(2015) 07 JH CK 0041

In the Jharkhand High Court

Case No : L.P.A. No. 126 of 2013

Jharkhand State Electricity Board (JSEB) and Others — APPELLANT

Vs

Ranchi Cold Storage Limited and Others — RESPONDENT

Date of Decision : 09-07-2015

Acts Referred:
Contract Act, 1872 — Section 70
Electricity (Supply) Act, 1948 — Section 49

Citation : (2015) 07 JH CK 0041

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Ajit Kumar and Amit Sinha, for the Appellant; Biren Poddar, Senior Advocate and Amrita Sinha, for the Respondent

Final Decision : Disposed Off

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred against the judgment and order dated 14th February, 2013 delivered by the learned Single Judge in Civil Writ Jurisdiction Case No. 3005 of 1998 (R) whereby the petition preferred by the respondent No. 1 (original petitioner) was allowed and hence, the original respondents have preferred this Letters Patent Appeal.

FACTUAL MATRIX OF THE CASE:

? "The respondent No. 1 (original petitioner) has a Cold Storage situated in the city of Ranchi who had entered into an agreement dated 22nd June, 1983 with the appellants for continuous supply of electricity of 95 KVA which was a High Tension connection. The said agreement was enforced initially for three years and the same was continued without there being any written agreement for subsequent periods.

? It appears that as per Clause 9(a) of the said agreement, if, any party wants to terminate the contract he has to give a notice of not less than twelve months. The said notice of termination was given by the respondent (original petitioner) to the appellants on 16th June, 1994 which was received by the appellants in July, 1994.

? Thus, as per Clause 9(a) of the said agreement the agreement cease to exist with effect from the end of the year 1995.

? It appears that there ought to have been disconnection of the electricity supply latest by 31st July, 1995, but, the appellants on their own continued the supply of electricity which was consumed by the respondent No. 1 (original petitioner).

? Thus, on and from 1st of August, 1995 the supply of electricity was continued up to 26th September, 1996 even after termination of the contract which led to dispute between the parties mainly for the Annual Minimum Guaranteed charges.

? These appellants raised a bill including AMG up to 26th September, 1996 and even thereafter also up to 31st March, 1998. Thus, AMG charges were demanded even after disconnection of the electricity and therefore, petition was preferred by the respondent No. 1 (original petitioner) bearing C.W.J.C. No. 3005 of 1998 (R)which was decided in favour of the respondent No. 1 by the learned Single Judge vide order dated 14th February, 2013 and therefore, original respondents had preferred this Letters Patent Appeal."

2. ARGUMENTS ADVANCED ON BEHALF OF APPELLANTS:

? "Learned counsel for the appellants has submitted that Annual Minimum Guarantee Charges (hereinafter referred to as AMG charges) is levied on the basis of tariff prescribed by these appellants in pursuance of power conferred upon the Electricity Board under Section 49 of Electricity (Supply) Act, 1948. All the consumers who are consuming electricity are bound by tariff. This aspect of the matter has not been properly appreciated by the learned Single Judge.

? Counsel for the appellants further submitted that respondent No. 1 is liable to make payment of AMG charges for the period of three years from the year 1995, because the notice of termination was given in the month of June, 1994 which was received in the month of July, 1994 and therefore, for three years thereafter the respondent is liable to make payment of AMG charges. Thus, on the basis of Clause-8 to be r/w Clause 9(b) of the said agreement even after disconnection of electricity the respondent No. 1 has to pay Annual Minimum Guaranteed Charges up to 31st March, 1998.

? It is further submitted by counsel for the appellants that the respondent No. 1 had consumed the electricity up to 26th September, 1996 and therefore, this respondent No. 1 is liable to make payment of all types of charges like Demand charge, Energy charge and Annual Minimum Guaranteed charge. These aspects of the matter have also not been properly appreciated by the learned Single Judge while passing the order impugned, deserves to be quashed and set-aside. Learned counsel for the appellants relied upon Clause Nos. 8 and 9 (b) of the said agreement mainly for his argument in this Letters Patent Appeal."

