

(2002) 08 JH CK 0022

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4027 of 2001

McNally Bharat Engineering Company Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Electricity (Supply) Act, 1948 — Section 18, 19(1)
Electricity Act, 1910 — Section 2

Citation : (2003) 3 BLJR 2177

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : M.S. Mittal, for the Appellant; V.P. Singh, Rajesh Shankar, A.K. Sinha, Sat Prakash, R. Mukhopadhaya and Biren Poddar, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The writ petition was preferred by petitioner, M/s. McNally Bharat Engineering Co. Ltd. for issuance of an appropriate writ or a writ in the nature of mandamus commanding and directing the respondents to raise separate bills on the basis of High Tension Tariff (H.T. for short) for its factory premises and on the basis of Commercial Service Tariff (C.S. for short) for its administrative premises and on the basis of Domestic Service Tariff (D.S. for short) for its 150 residential houses/ staff quarters, since despite repeated request to raise separate bills, a common bill on the basis of H.T. Tariff is being raised for its factory premises, administrative buildings and residential houses/ staff quarters which, according to petitioner, is against the provisions of the Tariff.

2. The case of petitioner is that it entered into an agreement for supply of load at H.T. for a contract demand of 1000 KVA and its consumer number is K.D. 5. The electrical line is supplied to its factory premises as also in its administrative building and about 150 residential houses/staff quarters. There being one H.T. electric meter, the entire consumption is being recorded and the bill is being raised on the basis of H.T. Tariff.

Further case of petitioner is that the petitioner is governed by the Tariff Schedule published in the Bihar Gazette (Extra) on June 23, 1993, commonly known as 1993 Tariff. Various rates have been provided in the 1993 Tariff. For electric supply to industrial consumer, it has made two categories, namely, Low Tension Industrial and Medium Power commonly known as LTIS and the 11 KVA or 6.6 K.V.H.T. commonly known as HTIS. The H.T. service is also divided in three parts on the basis of use of installation with minimum contract demand, the petitioner's factory having contract demand of 1000 KVA falls under the HTIS category.

Under 1993 Tariff for use of electricity for domestic purpose, D.S. Tariff is applicable. There are three categories of D.S. Tariff, namely :--

(a) D.S. I for rural areas not covered by area indicated under D.S. II and for connected load not exceeding 2 KW;

(b) D.S. II for urban areas covered by Notified Area Committee/Municipality/Municipal Corporation/District Town/Sub-Divisional Town/Block Headquarters/Industrial Area/ Contiguous Sub-Urban Area and for connected load and exceeding 4 KW; and

(c) D.S. III for load exceeding 4 KW. For domestic service (D.S. connection), separate rate prescribed per unit for D.S. I, D.S. II and D.S. III which is much lower than the rate of the H.T. or L.T. connection. There is neither any minimum guarantee charge, nor fuel surcharge fixed for domestic service (D.S. consumers).

The 1993 Tariff provides separate tariff for administrative building known as the Non Domestic Tariff for light, fan and power service which is also commonly known as C.S. Tariff. It is alleged that the petitioner though repeatedly and regularly requested the State Electricity Board to raise separate bills on the basis of commercial service tariff or non-domestic tariff for its administrative buildings and domestic service tariff for its residential houses/staff quarters but no action has been taken by the Board. The petitioner made such request recently by letter dated 24th November, 2000 to the Electrical Executive Engineer, Electric Supply Division, Nirsa but even thereafter bills have been raised on H.T. connection. The factory of the petitioner stated to have no sufficient work order so it did not require contract demand of 1000 KVA which has been informed to the Electrical Superintending Engineer on 3rd April, 2001 with request to reduce its load from 1000 KVA to 800 KVA by way of notice as required under clause 9-A of the agreement. It followed by petitioner's letter dated 30th April, 2001 to the Electrical Superintending Engineer, Nirsa and letter of same date given to the General Manager-cum-Chief Engineer, Dhanbad.

3. Counsel for the petitioner submitted that if the individual residents of 150 residential quarters applies, for separate C.S. connection with the State Electricity Board, the petitioner will not oppose and will co-operate with the Electricity Board to give them direct connection.

On 7th December, 2001, when the case was taken up, it was brought to the notice of the Court that similar problem is existing in other areas where Government employees and Court's employees are residing like H.E.C. Colony, Dhuruwa and MECON Colony (Shyamali) both at Ranchi. Similar position existing in certain other places outside the capital, Ranchi.

