
(1996) 09 PAT CK 0004
In the Patna High Court
Case No : C.W.J.C. No. 3594/93 (R)

Karam Chand Thapar and Bros. Ltd.

APPELLANT

Vs

The Bihar State Electricity Board and Another

RESPONDENT

Date of Decision : 18-09-1996

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79

Citation : (1997) 1 PLJR 729

Hon'ble Judges : R.N. Prasad, J

Bench : Single Bench

Advocate : R.K. Merathia, for the Appellant; R. Prasad, for the Respondent

Final Decision : Allowed

Judgement

R.N. Prasad, J.—The Petitioner has filed this writ application for quashing the order dated 19.9.1995 passed by Respondent No. 2, Annexure-1, whereby the claim of the Petitioner under Clause 13 of H.T. agreement for the financial years 1991-92 and 1992-93 was rejected.

2. The Petitioner applied for electrical service connection which was sanctioned by the Electrical Superintending Engineer, Dhanbad. The Petitioner also executed an agreement for supply of electrical energy. A copy of the standard form of agreement is Annexure-2. Respondent No. 1 also issued purported guidelines for decision on Clause 13 of H.T. agreement vide notification No. 810 dated 29.7.1994, Annexure-5. In August, 1991 the workmen employed by the Petitioner started "GO SLOW" type of strike. One Samresh Singh, M.L.A. along with number of agitated workmen entered into the Chambers of the Works Manager of the Petitioner at about 3.30 P.M. on 31.8.1991 and slapped him and also assaulted other loyal personnel. A large section of workmen employed by the Petitioner "gheraoed" (wrongful confinement) its officers on 26.10.1991 from 10 A.M. till late afternoon of 28.10.1991. During "gherao" the Petitioner's security personnels were mercilessly beaten up by the workmen. They also threatened to "gherao" again. The Petitioner also lodged a First Information

Report, copy of which was also sent to all the senior administrative authorities of the State. Neither the police nor the administrative authority extended any help to the Petitioner. Even after lifting of "gherao" on 28.10.91 there was no hope of industrial peace nor there was any substantial help from the law and order authority. The Petitioner in the circumstances declared lock-out with effect from 29.10.91. Due to threat and violence by the workmen led by Samresh Singh, M.L.A. the lock out persisted till 31.3.1993. The Petitioner had intimated Respondent No. 2 vide its letter dated 30.11.93 that the factory had gone under the lock out for causes beyond its management control and hence the Petitioner is entitled to proportionate reduction under Clause 13 of H.T. agreement and requested for charging on actual consumption basis for the electric supply, Annexure-3. Similar request was also made vide letter dated 31.12.91, Annexure-3/A. Respondent No. 2 vide its letter dated 7.1.92 promised to consider the claim of the Petitioner under Clause 13 of H.T. agreement in due course and after expiry of financial year, Annexure-4. Respondent No. 2 heard the Petitioner and departmental officers and passed order on 19.9.1995, Annexure-1, rejecting major portion of I the Petitioner's claim stating therein that the alleged circumstance of "GO SLOW", rioting and complete breakdown of law and order do not fall within the meaning of Clause 13 of H.T. agreement. However, he observed that the consumer is entitled for relief proportionately for the interruption of electric energy for the period of 30 minutes and above as per Board notification dated 29.7.1994 for the period April, 1991 to 28.10.91 only.

3. A counter-affidavit has been filed stating therein that the Petitioner is not entitled for proportionate reduction in demand charges pursuant to Clause 13 of H.T. agreement. In exercise of power conferred u/s 79 of the Indian Electricity (Supply) Act, 1948 a fresh guideline was issued for settlement of claim under Clause 13 of H.T. agreement whereby it has been decided to grant relief for interruption of electric energy for the period of 30 minutes or above: The lock out was against the mandatory provision" of law and cannot be said causes beyond control of the Petitioner. Lock out has not been mentioned as ground for granting remission under Clause 13 of H.T. agreement. The Deputy Labour Commissioner, Bokaro Steel City by letter No. 4801 dated 13.12.91 intimated labour situation in the factory of the Petitioner. The letter dated 30.11.93 sent by the Petitioner with regard to lock but was not received. However, he admitted that letter dated 7.1.92 was sent by the Respondent to the Petitioner clarifying therein in detail. The Petitioner is not entitled for reduction in terms of Clause 13 of H.T. agreement.