3. ARGUMENTS ADVANCED ON BEHALF OF RESPONDENTS:

? "Counsel appearing on behalf of respondent No. 1 (original petitioner) submitted that a contract was entered into between the appellants and respondent No. 1 on 22nd June, 1983 for supply of electricity of 95 KVA. Initially, the contract was for three years which was also continued for subsequent years. Thereafter, a notice for termination of contract was given by the respondent No. 1 on 16th June, 1994 which was received by the appellants in the month of July, 1995. This notice was given as per Clause 9 (a) of the said Agreement which is annexed as Annexure 1 to the memo of the petition.

? It has further been submitted that by virtue of Clause 9(a), the agreement cease to exist with effect from 1st of August, 1995 and the appellants should have disconnected the electricity by end of July 1995. Though, for any reason, whatsoever, the contract comes to an end and the appellants had not disconnected the electricity even after 1st August, 1995 and ultimately, the electricity was disconnected on 26th September, 1996. As the respondent No. 1 had consumed the electricity with effect from 1st August, 1995 till 26th September, 1996 as such, he had paid demand charges and energy charges, but, unreasonable demand of these appellants about payment of annual minimum guaranteed charges for the aforesaid period and also for the period after disconnection of the electricity was challenged in the writ petition.

? Counsel for the respondent No. 1 (original petitioner) submitted that once a contract comes to an end as per Clause 9(a) of the said agreement the annual minimum guaranteed Charges also comes to an end. In fact, there was no demand of electricity at all by the respondent No. 1 from the appellants and therefore, annual minimum guaranteed charges cannot be levied by these appellants. This aspect of the matter has been correctly appreciated by the learned Single Judge.

? It is further submitted by learned counsel for the respondents that in fact as per Clause 4 of the said agreement, once the contract comes to an end, even, the applicability of the proviso which empowers the appellants to apply tariff rate does not remain enforce. In fact, such type of supply of electricity on and from 1st August, 1995, without any demand of the respondent No. 1 is in fact, governed by Section 70 of the Indian Contract Act, 1872 and thus, rates prescribed under the tariff are not applicable and once it is not applicable the question of levying annual minimum guaranteed charges whatsoever not arises. As per Chapter V of the Indian Contract Act, 1872 the tariff rates prescribed in the Tariff are not applicable. Nonetheless, the respondent No. 1 has already paid demand charges and energy charges, but, major dispute has been raised by the respondent regarding payment of Annual Minimum Guaranteed charges. These appellants have demanded Annual Minimum Guaranteed charges even after termination of the electricity connection which is absolutely absurd demand. In fact, Annual Minimum Guaranteed charges are not payable by the respondents after the contract comes to an end. The basic concept of the Annual Minimum

Guarantee has arisen because there is a demand of certain quantity of electricity which must be supplied continuously by the Electric Board and in the event, if the consumers are consuming less than the minimum consumption of the electricity mentioned in the agreement then he has to pay annual minimum guaranteed charges. These facts are not in existence in this case. In the facts of the present case twelve months notice has to be given as per Clause 9(a) for termination of the contract which was given on 16th June, 1994 and was received by the appellants in the month of July, 1995 and, therefore, contract comes to an end latest by 31st July, 1995 and hence, there is no question of minimum guarantee of supply of electricity remains in existence. These aspects of the matter have been correctly appreciated by the learned Single Judge.

? Learned counsel for the respondents has relied upon the decisions rendered by the Hon''ble Supreme Court reported in

(a) Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others,   paragraph 11 and 24

(b) General Manager-cum-Chief Engineer, Bihar State Electricity Board and Others Vs. Rajeshwar Singh and Others,   paragraph 5

On the basis of the aforesaid two decisions it is submitted by the learned counsel for the respondents that the consumer of the electricity is liable to make payment of Annual Minimum Guaranteed charges till the contract remains in existence. Once the contract comes to an end, the liability of payment of Annual Minimum Guaranteed charges comes to an end. Hence, this Letters Patent Appeal may not be entertained by this Court."

4. FINDINGS:

"Having heard counsel for both sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons:

(i) An agreement was entered into between appellants and the respondent No. 1 for supply of 95 KVA electricity on 22nd June, 1983 which is a High Tension electricity supply. The agreement was to remain enforce for three years and though, there is no express written agreement, but, the same has been continued.

