
(2001) 11 PAT CK 0036
In the Patna High Court
Case No : C.W.J.C. No. 7720 of 1999

Mahabir Petro Products Private Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 27-11-2001

Acts Referred:

Citation : (2002) 3 CivCC 55

Final Decision : Allowed

Judgement

R.S. Garg, J.—The petitioner claims to be consumer of High Tension of Bihar State Electricity Board. According to the petitioner, it has an Industry at industrial area, Tilrath, Barauni. The petitioner says and submits that the factory was set up in September 1994, engaged itself in manufacturing of Calcined Petroleum Coke and started production in September itself. For running the said Factory, the petitioner applied for and was granted an electrical connection as a High Tension Consumer with a Contract Demand of 75 KVA.

2. The petitioner submits that in case of high tension, industrial consumers meter, reading is taken every month by team consisting of Electrical Executive Engineer and Assistant Electrical Engineer of the area concerned. The details of the readings of different components like KWH, KVAH & KVA are noted in the H.T. meter reading form by the said team with a copy to the consumer. He also submits that the Tariff for High Tension consumer is a two, tier tariff, i.e. the consumer has to pay KWH charges as well as KVA charges. To measure these components a Trivector meter is installed by the Board which has three separate inbuilt mechanisms to measure KWH, KVA and KVAH. According to him from April 1998 will August 1998, the meter showed no abnormality and bills were raised strictly according to the readings as contained in the meter reading forms of the months concerned. On 25-9-1998, the term of engineers found that KWH and KVH readings were correct but the KVA reading was showing the maximum of the meter at 206 KVA. Not only the petitioner but even the said team observed that the KVA indicator had mal-functioned. Accordingly, the meter reading team

made a remark in the meter reading form that the indicator had gone to maximum. The petitioner says that the bill for the month September 1998 was based on the meter reading recorded on 25-9-1998 was at 75 KVA, the minimum to be charged.

3. It is not in dispute before me that in case of high tension consumers the KVA charge, which is the maximum demand charge, is levied on the basis of the actual reading of KVA in the meter or 75% of the Contract Demand whichever is higher. But in case of high tension consumer where a Contract Demand is 75 KVA consumer is subjected to a minimum charge of 75 KVA and not 75% of his Contract Demand.

4. The petitioner says and submits and it is not in dispute before me that the bills for the month of April, 1998 to August, 1998 showed that the Contract demand of the petitioner as per the meter reading was 49 KVA but on account of the tariff provision the petitioner was charged at 75 KVA per month. The petitioner says that the KVA recording system which became defective in September, 1998 continued to be so in the subsequent months. According to him the respondents in the month of October, 1998 raised the KWH bill on the basis of actual meter reading and KVA bill on the basis of erroneous reading at 206 KVA. The bill for the month of November, 1998 was also raised on the basis of 206 KVA. The petitioner says that the Contract Demand of the petitioner being 75 KVA and the average monthly demand availed of by the petitioner being below 50 KVA every month, the recording of 200/206 KVA was erroneous recording and the said fact was recognised by the respondents at the time of meter reading. He submits that without there being any improvement in the situation, the respondents unilaterally changed the billing system with effect from December, 1998, while in respect of KVA they reverted back to charging 75 KVA but in respect of KWH ignoring the readings of KWH started raising bill on the basis of minimum guarantee units for every month i.e. 11634 units, though the meter reading chart for the same month showed the KWH reading as 4280 units only. According to the petitioner for the months of January, February and March, 1999 the respondents continued charging the petitioner in the same pattern on the basis of Annual Minimum Guarantee units in respect of KWH and at 75 KVA in respect of KVA.

