the arrears. The operation of GO No. 187 dated January 30, 1955, as such, was not stayed. Thus the obligation of the consumers to pay charges at the enhanced rates was not suspended though the Electricity Board was prevented from realising the arrears. It was up to the consumers to pay or not to pay the arrears. If they paid the arrears they relieved themselves against the liability to pay surcharge. If they did not pay the arrears they were bound to pay the surcharge if they failed in the appeals before the Supreme Court."

21. In view of the observation of the Division Bench in L.P.A. No.616 of 2015, it transpires that M/s B.M.C Metal Cast Limited has deposited the principle amount in 2015 meaning thereby the petitioner-company was in arrears of the energy bill. The issue of tariff order 2012-13 has been considered by this Court in W.P. (C) No.1682 of 2015 which has been affirmed up to the L.P.A which was numbered as L.P.A. No.254 of 2015. In the case of 'M/s Usha Martin Ltd.' in W.P. (C) No.3005 of 2011 it has already been held that in arrears for fuel surcharge are not entitled for getting the load factor rebate as admissible in the provision of tariff order of 2003-04. Thus, in view of the aforesaid discussions the Note is very clear that the above rebate will be available only on the monthly basis and the consumers with the arrears shall not be eligible for the above rebates which

cannot be read by way of bifurcating it and if it is being read in its entirety it transpires that the consumer who are in arrear are not entitled for the rebate.

22. In view of the fact that M/s B.M.C Metal Cast Limited has cleared the amount in question in 2005 which has been observed in the Division Bench order in L.P.A. No.616 of 2015, this Court comes to conclusion that M/s B.M.C Metal Cast Limited was in arrear therefore not entitled for getting rebate as admissible under the provisions of tariff 2010-11 and in view of the above discussions, this Court allow the writ application being W.P.(C) No.1284 of 2014 and quash the judgment delivered by the Electricity Ombudsman, Jharkhand in Appeal No.EOJ/03/2013 and order dated 25.05.2013 passed by Vidyut Upbhokta Shikayat Nivaran Forum, Chaibasa at Jamshedpur in Case No.33/2011/06/2012 and dismissed the W.P.(C) No.5057 of 2015.