4. It is pertinent to mention that after creation of State of Jharkhand, Ranchi having made its capital, a number of employees of the State as also the employees of High Court were transferred and posted at Ranchi. There being shortage of Government quarters, the State Government made arrangement with H.E.C., Ranchi and MECON, Ranchi to lease out certain quarters in its favour for allotment of such quarters in favour of State Government and High Court employees. Accordingly, a number of Government employees have been allotted quarters in H.E.C. Colony, Dhuruwa and a number of High Court employees have been allotted quarters in MECON Colony (Shyamali) at Ranchi. This fact having been brought to the notice of the Court, the Chief Secretary, Government of Jharkhand, Secretary, Energy Department, Jharkhand and the Chairman, Jharkhand State Electricity Board were asked vide order dated 7th December, 2001 to sit together to resolve the dispute. It was observed that if it was not resolved, the Court may determine the case on its merit. The Committee of aforesaid three officials held meeting on 8th January, 2001 under the Chairmanship of the Chief Secretary, Jharkhand and submitted a report. The aforesaid officials were also directed to assist the Court in the matter as the issue as may be determined will also be applicable in all similar cases such as employees residing in the quarters of H.E.C. and MECON.

An intervention petition was also filed on behalf of Ranchi Zila Nagrik Unnayan Parishad, a Welfare Society of H.E.C. Limited which was impleaded as respondent No. 6.

On the request of Mr. V.P. Singh, counsel for JSEB, HEC and MECON, Ranchi were also impleaded as party respondent Nos. 7 and 8 respectively.

The Court heard the learned SC I for the State, Mr. V.P. Singh, counsel of the JSEB, Mr. R. Mukhopadhyaya, counsel for the HEC, Mr. Biren Poddar, counsel for the MECON. Mr. A.K Sinha, counsel for the intervenor-respondent No. 6 as also the Chief Secretary, Jharkhand, Secretary, Energy Department, Jharkhand and the Chairman, J.S.E.B., Ranchi.

5. The main question ultimately raised for determination is whether the Electricity Board (J.S.E.B.) is bound to supply the electricity directly, if any one or other occupant of quarters applies directly to the Board, who is in occupation of the petitioner's quarters or quarters of H.E.C., Dhuruwa, Ranchi or the quarters in MECON Colony (Shyamali), Ranchi or not.

On behalf of the State of Jharkhand, the issue has not been directly addressed. It merely given reference of the decision taken by the Committee which is stated to have been forwarded by the Energy Department of the State to the Board by its

letter No. 231 dated 5th February, 2002 for its approval.

6. The stand taken by the Board is that the petitioner, M/s. Menally Bharat Engineering, H.E.C., MECON and similar other consumers of the Board are bulk consumers and purchasing electricity in bulk at a single point for its use in their industrial units, administrative building and staff quarters, they are liable to supply electricity in their respective quarters as per H.T. agreement. The Electricity Board cannot supply electricity directly to any person residing in the premises quarters of such bulk consumers.

In respect of the MECON quarters, the stand of the Board is that the electricity connection has been taken by MECON for its premises and for consumption in dwelling units of MECON-SAIL Township (Shyamali) and Associated Services. For supply to residents of petitioner's quarters or MECON or HEC, at present the Board has got no infrastructure in those areas, in setting up the infrastructure by the Board huge cost as well as sufficient time will be required. Before that the existing agreement will have to be rescinded. For recession of contract, application has to be made by consumer/bulk consumer after clearing the existing dues. The petitioner will have to make different applications for supply one for H.T. connection for factory, another for non- domestic C.S. category supply for office establishment and individual applications for each residential houses/quarters. All such applications are to be made after complying necessary formalities.