5. The petitioner submits that on 22-12-1998 the said defective meter was inspected by a team of engineers and after inspection they had prepared their report, saying in the remark column that tripping was not functioning, therefore, the recording was out of scale. After the repeated requests of the petitioner to change the defective meter the same was replaced on 13th April, 1999. After replacement of the meter a report was prepared by the officials of the respondent Board wherein the last reading of the said meter as well as the initial readings of the new meter were specifically mentioned. After installation of the new meter, the meter reading was taken on 13-4-1999 and the bill for April, 1999, so far as KWH was concerned was raised in two parts. For the period 1

-4-1999 to 12-4-1999 the units were charged on the basis of minimum guarantee and for the period 13-4-1999 to 30-4-1999 the units were charged on the basis of actual meter reading as recorded in the new meter. The petitioner says that for the first 12 days 4554 units were charged while for the subsequent 18 days 1912 units were charged.

6. By letter dated 14-12-1998 the petitioner protested against the charging of 206 KVA and after realising the mistake the respondent Board corrected the bill, issued a supplementary bill to the petitioner on 11-1-1999 and credited an amount of Rs. 32,750 in the accounts of the petitioner. The petitioner says that though the KVA charges were credited but the bill in relation to the actual consumption of the units was not credited and accordingly the respondent illegally charged for the units which were not even consumed by the petitioner.

7. The petitioner says that the Annual Minimum Guarantee when is divided by 12, the Monthly Minimum Guarantee is derived. According to him the petitioner was not liable to pay in accordance with the Annual Minimum Guarantee or Monthly Minimum Guarantee because in accordance with the new Industrial Policy, the petitioner being new industrial unit was exempted from paying Annual Monthly Guarantee charges for the period of 5 years from the date of starting production, i.e., from September, 1994 to September, 1999. He submits that for the years 1995-96 and 1996-97 the respondents had raised annual minimum guarantee bills even though the petitioner was exempt from payment of the same, the petitioner had to approach the High Court for quashing the said demand by filing a writ application being C.W.J.C. No. 5986 of 1997. He says that by order dated 28-7-1997 the said writ application was allowed and the respondents were restrained from charging Annual Minimum Guarantee charges in view of the exemption availed of by the petitioner.

8. The petitioner says that by billing on the basis of monthly minimum guarantee the respondents have overcharged the petitioner to the extent of Rs. 1,84,021.08 as detailed in paragraph No. 26 of the petition. He also submits that as the bills were wrong, illegal and contrary to the industrial policy so also contrary to the Board's circular acknowledging exemption in favour of the New Industrial Units, the petitioner was not obliged to make payment under illegal demand nor it would be liable to pay the delayed payment surcharge. He submits that in case of defective meter or dispute relating to incorrect reading the matter is to be referred to the Electrical Inspector who in accordance with Section 26(6) of Indian Electricity Act, 1910 has to decide the dispute. He also submits that the Board is not entitled to unilaterally decide the consumption of energy by the consumer but the same is to be decided by the Electrical Inspector on a reference only for a maximum period of six months. It is contended that the meter barring in relation to KVA was recording, the other factors correctly therefore there cannot be any dispute regarding KWH recording and the Board was not entitled to charge anything on the basis of Annual Minimum Guarantee or Monthly Minimum Guarantee.

9. This Court issued a notice to the respondents to show cause. The respondents showed cause under their affidavit dated 5-4-2000. It is contended by the Board that the petitioner is not a High Tension consumer, the meter recording was not recording correct and the fact was not disputed by the petitioner. At the time of inspection it was found that one phase was not recording in the meter and only two phases were recording and as such the consumption of energy and the maximum demand utilised were both giving lower readings than the actual consumption. It is also submitted that the defective meter was replaced on 13-4-1999. The defective meter was tested on 13-4-1999 and it was found that the voltage between red phase and neutral was zero where it should have been equal to the voltage of the other "Y" and "B" phases. According to them after the replacement of the meter, voltage between red phase and neutral, in the new meter was found to be almost the same as in other phases and the phase sequence was found in forward direction.