(ii) Both sides have referred few Clauses of the agreement again and again and they have read and re-read the said Clauses and for ready reference Clause No. 4,8 and 9 of the agreement read as under:--

"4 (a). Subject to the minimum contract demand applicable for the category of supply in which the consumer falls as per Board''s tariff, the consumer shall pay to the Board for the energy so supplied and registered or taken to have been supplied as aforesaid at the appropriate rates applicable to the consumer according to the tariffs framed by the Board and in force from time to time, the presently enforced tariffs being given in the Schedule to this agreement for easy reference. Such reference is subject to provisions of Clause 14 appearing hereinafter:

Provided that notwithstanding anything said above but subject to the provisions of Clause 13 appearing hereinafter, the consumer shall have to pay minimum charges as specified in the above said tariffs framed by the Board and enforced from time to time irrespective of whether energy to that extent has been consumed or not. (Such minimum charges are referred as "minimum guaranteed charges" at other places in this agreement) (b) For the purpose of this agreement the maximum demand of the consumer for each month shall be largest total amount of Kilovolt amperes (KVA) delivered to the consumer at the point of supply during any consecutive 30 minutes in the month.

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

(d) That part of minimum charges referred to in provision to Sub-Clause (a) above, if not billed every month, the assessment for the same will be generally made at the end of the year commencing from the 1st April to 31st March of the following year which is the financial year of the Board not with standing any agreement entered into in between this period, in which case the minimum guarantee will be proportionate for the period for which the consumer is connected. Any bill on account of the minimum guaranteed consumption for the year or part thereof will be submitted by the end of the June in each year.

8. The agreement shall be ordinarily in force for a period of not less than three years in the first instance (Except in exceptional cases in which written consent of the Board will be taken) from the date of commencement of supply i.e. 1st April, 1981 (1981-82) and thereafter shall continue from year to year until the agreement is determined as hereinafter provided.

Note- In case where the date of commencement of supply is a date subsequent to that of the execution of this agreement, the Board is given power to fill in the date in the blank space provided for the same in this clause with prior intimation to the consumer. The consumer can produce his copy of the agreement to have such date filled in by the Board.

9 (a) The consumer shall not be at liberty to determine this agreement before the expiration of three years from the date of commencement of the supply of energy. The consumer may determine this agreement with effect from any date after the said period on giving to the Board not less than twelve calendar months previous notice in writing in that behalf and upon the expiration of the period of such notice this agreement shall cease determine without prejudice to any right which may then have accrued to the Board hereunder provided always that the

consumer may at any time with the previous consent of the Board transfer and assign this agreement to any other person and upon subscription of such transfer, this agreement shall be binding on the transferee and Board and take effect in all respects as if the transferee had originally been a party hereto in place of the consumer who shall henceforth be discharged from all liabilities under or in respect thereof.

(b) In case the consumers supply is disconnected by the Board in exercise of its powers under this agreement and/or law and the consumer does not apply for reconnection in accordance with law within the remainder period of the compulsorily availing of supply as stated above or the period of notice whichever be longer, he will be deemed to have given a notice on the date of the disconnection in terms of aforesaid clause 9 (a) for the determination of the agreement and on expiration of the above said remainder period of compulsorily availing of supply or the period of notice whichever is longer, this agreement shall cease and determine in the same way as above."

(Emphasis supplied)

In view of the aforesaid Clause-4 the consumer shall have to pay the charges to the Electricity Board for supply of energy. The rates applicable to the consumer according to tariff framed by the Electricity Board which is enforced from time to time and as per the Proviso to Clause 4 (a) the consumer shall have to pay the minimum charges as specified in the Tariff. This is also known as annual minimum guaranteed charge for which mainly the petition was preferred by the respondents. As per Clause 8 of the aforesaid agreement, initially, the agreement will enforce minimum for three years and thereafter shall continue from year to year, until the agreement is terminated. Method of termination of the contract has been mentioned at Clause 9 (a) which requires twelve months notice to be given for termination of the agreement. From the facts of the case it appears that notice of termination of the agreement was given by the respondent No. 1 on 16th June, 1994 which was received by the appellants in the month of July, 1994. Thus, as per Clause 9(a) the agreement shall cease to exist at least for 31st July, 1995.

(iii) Once, the agreement comes to an end all the liabilities under the agreement also comes to an end. Neither the appellants nor the respondents are now having any liability under the agreement after 31st July, 1995. For the past liability i.e. for the period prior to termination of the agreement, if any amount is due and payable then the party may take any action.

