
(2012) 08 JH CK 0153
In the Jharkhand High Court
Case No : L.P.A. No. 435 of 2003

Jharkhand State Electricity Board and Others

APPELLANT

Vs

Ranchi Club Limited

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Citation : (2012) 4 JCR 419

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Advocate : Ajit Kumar, for the Appellant; Anil Choudhary and Piyush Poddar, for the Respondent

Judgement

Hon"ble The Chief Justice Mrs. Justice Jaya Roy

1. Heard learned counsel for the parties. The Jharkhand State Electricity Board, successor of the Bihar State Electricity Board has challenged the judgment dated 11.03.2003 passed in CWJC NO. 2987/2000(R).

2. The facts in brief are that the writ petitioner-respondent has three separate electrical connection of 10 K.W. each in its premises for the last 30 to 40 years. In presence of the Club office bearers, an inspection of the premises was made and the inspection report was prepared. The total connected load was found to be 131.644 K.W. and in the remark column, it was recorded that as per the Club representative, A.C. was not in working condition and compressors were found removed during inspection but all motors were found connected.

3. Be that as it may, a bill was raised against the writ petitioner which was challenged on various grounds including on the ground that the bill has been raised by wrong calculation made under Clause 16.9.A(iv) of the tariff prescribed for charging of the electricity consumption. In such situation, the learned Single Judge, after considering Clause 16.9.A.(iv) and after considering the consumer category i.e. CS- III observed that in the assessment for charge as per formula which is Rs. $CxM(LD-LS)x3$ and what is "M" is mentioned in Clause 16.9.A.(iv)

observed that value of "M" cannot be a fixed value but it is a variable value. The learned Single Judge for holding so considered the calculation given by the petitioner in the writ petition itself.

4. Learned counsel for the Jharkhand State Electricity Board submitted that when Clause 16.9.A.(iv) is unambiguously clear and what is the value of "M" has been mentioned in the Clause itself then it cannot be interpreted in the manner which is not in consonance with the definition of M given in the above statutory provision on the basis of some assumption.

5. Learned counsel for the appellant, therefore, submitted that the judgment decided only one question in favour of the petitioner and i.e. of interpretation of value of "M" deserves to be set aside.

6. Learned counsel for the respondent tried to justify the calculation on the basis of the reasons given by the learned Single Judge that if the value of "M" will not be variable then it will result into charging of the consumption on the basis of a statistical method inspite of different consumption.

7. Learned counsel for the respondent also submitted that the learned Single Judge committed error of law and wrongly held that the appellant-electricity Board can charge three times of fuel surcharge in such matter. According to the learned counsel for the respondent the decision of the learned Single Judge is just contrary to the decision of the Supreme Court given in the judgment delivered in the case of J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, wherein this very condition was under consideration and the Supreme Court held that thrice of the fuel surcharge cannot be charged.

8. We have considered the submission of the learned counsel for the parties and perused the reasons given by the learned Single Judge and the judgment cited by the learned counsel for the respondent.

9. The 16.9.A.(iv) is as under :-

When connected load is more than the sanctioned load in case of all categories L.T. Connection except domestic service.

Assessment charge:- Rs. $C \times M(LD - LS) \times 3$

Where, M= Minimum consumption guarantee charge per BHP per month as applicable in the tariff schedule.

L.D= is the load detected in BHP at the time of inspection.

L.S.= is the load sanctioned to the consumer in BHP.

C= This factor be taken equivalent to six months or no of months or part thereof elapsed from the date of connection/installation whichever is less.

10. It is clear from the said Clause that what shall be the value of "M" has been made very specifically clear in the same provision and, therefore, no other

interpretation is possible by the Court then as given in the statutory condition. Therefore, value of "M" will only be - "minimum consumption guarantee charge per BHP per month as applicable in the tariff schedule". The value of "M" is, therefore and cannot be a variable factor.

11. In view of the above reasons, the judgment of the learned Single Judge deciding this issue is reversed and it is held that the value of "M" will be only as given under Clause 16.9.A.(iv).

12. So far as the fuel surcharge is concerned they cannot be levied thrice in view of the judgment of the Supreme Court delivered in the case of J.M.D. Alloys Ltd(Supra). The Supreme Court in last paragraph 17 clearly held that Clause 16.10.3 is a separate Clause which deals with fuel surcharge and it nowhere lays down that this additional surcharge will also be levied at thrice the rate per unit of the tariff. The two Clauses namely, 16.9 and 16.10.3 have to be read separately and therefore, having no specific provision for assessing the fuel charge at thrice the rate per unit which is not possible to hold that in such a case fuel surcharge can also be charged at thrice the rate per unit. In view of the above reasons, the L.P.A is allowed to the extent mentioned above with respect to the interpretation of value of "M" but, relief is also granted in favour of the respondent and it is held that the appellant-Board cannot charge the amount thrice the fuel surcharge amount. Therefore, the setting aside of the bill shall remain as it is and the appellant-Board may re-calculate the amount of charge and the appellant-Board will calculate the charges in accordance with the findings given above and may issue a bill to the writ petitioner-respondent which is to be paid by the writ petitioner. If the petitioner has already paid any bill amount and it is in excess to fresh demand that may be adjusted against the future bill.