10. It is contended by the Board that under the powers conferred upon the Board u/s 49 of the Indian Electricity (Supply) Act, 1948, the Board has framed the tariff. According to them, Clause 16.8 deals with a situation of a defective meter and as the said tariff Notification dated 23-6-1993, which is time tested, is still operative, the petitioner cannot revert to a reference to the arbitration by Electrical Inspector but would be governed by the tariff Clause 16.8. It is further contended by the Board that the Board was absolutely justified in applying Clause 16.8 and in not referring the matter to the Electrical Inspector because the petitioner had acknowledged that the meter was defective. It is also contended by the Board that the Board after finding that there was defect in recording KVA corrected the bill and therefore, their bona fides show that the Board is not interested in charging extra. It is further contended that Clause 16.8 of the tariff is of general application and as the petitioner has not been singled out, the petitioner cannot raise any grievance. He submits that the petitioner not being a H.T. consumer and as it is not known to anybody that he had commenced the production in September 1994 and as the petitioner is not covered under the New Industrial Policy, the petitioner cannot claim exemption from Annual Minimum Guarantee or Monthly Minimum Guarantee, therefore, the Board was right and justified in charging on the basis of monthly minimum guarantee. They have prayed for dismissal of the petition,

11. I have heard the parties at length and have gone through the pleadings and the documents annexed to the petition so as to the counter-affidavit. The question whether the petitioner is H.T. consumer or not and whether the Industrial Policy exemption is available to him from Annual Minimum Guarantee should not detain this Court unnecessarily because on an earlier occasion, this Court in C.W.J.C. 5986 of 1997 (Mahabir Petro Products Private Limited v. Bihar State Electricity Board and Ors.) decided the issue for ever under its Judgment dated 28-7-1997. From a perusal of the judgment (Annexure-11), it would clearly appear that the present petitioner on an earlier occasion came to this Court seeking quashment of the bills of Annual Minimum Guarantee charges for

the years, 1995-96 and 1996-97. In the said petition, the petitioner had submitted that the petitioner was entitled to exemption as he had commenced the production between the period 1-4-1993 and 31-3-2000. This Court recorded a finding of fact that the petitioner commenced production during the period between the 1-4-1993 and 31-3-2000, therefore, he is entitled to exemption. The High Court on the earlier occasion directed the respondent-Board to grant relief to the petitioner, restore his electric connection. In fact, under the said judgment, the High Court had held that the petitioner is entitled to exemption under the Industrial Policy and the Board would not be entitled to charge Annual Minimum Guarantee.

12. In accordance with the earlier judgment of this Court, I find no difficulty in holding that the petitioner is a H.T. consumer availing of maximum demand of 75 KVA and is exempted from Annual Minimum Guarantee Charges or Monthly Minimum Guarantee charges but has to pay in accordance with the actual consumption.

13. Undisputedly, there was a dispute in relation to the meter. Section 26 of Indian Electricity Act, 1910 deals with the recording meter. Section 26(6) of the 1910 Act provides as under:-

Where any difference or dispute arises as to whether any meter referred to in Sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector, ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days" notice of his intention so to do.

14. Section 26(6) of the Act came up for consideration before the Supreme Court in the matter of Madhya Pradesh Electricity Board and Others Vs. Smt. Basantibai, The Supreme Court after dealing with the said provisions in details deserved as under:-

It is evident from the provisions of this section that a dispute as to whether any meter referred to in Sub-section (1) is or is not correct has to be decided by the Electrical Inspector upon application made by either of the parties. It is for the Inspector to determine whether the meter is correct or not and in case the Inspector is of the opinion that the meter is not correct, he shall estimate the amount of energy supplied to the consumer or the electrical quantity contained in the supply during a period not exceeding six months and direct the consumer to pay the same. If there is an allegation of fraud committed by the consumer in

tampering with the meter or manipulating the supply line or breaking the body seal of the meter resulting in not registering the amount of energy supplied to the consumer or the electrical quantity contained in the supply, such a dispute does not fall within the purview of Sub-section (6) of Section 26. Such a dispute regarding the commission of fraud in tampering with the meter and breaking the body seal is outside the ambit of Section 26(6) of the said Act. An Electrical Inspector has, therefore, no jurisdiction to decide such cases of fraud. It is only the dispute as to whether the meter is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.

