(2004) 10 JH CK 0008

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2626 of 2001 and CWJC No. 644 of 2000 (R)

Neemi Chand Agarwal APPELLANT

Vs

Jharkhand State Electricity Board and Others
 Chotanagpur Small Scale Industries Association and Another Vs Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 29-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 49

Citation : (2004) 4 JCR 778

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : L.K. Bajla, Amicus Curiae, M.S. Mittal, for the Appellant; Mihir Kumar Jha, A.K. Mehta, Chandra Prabha and Rajiv Anand, for the Respondent

Judgement

Tapen Sen, J.—Heard the parties.

2. The petitioners in the instant cases pray for quashing the circular No. Misc./ 2424/98/EB-3/14/9/99 issued by the Financial Controller (Rev.) Bihar State Electricity Board, Patna (respondent No. 6) directing all officers of various Electrical Circles to raise fuel surcharge on the basis of monthly minimum consumption for consumers falling under the Low Tension Industrial Service/ Commercial Service Category, thereby directing to levy fuel surcharge on unconsumed units also in respect of consumers of both the categories. By reason of the said circular, a further direction has been made to raise Supplementary Bills for the previous periods following the aforementioned method of levying fuel surcharge on unconsumed units. This, according to the petitioners, is contrary to the principles of tariff and also contrary to the judgment of this Court wherein it has been held that the consumers are liable to pay minimum guarantee charge on annual basis and not on monthly basis.

3. The main contention of Mr. M.S. Mittal, learned counsel appearing for the

petitioners is whether the respondents can charge on either the actual consumption recorded in the meter or the monthly minimum consumption or both. According to Mr. Mittal, the L. T. I. Tariff specifically refers to monthly minimum consumption of energy charges plus fixed charges and it also refers to fuel surcharge. Therefore, according to him, the Board can charge fixed charge plus monthly minimum consumption plus fuel surcharge based on actual consumption recorded in the meter but not on unconsumed units.

4. The petitioner submits that as per Clause 16.10 of the 1993 tariff, the operational surcharge is to be levied and realized from C. S. II and III category consumers; L. T. I. S. Consumers; H. T. Consumers; Extra High Tension Consumers and Railway Traction Service Consumers. Operational surcharge consists of two elements ;-

(a) Fuel surcharge; and

(b) Other operational surcharge.

5. By judgment reported in 1994 (2) PLJR 103, operational surcharge was struck-down by Hon''ble Patna High Court as a result whereof not, the said operational surcharge now consists of only one element and i.e. fuel surcharge which has to be calculated on the basis of a formula given in Clause 16.10.3 of the 1993 Tariff. That tariff rate is as follows :-

S1 = Al X A3 + B1 X B3 + C1 X C3+ D1 X D3 + E1 X E3 + F1 X F3 + G1 X G3 + HI X H3....../(A2 + B2 + C2 + D2 + E2 + F2 + G2 + H2+ ....)

Whereas :-

S1 = Average Fuel Surcharge per Unit in paise applicable during the financial year.

Al, Bl, Cl = Unit generated from PTPS. DTPS and MTPS respectively.

Dl, El, Fl, Gl, HI = Unit purchased from DVC, UPSEB, OSEB, NTPC, PGC and any other source respectively.

A2, B2, C2 = Unit sold out of sent out from ITPS, DTPS and MTPS on which fuel surcharge in leviable.

D2, E2, F2, G2, H2 = Unit sold out of purchased from DVC., UPSEB, OSEB. NTPC, PCCL and any other source respectively during the year on '' which fuel-surcharge is leviable.

A3, B3, C3 = Increase in average cost of fuel surcharge in paise per unit com-puted for Board''s Generation at PTPS, BTPS and MTPS.

D3, E3, F3, G3, H3 ~ Increase in the average, unit rate of purchase of energy from DVC, UPSEB, OSEB, NTPC, PCCL and any other source respectively during the year for which the surcharge is to be calculated. The said increase to be calculated with respect to the year 1992-93.

6. The word, units sold, according to the petitioners, as stated in paragraph-10 was considered by the Hon''ble Supreme Court in the case of D.C.M. Ltd., etc. Vs. Municipal Corporation of Delhi and another etc., From perusal of paragraph-10 of the judgment quoted therein, it is seen that the expression "units sold" in the denominator of the formula means, the units which reach the consumers and which are consumed by them and thus, according to the petitioners, the Board has to charge fuel surcharge only on units consumed and not on unconsumed units.

