

**(2012) 09 PAT CK 0060**  
**In the Patna High Court**  
**Case No : CWJC No. 6672 of 2005**

|                                              |    |            |
|----------------------------------------------|----|------------|
| M/s. Indo Hokke Hotels Ltd.                  | Vs | APPELLANT  |
| The Bihar State Electricity Board and Others |    | RESPONDENT |

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**Date of Decision :** 11-09-2012

**Acts Referred:**

**Citation :** (2013) 2 PLJR 213

**Hon'ble Judges :** Ajay Kr. Tripathi, J

**Bench :** Single Bench

**Advocate :** Pradeep Kumar I, Rishi Raj Sinha, Manojeshwar Pratap Sinha and Lal Babu Sinha, for the Appellant; Vinay Kirti Singh, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ajay Kr. Tripathi, J.—Bihar State Electricity Board has a monopoly so far as the State of Bihar is concerned. Consumers have no option but to depend on the Board if they want any kind of electric supply to be made to their establishment or a dwelling house. The present writ application arises from a set of facts which are not in dispute. As per the counsel for the petitioner, he is being harassed and victimized by raising additional demands and dues for carrying out the dictates and direction of the Electrical Superintending Engineer of Electrical Supply Circle, Biharsharif.

2. The Indo Hokke Hotels Limited set up a hotel at Rajgir with the object of meeting the demands of Foreign tourists especially coming from countries professing to Buddhist religion. This hotel is used to be run in season from October to March every year for many many years, looking at the seasonal demand for occupancy in the hotel. Later on, for many a reasons due to improved situation and demand, petitioner decided to go for a regular connection instead of seasonal connection, which was in place earlier.

3. An application was made before the competent authority and in response thereto petitioner received communication contained in Annexure-1, which is

dated 28.10.1995. Seven conditions were indicated therein which the petitioner was expected to carry out or comply before he could enter into an agreement with the respondents. Condition (1) of Annexure-1 reads as follows:

(1) You have to install your own transformer of capacity 200 KVA.

4. Petitioner dutifully agreed and did what was required to be done including the installation of a transformer at his own cost having a capacity of 200 KVA. An agreement was also executed in terms of Annexure-3 showing the load factor of 120 KVA. All was well thereafter. Petitioner had been meeting the obligation by making payments of all the bills raised from time to time. All of a sudden in the year 2004 he was sent additional demand by virtue of Annexure-6 as well as Annexure-17. The reason for raising additional demand is supposed to be the audit objection taken within the board on the action of the petitioner of having transgressed some tariff provision of installing a transformer having 200 KVA capacity instead of confining it to 150 percent of the agreed load.

5. This is the background under which this writ application came to be filed since there was persistence on the part of the respondents to pay up or face the consequences thereof.

6. There are two basic contentions on behalf of the petitioner in this regard. One is that the petitioner had carried out his obligation in terms of direction contained in Annexure-1 by installing a transformer of the capacity of 200 KVA. It is only much later that he was told that the transformer's capacity should not be more than 150 percent of the agreed load. But then, it is also a fact that there are no manufacturers in the country who manufacture transformers in fraction of load and that was one of the primary reason why Electrical Superintending Engineer directed the petitioner to install a transformer with 200 KVA capacity instead of 180 KVA, which was an impossibility to perform due to non-availability in the market.

7. It is also urged that the petitioner cannot be penalized and the respondents cannot draw advantage of their own action or direction issued upon the petitioner by trying to find fault with what he had done in terms of Annexure-1 itself.

8. Yet another contention is that the petitioner could at best be dealt with or proceeded against in terms of tariff provision and any action beyond the same was uncalled for. In this regard attention of the Court has been drawn to Clause 16.4.1 of the 1993 Tariff published in Bihar Gazette on 23rd June, 1993. Clause 16.4.1 has been reproduced in para 12 of the writ application, which is also quoted herein below:

The transformer capacity of H.T. and E.H.T. consumers shall not be more than 150 percent of the contract demand.

If any consumer is found violating this provision his service connection will be disconnected.