15. There is catena of authorities which say that in case the Board raises a dispute regarding recording by defective meter then the Board has to refer the matter to Electrical Inspector unless there are allegations of commission of fraud or tampering with the meter or breaking the body seal, the Electrical Inspector would have jurisdiction to decide the question relating to the defective meter. But if there are allegations of fraud, tampering with the meter, breaking of the body seal or some allegations of like nature, the Electrical Inspector would have no jurisdiction to take a decision in such a matter. It is only the dispute as to whether the meter is not correct or it is inherently defective or faulty not recording correctly the electricity consumed, can be decided by the Electrical Inspector under the provisions of the said Act.

16. The matter was again taken up for consideration by the Supreme Court in the matter of Belwal Spinning Mills Ltd. etc. Vs. U.P. State Electricity Board and another, The Supreme Court observed that if the dispute as to the correct status of the meter or the other electrical apparatus is raised either by the licensee or by the consumer by making reference to the Electrical Inspector u/s 26(6) then such dispute can be determined only by the Electrical Inspector and the meter apparatus cannot also be changed by the licensee unless the dispute is resolved by the Electrical Inspector. The Supreme Court further observed that the Electrical Inspector upon entering the reference would determine the dispute as to the proper functioning of the meter and after Electrical Inspector comes to the finding that the meter ceased to be correct, he has to determine the quantum of the electricity consumed during the statutory period referred to in Sub-section (6). The licensee and the consumer have to accept the quantum of supply of electricity to the consumer as may be determined by the Electrical Inspector. The Supreme Court further observed that in a case of the meter dispute, the matter has to be referred to the Electrical Inspector.

17. In the present matter, there is no dispute before me that the meter became defective and it had started recording incorrectly. There is also no dispute before me that before the meter became defective the petitioner was charged on the basis of meter reading, the Annual Minimum Guarantee or Monthly Minimum Guarantee was not forced upon him but the petitioner was required to pay in accordance with the units recorded by the meter. If the Electricity Board was of

the opinion that the meter was not recording correctly then in accordance with the Section 26(6) of the 1910 Act they were obliged to refer the matter to the Electrical Inspector for his decision u/s 26(6) of the said Act. Having not done so ordinarily under the Act, they cannot record certain findings to suit their own purposes.

18. The respondents, in fact, are relying upon Section 49 of Indian Electricity (Supply) Act, 1948 which authorises the Electricity Board to make provisions for sale of electricity. There is no dispute that Section 49 of the Act confers absolute power of Electricity Board to frame the tariff. The only condition governing the discretion of the Board is that it has to fix the uniform tariff. Having regard to all or any or the facts mentioned in Sub-section (2) of Section 49 of the Apt. Sub-section (3) of Section 49 provides that anything in the foregoing provisions of Section 49 shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of the electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors. The respondents submit that Clause 16.8 clearly provides that in case of a defective meter, the said Clause shall provide the guidelines. Without entering into the controversy that in case of a defective meter whether the matter is to be referred to the Electrical Inspector or Clause 16.8 shall govern the rights and liabilities of the parties for the purpose of this petition only, I proceed to consider Clause 16.8 the said Clause reads as under:

In the event of meter being out of order, i.e., burnt/stopped or having ceased to function for any reason during any month/months, the consumption for that month/months shall be assessed on average consumption of previous 3 months from the date of meter being out of order of the average consumption for the corresponding three months of the previous year's consumption or the Minimum Monthly Guarantee whichever is the highest. Such consumption will be treated as actual consumption for all practical purposes until the meter is replaced/rectified. Operational surcharge, power factor surcharge and electricity duty shall be levied on consumption so calculated.

19. A perusal of Clause 16.8 would provide that in the event of meter being out of order, the consumption for that month/months shall be assessed on average consumption of previous three months from the date of meter being out of order or the average consumption for the corresponding three months of previous year's consumption or the Minimum Monthly Guarantee which ever is the highest. Clause 16.8 further provides that such consumption will be treated as actual consumption for all practical purposes until the defective meter is replaced/rectified. To understand Clause 16.8 one has to keep in mind that the Board has been given authority to charge on the basis of previous three months' consumption or corresponding three months of the previous years' consumption or the Minimum Monthly Guarantee which ever is the highest. If the Board finds that consumption for the past three months or the consumption for the