(iv) Despite the notice of termination of the agreement was given on 16th June, 1994, the appellants continued the supply of the electricity up to 26th September, 1996. The electricity connection was disconnected by the appellants on 26th September, 1996. Thus, supply of the electricity after 31st July, 1995 till 26th September, 1996 has raised several disputes between the parties and that has given a birth to the writ petition preferred by the respondents.

(v) It appears that once the contract comes to an end after twelve months of the notice there is no demand of the electricity at all by the respondent No. 1 and hence, he is not liable to make payment of Annual Minimum Guaranteed charges because there is no minimum guarantee of supply of the electricity. There is no demand of electricity at all by the respondents. In fact, such type of supply and consumption of electricity is basically governed by Section 70 of the Indian Contract Act, 1872. For ready reference Section 70 of the Indian Contract Act, 1872 reads as under:

"70. Obligation of person enjoying benefit of non-gratuitous act- Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

(Emphasis supplied)

(vi) Counsel appearing on behalf of respondents submitted that once the contract comes to an end the applicability of the proviso to Clause 4 (a) also comes to an end and, therefore, respondents are not liable to make payment of any charges under any tariff whatsoever. This, high pitch arguments is not accepted by this Court because looking to Section 70 of the Indian Contract Act, 1872. The respondents have consumed the electricity and therefore, they are bound to make the payment of some charges. Now the question arises what are these charges for which the respondent No. 1 is liable to make payment. It appears that the easiest method of arriving such conclusion is to compel the respondent No. 1 to make payment of demand charges and energy charges. The appellants are charging, types and types of charges and surcharges and minimum guaranteed charges etc. under the Tariff, but, all these charges are basically mentioned in the Tariff prescribed under the Proviso to Clause 4 (a) of the said agreement.

As stated hereinabove, once the contract comes to an end the liability under the contract also comes to an end, but, Section 70 of the Indian Contract Act, 1872 does not allow the respondent No. 1 to consume the electricity supplied by the appellants even, though, there was no demand by the respondent No. 1. The respondent No. 1 is bound to make the payment of some amount and that will be equal to the demand charges and the energy charges because i.e. easiest methodology to arrive at a figure of the consideration.

(vii) The Annual Minimum Guaranteed Charges is basically based upon sure supply of the demanded electricity and that too continuously because respondent No. 1 is a manufacturing unit. In the facts of the present case, once the contract comes to an end by the end of July, 1995 there is no minimum demand of the energy by the respondent No. 1 and hence, Annual Minimum Guaranteed charges are not leviable from the respondent. Counsel for both sides in this Letters Patent Appeal have mainly argued about Annual Minimum Guarantee Charges liability.

(viii) It has been held by the Hon''ble Supreme Court in the case of Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, at para 11 and 24 which reads as under:

"11. It is seen that in case of disconnection of the supply by the Board in exercise of its powers under the agreement it would be open for the consumer to apply for reconnection in accordance with the law within the remainder period of the above given compulsorily availing of supply or that of notice whichever is longer, (sic and on his failure to do so) he will be deemed to have given a notice on the date of disconnection in terms of aforesaid clause 9(a) for determination of the agreement and on expiry of the remainder period of compulsorily availing of supply or notice, whichever is longer, the agreement shall cease and determine. It is therefore, clear that in the instant case the disconnection on the default of the consumer having been effected on September 28, 1981 and the consumer having not applied for reconnection, it would be deemed to have given a notice on the date of disconnection in terms of clause 9 (a) for the determination of the agreement and the agreement must be taken to have ceased and determined either at the end of the notice or at the end of the period of compulsorily availing of supply i.e. two years of the agreement whichever was longer. The (fresh) agreement having been executed on May 2, 1981 it would expire on May 1, 1983. The disconnection having been effected on September 28, 1981 the period of deemed notice of seven days expired before the period of compulsorily availing of supply under the agreement expired and hence, the agreement must be deemed to have determined only on May 1, 1983. During this period the consumer''s liability to pay the minimum guaranteed charges must be held to have continued.

24. For the foregoing reasons we have no hesitation in holding that the agreement was reasonable and valid and it was not determined with the disconnection of supply to the respondent firm by the Board on September 28, 1981 but only according to the stipulations in clause 9 (b) of the agreement as discussed above. The liability to pay the minimum guaranteed charges, therefore, continued till the determination of the contract. The Board was, therefore, entitled to submit the bills and make the demand on that account, and recover the same according to law."