7. The Chairman, JSEB on appearance took similar plea as taken by the Board. Mr. V.S. Dubey, the then Chief Secretary, Jharkhand referred the definition of bulk licensee and licensee defined under Sections 2(3) and 2(6)(a) of the Electricity (Supply) Act and submitted that the petitioner, HEC or MECON and other similar H.T. bulk consumers being not a licensee, as defined under the Act, any individual if applies directly to the Board for electric supply, the Board cannot deny or refuse to give direct connection. It was submitted that initially the Tariff of H.T. consumer being less than the Tariff as was fixed for C.S. consumer, the organisations such as petitioner, HEC and MECON used to obtain H.T. connection and used to supply electricity in its staff quarters. Since 1993, new tariff having prescribed, now higher tariff having prescribed for H.T. consumers, such as Rs. 5/- approximately per unit, the tariff of domestic consumer being much less, i.e. about one rupee twenty three paise per unit, the consumers allotted quarters in the petitioner's premises or in the premises of HEC or MECON are facing difficulty as they are asked to pay about Rs. 5/- (five) per unit in place of Rs. 1.23 paise (one rupee twenty three paise) per unit as being paid by other domestic consumers.

Mr. V.S. Dubey, the then Chief Secretary, Jharkhand submitted that the stand aforesaid taken by him is his personal opinion on the basis of law laid down in this respect for assistance of the Court, it should not be construed as the stand of the State of Jharkhand.

8. The Indian Electricity Act, 1910 (Act 9 of 1910) was passed with the intention to impose certain duties and liabilities on licensee and other person to supply electric energy in an area for which a licence or permission is granted. The powers granted to a licensee or other person are conferred and imposed for the purpose of enabling them to construct their work, their plants, service mains etc. and to maintain them. The duties are also imposed on them for the safety of public or individuals, who purchased energy from them. The undertaking being for public benefit a duty is imposed on the licensee to supply energy to any person, who wants it, subject to the condition laid down by statute or the conditions for the licensee or the sanction granted by the Government. The licensee is not permitted to impose any condition contrary to the Acts or Articles of his character.

The definition of licensee laid down u/s 2(h) of the Electricity Act, 1910 means any person licensed under Part II to supply energy. Part II deals with supply of energy including grant of licence. Under the Electricity (Supply) Act, 1948, the Electricity Board constituted is a licensee for the purposes of the Electricity Act, 1910. As per Section 2(3) of the Electricity (Supply) Act, 1948, bulk licensee means a licensee, who is authorised by his licence to supply electricity to other licensees for distribution by them. Section 5 of the Supply Act, 1948 while prescribes constitution and composition of the State Electricity Boards, Section 18 of the said Supply Act, 1948 prescribes the general duties of the Board, as quoted hereunder :--

"General Duties of the Board.--Subject to the provisions of this Act, the Board shall be charged with the following general duties, namely :--

(a) to arrange, in co-ordination with the Generating Company or Generating Companies, if any, operating in the State, for the supply of electricity that may be required within the State and for the transmission and distribution of the same, in the most efficient and economical manner with particular reference to those areas which are not for the time being supplied or adequately supplied with electricity;

(b) to supply electricity as soon as practicable to a licensee or other person requiring such supply if the Board is competent under this Act so to do;

(c) to exercise such control in relation to the generation, distribution and utilisation of electricity within the State as is provided for by or under this Act;

(d) to collect data on the demand for, and the use of electricity and to formulate perspective plans in co-ordination with the Generating Company or Generating Companies, if any, operating in the State, for the generation, transmission and supply of electricity within the State;

(e) to prepare and carry out schemes for transmission, distribution and generally for promoting the use of electricity within the State; and

(f) to operate the generating stations under its control in co-ordination with the

Generating Company or Generating Companies, if any, operating in the State and with the Government, or any other Board of agency having control over a power system."

9. Thus, it will be evident that the Board is charged with duty to supply electricity as soon as practicable not only to a licensee but also to other person requiring such supply if the Board is competent under the Act to do so [Ref. Section 18(b)]. Admittedly, the petitioner-M/s. Menally Bharat Engineering Co. Ltd., HEC or MECON are H.T. consumers. None of them are licensee as defined u/s 2(h) of the Indian Electricity Act, 1910, nor a bulk licensee as per Section 2(3) of the Electricity (Supply) Act, 1948. They are not being provided with any command area to supply energy within such area, nor they have been empowered by the Board to supply energy to any one or other consumer of their choice. Thus, none of the "licensee except the Electricity Board having provided with licence to supply energy in the residential area/quarters of petitioner, M/s. Penally Bharat Engineering Co. Ltd. or residential area/quarters of HEC or MECON, Shyamali, Ranchi, the JSEB cannot refuse any prayer, if made by any person, for direct supply.

