

(2008) 04 PAT CK 0074
In the Patna High Court
Case No : CWJC No. 6242 of 2003

M/s J.M.G. Steel Pvt. Ltd.

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Citation : (2008) 2 PLJR 759

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : S.D. Sanjay, Suraj Samdarshi in 6241, 6242 and Mr. S.S. Rekhi in 14128, for the Appellant; Vinay Kirti Singh, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kr. Tripathi, J.—Heard counsel for the parties. Since there are common questions of law raised in all these three writ applications they are all being heard and decided together.

2. In all the three writ applications supplementary bills as minimum demand charges have been raised for varied period beginning the year 1998 till" 2003 as the case may be in all the three individual writ applications. All the three petitioners have a H.T. agreement of 33 KVA and are covered under the category of H.T.S.-II of the tariff notification for the year 1993. Based on the minimum contract demand in terms of the agreement read with Clause 15.2 as well as the tariff entry for H.T.S.-II consumers they were being charged on the basis of either on the maximum demand recorded during the month or 75% of the contract demand, whichever was higher. There have been instances where the payment of these bills have been made on the basis of 75% of the contract demand when the maximum demand in terms of the contract demand was less than 75%. There have been no problems with the bills raised in the past and all bills have been paid by these petitioners. The problem started for the first time in the year 2003. On a communication made by the O.S.D. (Revenue) contained in Memo No. 1200 dated 13.6.2003 supplementary bills were sought to be raised.

It is Annexures-2 and 4 in C.W.J.C. No. 6242 of 2003, Annexure-2 in C.W.J.C. No. 6241 of 2003 and supplementary dated 20.6.2003 bill with regard to C.W.J.C. No. 14128 of 2003.

3. A few provisions of the agreement and the tariff notification of 1993 deserve to be noticed if not reproduced for proper interpretation and adjudication of the issues. In this regard Clause 4(a) to (d) of the agreement is reproduced hereinbelow:-

"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 abovesaid 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 Kilo Volt 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 per cent 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 1 st April to 31 st March of the following year which is the financial year of the Board notwithstanding 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 June in each year.

4. Clause 15.2(a) are also being reproduced for ready reference:-

"15.2. The following "Minimum Base Charges" shall be realizable from the H.T./ E.H.T. & R.T. consumers as per the appropriate tariff.

(a) In respect of Demand Charge.- Subject to the minimum contract demand mentioned in this tariff for each category of service the consumer shall pay the monthly maximum demand charge as per the appropriate tariff based on the actual maximum demand of that month or 75 per cent of the contract demand whichever is higher.

5. The relevant entry for the charges for H.T.S.-II consumers of 33 KVA High Tension Service are also reproduced herein below:-

"1. Applicability:

For use in installation with a minimum contract demand of 1000 KVA.

2. Character of Service:

AC 50 Cycles, 3 phase at 33 KV.

3. Tariff Charges:

(a) Demand charge:-Rs. 115 per KVA per month. The billing demand will be the maximum demand recorded during the month or 75 per cent of the contract demand whichever is higher.

Plus

(b) Energy Charges.-172 paise per Kwh. The above is subject to minimum base charges as indicated in clause 15.2 and payable every month."

6. According to the counsel for the petitioners a reading of Clause 4(a) alongwith 15.2(a) would show that consumers under various categories as indicated in 15.2 of the tariff shall be charged subject to the maximum contract demand in the tariff for each category of service as per the actual maximum demand of that month or 75% of the contract demand, whichever is higher. According to them Clause 15.2(a) is the general provision governing various kinds of consumers and a plain reading of the same would show that despite the minimum contract demand while raising a demand charge the concerned consumer shall pay the same on either the maximum demand recorded during the month or 75% of the contract demand, whichever is higher but by a strange interpretation given by the O.S.D. (Revenue) contained in Annexure-3 the nature of the tariff itself is being sought to be changed. The interpretation given by the O.S.D. (Revenue) virtually amounts to converting the minimum contract demand into minimum chargeable demand. This interpretation, according to them, is contrary to the spirit of the provisions of the tariff specially clause 15.2 read the chargeable entries for H.T.S.-II category consumers. The submission of the petitioners, therefore, is that it is not open to the respondents moreso the O.S.D. (Revenue) to give a new interpretation and create a new category of charging section by giving the wrong interpretation to the entries. They further submit that by virtue of these action they have reopened a settled issue after many many years and they may not be permitted to raise a supplementary demand when under the new provisions of the Electricity Act, 2003 a kind of limitation of two years has

been laid down.

7. Counter affidavits have been filed on behalf of the respondents. They support the action and the interpretation given by the O.S.D. (Revenue) based on which the disputed supplementary bills have been raised. According to them since Clause 15.2(a) states, "Subject to the minimum contract demand mentioned in this tariff for each category of service the consumer shall pay the monthly maximum demand charge". According to him a plain reading of the above quote would show that the demand charges which have to be made will be the minimum contract demand for each category of consumers and the other part of Clause 15.2(a) should be read to mean that the Board is entitled to raise a demand charge on the minimum contract demand.

8. The submission made on behalf of the respondents in the opinion of this Court cannot be accepted. The Rules of interpretation in this regard are quite clear. The so-called golden rule of interpretation will always to be used as a first tool in reading any provision of a statute. The interpretation given by the respondents cannot be accepted for the simple reason that Clause 15.2(a) must be read as a composite, sentence starting with the words, "subject...is higher...". There are no commas, semicolons or any kind of punctuation which has been used in Clause 15.2(a). If the interpretation given by the respondent is accepted then it amounts to splitting-up clause 15.2(a) into two parts and the interpretation is being used to mask the provision that a demand charge based on the tariff shall be on the actual maximum demand of that month or 75% of the contract demand, whichever is higher. In the opinion of this Court the respondent authorities have misread the provisions of the Clause 15.2(a) and this has given them a reason for raising the supplementary demand which cannot be permitted. By virtue of such interpretation it also has the effect of creating a new category of charge which has not been envisaged under the Tariff Notification of 1993. Even otherwise a reading of the tariff provisions would show that Clause 15.2 comes under the category of special terms and conditions of supply and is general in nature that is why the entry always specifies that the charges are as per the appropriate tariff.

9. This Court on a plain reading of Clause 15.2(a) holds that despite the minimum contract demand every category of consumer shall pay the monthly demand charge based on the actual maximum demand of that month or 75% of the contract demand, whichever is higher. There is no other interpretation which can be given if one reads the provisions of H.T.S.-II consumers specialty Clause 3 which relates to tariff charges.

10. The Court, therefore, comes to a conclusion that the communication issued by the O.S.D. (Revenue) giving a new interpretation to Clause 15.2(a) and thereby raising the demand charges to the level of minimum contract demand is a misplaced exercise of power, if not a misplaced interpretation. The communication contained in Memo No. 1200 dated 13.6.2003 as well as Memo No. 1199 dated 13.6.2003 in the case of J.M.G. Steel Pvt. Ltd. and Jai Mata Di

Metals Pvt. Ltd. respectively are hereby quashed. The supplementary bills raised in pursuant to the said communications are also set aside. These are Annexures-2 and 4 in C.W.J.C. No. 6242 of 2003, Annexure-2 in C.W.J.C. No. 6241 of 2003 and supplementary bill dated 20.6.2003. in C.W.J.C. No. 14128 of 2003. All the three writ applications stand allowed.