4. Learned Counsel for the Petitioner contended that the Petitioner is legally entitled for remission in annual minimum guarantee charges and maximum demand charges as per Clause 13 of H.T. agreement. Not allowing remission for less than 30 minutes interruption is also illegal as there was no such term in H.T. agreement. The Petitioner declared lock out in compelling circumstances as there was assault on the Petitioner's employee and workers loyal to the Petitioner. There was "gherao". There was no help from the side of the authority in

maintaining law and order. There was also threatening of "gherao" etc. again and hence the Petitioner under the compelling circumstances declared lock out which was beyond its control. The Petitioner is entitled for remission for the period of lock out. Respondent No. 2 has committed error in holding that lock out was not legal as he has no authority to pass such order. On the other hand, learned Counsel for the Respondents contended that lock out was illegal. Besides, lock out is not mentioned in Clause 13 H.T. agreement. The Respondents are entitled to issue guideline to the effect that the consumers are not entitled for relief for interruption of electric supply less than 30 minutes and hence the order, Annexure-1, is legal.

5. From the material available on the record, it is manifest that the Petitioner entered into an agreement for supply of electric energy. The standard form of the agreement is Annexure-2 to this petition. It is evident from Clause 1(A) of the H.T. agreement that it imposes a contractual obligation on the part of the Board to make constant supply of electric energy. Besides the Board has statutory obligation to supply electric energy to the consumers in terms of the provisions of the Electric (Supply) Act, 1948 read with Indian Electricity Act, 1910. The Petitioner is also entitled for remission in terms of Clause 13 of the H.T. Agreement Clause 13 of H.T. agreement reads as follows--

If at any time the consumer is prevented from receiving or using the electrical energy to be supplied under this agreement either in whole or in part due to strikes, riot, fire, floods, explosions, act of God or any other cause reasonably beyond control or if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all of the causes mentioned above then the demand charge and guaranteed energy charge set out in the Schedule shall be reduced in proportion to the ability of the consumer to take or the Board to supply such power and the decision of the Chief Engineer, Bihar State Electricity Board, in this respect shall be final.

6. It is obvious from the aforesaid Clause quoted above that the consumers are entitled for remission if they are prevented from receiving or using electric energy in whole or part due to strikes, riots, fire, floods, explosions and act of God or any other cause reasonably beyond control or if the Board is prevented from supplying or unable to supply such electric energy owing to any of the causes mentioned above. Merely because non-mentioning of lock out in Clause 13 of H.T. agreement it cannot be said that the Petitioner is not entitled for remission for the period the management of the consumers remained under-lock out as Clause 13 of H.T. agreement is illustrative and not exhaustive which is apparent from the language of Clause 13 as it has been stated in the said Clause that "any other causes reasonably beyond control". Therefore, it is to be seen that the causes shown by consumers for not using electric energy was reasonably beyond its control or not.