corresponding three months of the previous year's consumption is less than the Board can charge Minimum Monthly Guarantee. In the present case, undisputedly the Annual Minimum Guarantee charges are 139613, if the same is divided by 12 the Minimum Monthly Guarantee charges would be 11634. The Board has charged 11634 units per month taking into consideration that the Minimum Monthly Guarantee is the highest. Apparently, there may not appear any defect in the charging system but a little probe into the matter would show that the Board is not entitled to charge on the basis of Annual Minimum Guarantee charges or Monthly Minimum Guarantee charges. The Board would be entitled to charge on the basis of Minimum Monthly Guarantee, if the same is applicable to the parties. If the clause relating to Minimum Monthly Guarantee is not applicable to a consumer either because of the industrial policy or the exemption availed of by the consumer or under the circular issued by the Board then consideration of Minimum Monthly Guarantee would be out of course. In such a case, the Board would be entitled to charge on the basis of the average consumption of previous three months or the average consumption for the corresponding three months of the previous year's consumption. On one side, the industrial policy says and it has been so observed by the High Court that the petitioner would not be liable to pay Minimum Monthly Guarantee charges then it would not be possible for the Board, on the other hand, to say that they would be entitled to charge on the basis of Minimum Monthly Guarantee charges.

20. In the earlier petition, the High Court has already brought the issue to an end after recording that the petitioner is entitled to exemption under the industrial policy and is not answerable to the claim of the respondents on the strength of Monthly Minimum Guarantee charges.

21. In my considered opinion, the Board would be justified in raising a bill on the basis of Minimum Monthly Guarantee charges, if the said charges are applicable to the consumer or the tariff applies to the consumer. In a case where the Minimum Monthly Guarantee charges are not applicable, then the Electricity Board is obliged to raise a bill on the basis of the actual consumption either recorded in the meter or on the basis of consumption of previous three months or the average consumption for the corresponding three months of the previous years consumption.

22. In a case where the Annual Minimum Guarantee or Minimum Monthly Guarantee charges are not applicable in accordance with the circular issued by the Board, the tariff, in the opinion of this Court, shall stand automatically amended and the Board would not be entitled to say that irrespective of exemption granted to or availed of by a consumer the Board would raise the bill on the basis of the Minimum Guarantee charges. The bill could only be raised on actual average of the previous three months' consumption or on basis of the last year's corresponding three months.

23. In the opinion of this Court then, the Board was certainly not justified in raising the bill after applying the Minimum Guarantee charges. In the case of the

present petitioner, the bill could be raised on the basis of the actual consumption or as observed above.

24. A question is being raised before this Court that if the Board raises a wrong bill and the consumer refuses to make the payment of the said bill whether such a consumer is liable to pay the delayed payment surcharge. According to the agreement and the tariff conditions the Board has to issue a bill within 15 days of the month and has to give a particular period to the consumer for making the deposits. If the deposits are not made within the prescribed period, the Board is entitled to disconnect its supply or in alternative charge the delayed payment surcharge. In the present case, the equities can be balanced by directing the Board to restructure the bill in accordance with the observations made above. If it is found that the petitioner did not pay the bills in accordance with the legal demands then the Board shall be entitled to charge the delayed payment surcharge for the period for which the bill has not been paid, but if it is found that the petitioner has already made payments in accordance with the bill raised by the Board and the said payment is in excess of the above directions then the Board shall refund the amount charged excessively or in the alternative shall give the credit of the said amount to the petitioner in the future bills.

25. The petition deserves to and accordingly allowed with costs of Rs. 5,000/- I am imposing this cost on the Board because the Board has taken wrong and false stand in its zeal to contest the petition, it has raised false pleas which are contrary to the earlier judgment of this Court.

26. Within one month from today, the Board shall correct the bills and provide the same to the petitioner either for payment with or without surcharge and in case, it is found the petitioner has made excess payment in accordance with the bill earlier raised then the Board shall be obliged either to refund the excess charged or give the credit of the said amount to the petitioner in the future bills.

27. The petition is allowed.