(Emphasis supplied)

The aforesaid decision rendered by the Hon''ble Supreme Court makes it very clear that liability to pay the minimum guaranteed charges continues till the termination of the agreement.

(ix) It has further been held by the Hon''ble Supreme Court in the case of General Manager-cum-Chief Engineer, Bihar State Electricity Board and Others Vs. Rajeshwar Singh and Others, in paragraph No. 5 which reads as under:

"5. The first question, therefore, is whether the firm was liable to pay the minimum guaranteed charges for the period during which the supply remained disconnected. In Civil Appeal No. 220 of 1987 we have held that the firm would be liable to pay the minimum guaranteed charges unless it could be shown that the contract itself was terminated. The mere disconnection of the electricity supply would not amount to termination. If there was no application for restoration within 7 days of disconnection that would be deemed to be a notice for termination and the contract would be terminated either at the end of this period of notice or the tenure of the agreement whichever was longer. In the instant case the fresh agreement was entered into on May 30, 1977 and connection was restored on June 15, 1977. Earlier the connection given on execution of the agreement was on August 12, 1974 and supply was disconnected on October 16, 1975. The earlier agreement must be deemed to have come to an end on execution of the fresh agreement and restoration of connection if it did not terminate earlier under the terms of the agreement. The firm''s liability, has therefore to be determined on that basis in view of what has just been held in the judgment in Bihar SEB V. M/s. Green Rubber Industries. "

(Emphasis supplied)

In view of the aforesaid decisions and also in view of the facts that the contract comes to an end after 31st July, 1995 the respondent No. 1 is not liable to make payment of Annual Minimum Guaranteed charges. In the facts of the present case the appellants have raised the bills for Annual Minimum Guaranteed Charges up to 31st March, 1998 i.e. even after disconnection of the electricity which is also not permissible. Clause 9 (b) of the said agreement never permits the appellants to raise such type of bills for the period up to 31st March, 1998. The appellants have not appreciated Clause 9 (b) in its proper perspectives. Clause 9 (b) never permits these appellants to raise a bill for Annual Minimum Guaranteed charges for three years after the termination of the agreement. In fact, Clause 9 (b) is meant for some other circumstances e.g. if any consumer is not paying electric bill and if the electricity is disconnected and within seven days the applicant if not applied for re-connection of the electricity under these circumstances the date of disconnection of the electricity will be deemed to be the date of notice of termination of the agreement as provided under Clause 9 (b) of the agreement. Meaning thereby, after twelve months of disconnection of electricity the agreement comes an end. Thus, 9 (b) in the facts of the present case never entitles these appellants to raise the bill of annual minimum guaranteed charges because here the termination notice was given to the consumer in June, 1994 and contract comes to an end latest by 31st July, 1995. Thus, eventualities envisaged in Clause 9 (b) are not present in the facts of the present case and, therefore, the bill raised up to 31st March, 1998 could not have been raised by these appellants for three years i.e. 1995-1996, 1996-1997 and 1997-1998.

(x) It appears that learned Single Judge has stated in paragraph No. 10 that respondents are also not liable to pay the fuel surcharge for the period 1st August, 1995 since the agreement terminated by July, 1995.

Counsel for the respondent- Ranchi Cold Storage Ltd. has stated that for this case only they will pay the fuel surcharge because there will be meager amount, but, no concession has been given by counsel for the respondents with regard to delay payment charges and interest thereupon etc. The concession is given by the counsel for the respondent (original petitioner) only for payment of basic rate of fuel surcharge excluding any other thing like delay payment charges etc. till the date of consumption of the electricity by the respondent i.e. till 26th September, 1996. This concession given by the counsel for the respondent requires slight modification in the order passed by the learned Single Judge especially in Paragraph No. 10 thereof."

5. As a cumulative effects of the aforesaid facts, reasons and judicial pronouncements there is no substance in the Letters Patent Appeal. We, hereby, upheld the decision rendered by the learned Single Judge in C.W.J.C. No. 3005 of 1998 (R) dated 14.2.2013 with slight modification with regard to payment of basic rate of fuel surcharge by the respondent which is based upon the concession given by the counsel for the respondent. The appellants will issue fresh bill as directed by the learned Single Judge, but, there will be addition of basic fuel surcharge.

6. Instant Letters Patent Appeal is disposed of in view of the aforesaid observations.