7. It appears from the order of Respondent No. 2, Annexure-1, that the remission for the period of lock out was not allowed on the ground that the lock

out was illegal. It further appears from the order, Annexure-1, that the Respondent has discussed the matter as to whether the lock out was legal or not. In my view, Respondent No. 2 has no authority under the law to say that lock out was legal or not. Respondent No. 2 has to consider as to whether the Petitioner has been prevented from using electric energy which was reasonably beyond the control of the management. It has already been pointed out that situation enumerated in Clause 13 of H.T. agreement is illustrative and not exhaustive. The circumstances in which the Petitioner declared the lock out is manifest from the material available on the record. It has been stated that in the month of August, 1991 the workmen started GO SLOW type of strike. One M.L.A. along with number of workmen entered into the chamber of Works Manager of the Petitioner at 3.30 P.M. on 31.8.91 and slapped the Works Manager and also assaulted other loyal personnel. They also wrongfully confined the officers from 10 A.M. of 26.10.91 till late afternoon of 28.10.91 continuously. They also assaulted security personnel mercilessly. Even after lifting of "gherao" on 28.10.91 there was no industrial peace. They were threatening for repeated "gherao" and there was no proper help from law and order authority. In the circumstances the Petitioner declared lock out. Lock out continued from 29.10.91 to 31.3.93. Respondent No. 12 without appreciating the aforesaid circumstances for the purpose of granting remission as to whether the Petitioner was prevented from using electric energy which was reasonably beyond its control, has rejected the claim of the Petitioner on the ground that lock out was illegal as if he was authority to decide as to whether the lock out was legal or illegal. In this regard it is also pertinent to mention herein that the State Government declared the lock out illegal. The Petitioner filed a writ petition bearing C.W.J.C. No. 1745/92 (R) challenging the order of the State Government which was allowed on 5.4.1996 and held that the Government has no jurisdiction to declare the lock out to be illegal.

8. In the case of Bihar State Electricity Board v. Dhanwanti Rice & Oil Mill 1989 SC 1030, it has been held that in case of tripping, load sheeding and powercuts as also in cases where the consumer was unable to take supply of electric energy for one or other reasons enumerated in Clause 13 of the agreement will be entitled to proportionate reduction in annual minimum guarantee charge. Similar question was involved in the case of Suprabhat Steel v. Bihar State Electricity Board 1994 BBCJ 369. The Division Bench of this Court has held that in terms of Clause 18 of H.T. agreement, the consumers are entitled for remission on account of tripping when the Board is unable to supply electric energy and also in case where the consumer is prevented from receiving or using electric energy. The Board is liable to grant remission for any duration on the basis of record maintained by the Board in this regard. The consumers are not only entitled for remission in annual minimum guarantee charges but also maximum demand charges. In the instant case the Petitioner was not allowed remission in A.M.G. charge and maximum demand charges for the period claimed by the Petitioner and also for interruption of electric supply below 30 minutes as claimed by the

Petitioner. The Petitioner was, no doubt, allowed remission for some time i.e. from April, 1991 to 28.10.1991, that too only for interruption of electric energy for 30 minutes or above. In my view rejection of the claim of the Petitioner in view of a Division Bench decision in Suprabhat Steel (supni) is bad in law. In the above mentioned decision it was specifically held that refusal to grant remission for non-supply of electric energy up to 59 minutes is not at all legal. Under Clause 13 of H.T. agreement the consumers, as a matter of right, would be entitled to proportionate remission of A.M.G. charges and maximum demand charges and thus, in my view, the aforesaid decision is fully applicable in the facts and circumstances of the case in hand.

9. Thus on consideration of the entire facts and circumstances of the case, in my view, Respondent No. 2 has committed an error in passing order, Annexure-1. He is bound to follow the decision in the case of M/s Suprabhat Steel (supra). Respondent No. 2 has also gone beyond its jurisdiction in refusing the claim of the Petitioner by holding that lock out was illegal and hence the Petitioner is not entitled for remission for the period of lock out. Respondent has to consider in the facts and circumstances of the case as to whether the Petitioner was prevented from using electric energy in the circumstances which was reasonably beyond its control in terms of Clause 13 of H.T. agreement and has to pass order accordingly.

10. This application is, accordingly, allowed. The order Annexure-1, is hereby quashed. Respondent No. 2 is directed to reconsider the claim of the Petitioner afresh after hearing the parties and dispose of the same by a reasoned order in the light of observations made in this order and issue a fresh bill accordingly.