9. The stand of the petitioner, therefore, is that he should have at best faced the threat of disconnection if there was failure on his part to meet the obligation or he had transgressed any provision of the tariff, which he had not done but raising an additional demand only on the basis of capacity of installed transformer is uncalled for.

10. It is also the stand of the petitioner that when this dispute arose he approached the respondent Board for reduction of the load by filing an application on 6th July, 2004 and it took four years for the respondent Board to accept their request and enter into a fresh agreement, on 1st February, 2008. While there was no decision on the request for four years, petitioner is being saddled with additional responsibility in terms of Annexure-17, All this, per se, according to him, is not only in violation of law, the tariff provision but also amounts to allowing the respondent Board to reward itself by compelling a consumer to do a thing first then penalize him for what he had done in terms of the dictate or directions of the board.

11. The stand of the counsel representing the Board is that it was the duty of the petitioner to ensure that the capacity of the transformer so installed should not have exceeded more than 150 percent of the contract load. If there was miscommunication by the Superintending Engineer, the Board ought not to suffer.

12. His other stand is that the load of transformer should not be more than 150 percent of the contract load. In other words, petitioner should have gone for a reduced load or for a transformer with reduced capacity which would not violate the embargo of 150 percent of the contract load or demand.

13. Another submission which is being made on behalf of the counsel of the Board is that a notice for reduction does not amount to a notice for termination of the earlier agreement and therefore, liability of the petitioner remains.

14. What is the relevance of such a stand taken by the counsel is not understood or appreciated by this Court taking into consideration the issue which has been raised by the petitioner and the bundle of facts which led to the present dispute and filing of the writ application.

15. Curiously enough Electricity Board is silent on the communication contained in Annexure-1. Taking a stand by the counsel representing the Board that the act of Superintending Engineer, may be an act of indiscretion not binding on the Board, is a misplaced stand for the reason that the Superintending Engineer is an agent of the Board, if not an authorized Personnel of the Board, who has requisite power to take such decision. He cannot be disowned or dumped according to the convenience of the Board after many decades after the dispute has been raised by the petitioner bonafidely. The reason why Electrical Superintending Engineer had directed the petitioner to install a transformer of 200 KVA is because there are no transformers available of 180 KVA. Either it is of 150 KVA or 200 KVA. This fact has been accepted at the bar that there are no transformers available in the market in fractions. The Superintending Engineer

was well aware of this being a technical man and he knew this position very well and therefore, a direction for installation of a transformer of the capacity of 200 KVA was given.

16. The question which arises for consideration is whether the respondent Electricity Board or its officials can draw advantage of its own act and direction by penalizing the consumer when he has bonafidely carried out what he was directed to do. It was the responsibility of the Board to properly advise the consumer of his obligation. A game cannot be played by the Electricity Board to first direct a consumer to do a thing and then extort money for so-called breach or condition of tariff. This Court will not allow such an act to be done because the respondent authorities cannot question their own act as has been held by the Apex Court in the case of Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, and this proposition or principle still occupies the field.

17. The submission made on behalf of the respondents in support of the decision to levy additional tariff and demand as contained in Annexures-6 and 17 is in total breach of tariff provision 16.4.1 as also in breach of their own demand, action or direction which has been carried out by the consumer in toto for which he cannot be allowed to be punished. Therefore, the Court holds the entire act of the respondent to be arbitrary, per se.

18. The writ application is allowed. Annexure-6 as well as Annexure-17 stands quashed.

19. The bills which have been raised against the petitioner shall be on the basis of the contract demand including the agreement and nothing more over and above the same shall be charged. Since the bills require corrections it must be done within a period of six weeks from the date of production of a copy of this order.

20. Let a copy of this order be marked to the Chief Secretary, Government of Bihar, who shall have a look at the state of affairs of the Electricity Board and the manner in which dichotomy in decisions making exists. This order may also be brought to the notice of the Hon'ble Chief Minister for his knowledge, especially for the reason that no amount of effort on the part of the State to bring investment in the State can succeed if the mind set of people at the helms of affairs in various departments do not change. The present writ is a gross case of harassment to a bonafide consumer.