Even in an area where a scheme sanctioned under Chapter V is in force, the Board may supply electricity to any licensee or person subject to certain conditions as prescribed u/s 19 of the Supply Act, 1948 as quoted hereunder :--

"19. Powers of the Board to supply electricity.--(1) The Board may, subject to the provisions of this Act, supply electricity to any licensee or person requiring such supply in any area in which a scheme sanctioned under Chapter V is in force :

Provided that the Board shall not,--

(a) supply electricity for any purpose directly to any licensee for use in any part of the area of supply of a bulk licensee without the consent of the bulk licensee, unless the licensee to be supplied has an absolute right of veto on any right of the bulk licensee to supply electricity for such purpose in the said part of such area, or unless the bulk licensee is unable or unwilling to supply electricity for such purpose in the said part of such area on reasonable terms and conditions and within a reasonable time; or

(b) supply electricity for any purpose to any person, not being a licensee for use in any part of the area of supply of a licensee without the consent of the licensee, unless,--

(i) the actual effective capacity of the licensee's generating station computed in accordance with paragraph IX of the First Schedule at the time when such supply was required was less than twice the maximum demand asked for by any such person; or

(ii) the maximum demand of the licensee, being a distributing licensee and taking a supply of energy in bulk is, at the time of the request, less than twice the maximum demand asked for by any such person; or

(iii) the licensee is unable or unwilling to supply electricity for such purpose in the said part of such area on reasonable terms and conditions and within a reasonable time.

(2) After the Board has declared its intention to supply electricity for any purpose in any area, for which purpose and in which area it is under this section competent to supply electricity, no licensee shall, the provisions of his licence notwithstanding, at any time be entitled without the consent of the Board to supply electricity for that purpose in that area.

(3) For the purposes of Sub-section (1) "absolute right of veto" means an unqualified right vested in a licensee by virtue of any law, licensee or other instrument whereby a bulk licensee is prevented from supplying electricity in any specified area without the consent of the licensee in whom the right of veto vests.

(4) If any question arises under subsection (1) as to the reasonableness of the terms or conditions or time therein mentioned, it shall be determined (by arbitration) as provided in Section 76."

The provision of Section 19(1)(b)(ii) of Supply Act, 1948 fell for consideration before the Supreme Court in the case of S.E. Works v. Gujarat Electricity Board AIR 1969 SC 770. The Supreme Court taking into consideration the language of Section 19(1)(b)(ii) of the Act, held that the applicability of Clause (ii) is restricted to person taking electricity supplied by the licensee. There is also no hardship caused to an applicant who may not take electricity supply by the licensee and who may be desirous of taking electricity for the first time from the Board in view of his anticipated requirement. It is open to such an applicant to take recourse to the provision of Clause (ii) of Section 19(1)(b) of the Act which provides that the Board may supply electricity direct without the consent of the licensee, if the licensee is unable and unwilling to supply electricity for the purpose of the applicant on reasonable terms and conditions and within a reasonable time.

10. In the aforesaid background, even if the stand of the Board is accepted that the petitioner or HEC or MECON is a bulk licensee, which is incorrect, in such case also, if any individual applies for direct electrical connection on the ground that it is not getting electricity on reasonable terms and conditions, the Electricity Board cannot refuse such applicant.

So far as infrastructure for supply of electricity is concerned, if the management of petitioner or the management of MECON or any other similarly situated organisation allows to avail the infrastructure for supply of energy to individual domestic consumer, the Board may avail the same. In case, one or other management do not permit to avail their structure for supply to any individual consumer of the area, the Board to perform their duty is bound to make necessary infrastructure for such supply.

11. In view of finding aforesaid, I give liberty to petitioner, M/s. Menally Bharat

Engineering Co. Ltd., any resident of the petitioner's quarters or any resident within the area of HEC or MECON (Shyamali), Ranchi including any quarters of such organisation to apply for supply of electrical connection directly from the JSEB at the rate the other consumers of Electricity Board are getting electricity. In such case, the officials of the JSEB will be bound to take appropriate steps to give electrical connection directly on deposition of requisite fee and forms.

The petitioner or other similar organisation like HEC, MECON etc. may also ask for separate electrical connection for its administrative office.

The agreement, if any, reached between the petitioner or any organisation such as HEC or MECON with Electricity Board, will be binding between them but not on an individual resident of their area/ quarters, being not a party to such agreement.

12. The writ petition is allowed, with the aforesaid observations/directions. However, there shall be no order, as to costs.