7. According to the respondents, the writ petition is fit to be dismissed as it is based on fallacies. According to the respondents there are several categories of consumers which are called as Domestic Service. There are three types of consumers i.e. DS-I, DS-II and DS-III. There is another category of service which is known as Commercial service. There are three types of commercial service namely CS-I. CS-II and CS-III. There is another category of consumers having Low Tension Industrial and minimum power and they are known as L. T. I. S. consumers. There are two types of L. T. I. S. consumers and they are known as LTIS-I and II.

8. According to the respondents, the Board has framed Tariff which was published in the Gazette on 26.3.1993 and the same is commonly known as the 1993 Tariff. The Tariff Schedule provides tariff rates for different category of consumers. It is stated that for CS-II category, fixed charge is 100 per KW or part thereof per month for connected load upto 4 KW. In addition, the CS-II consumer has to pay energy charges :-

(i) For 1st 150 KWH. @ 132 Paise per KWH;

(ii) in excess of 150 KWH. @ 150 Paise per KWH:

(iii) CS-II category consumer is required lo pay minimum monthly consumption of 50 KWH per month.

9. The respondents have further stated that LTIS-I consumer is required to pay fixed charge of Rs. 60/- per month per HP or part thereof. In addition thereto, the L. T. I. S. consumer is also required to pay energy charges at the rate of 111 P. Per KWH and if is required to pay minimum monthly consumption of 70 KWH per HP per month. It is further submitted that similarly, LTIS-II category of consumer is required lo pay fixed charges of Rs. 80 per HP or part thereof per month. In addition thereto, LTIS-II consumer is required to pay minimum monthly consumption of 70 KWH per HP per month. It is stated by them that due to certain confusion in the method of billing of consumers under categories LTIS-I and II and CS-II and III, a clarification was issued by the Financial Controller of the Electricity Board vide Circular No. 3, dated 14.9.1999 (Annexure-5 herein). It is further submitted by the learned counsel for the respondents that a clarification was sought for as to whether fuel surcharge would be levied or not when energy bills were raised on the basis of minimum monthly consumption against the consumers under the aforesaid categories. The clarification received

was as follows :-

(i) Monthly energy bills of consumers falling under LTIS and CS categories are to computed on the basis of actual consumption recorded in the meter or the minimum monthly consumption specified in the tariff schedule whichever is higher;

(ii) The Units (KWH) to be billed as per (i) above will be charged at the appropriate tariff rate of energy charge plus fuel surcharge as applicable from time to time.

10. The respondents have further stated that for making supply, at least to the extent of minimum monthly consumption for the consumers under categories ITIS-I and II and CS-II and III, the respondent-Board is required to generate or purchase electricity. In generating the electricity, the respondent Board has to make expenses on the fuel used for generation. Even while purchasing electricity, the Board has to pay fuel surcharge from the agencies from which electricity is purchased. Whether the consumers of the aforesaid categories consumed the electricity up to the minimum monthly consumption or not. the same is immaterial because the electricity so generated or purchased for meeting the requirement upto monthly minimum consumption or above can not be stored.

11. The learned counsel for the respondents have further submitted that if has been provided in the tariff itself that, two kinds of charges are made on the commercial/LTIS consumers :-

(i) Being the fixed charges as per the schedule/rate given in the tariff and;

(ii) Being the minimum monthly consumption unit charges.

It is further submitted that the aforesaid two kinds of charges, which are raised by the Board, has been approved even by the Hon''ble Supreme. Court in the case of Bihar 440 Volts Vidyut Upabhokta Sangh v. Bihar State Electricity Board reported in (1997) 11 SCC 382. Hence, the petitioners cannot take a plea that they may be exempted from payment of fuel surcharge amount on the minimum guarantee units if it is higher than the consumed units. As a matter of fact, the monthly energy bills of a consumer falling under LTIS and CS categories have to be computed on the basis of actual consumption recorded in the meter or the minimum monthly consumption specified in the tariff schedule. whichever is higher. Hence, in that view of the matter, if the actual consumption of a particular consumer is less than the minimum monthly consumption units, then the consumer is required to pay the charges on the basis of minimum monthly consumption units and not on the basis of actual consumed units. This proposition, which finds its root in the Board Tariff Itself, has been approved even by the Hon''ble Supreme Court in I he above referred case. Hence, there remains no ambiguity at all with respect to the aforesaid matter. It is further submitted that every consumer is required to pay fuel surcharge also on the basis of monthly minimum guarantee units if the monthly minimum guarantee units is higher than the actual consumed units.

12. Taking into consideration the aforementioned facts and circumstances and also taking into consideration the pleadings of the parties, this Court considers that it would be more appropriate if the respondents decide this issue finally in the light of what the petitioners have stated and the stand of the respondents after taking note of the judgments referred to.

13. In that view of the matter, the petitioner is given liberty to file a fresh representation before the concerned officer of the Board who shall take a final decision in accordance with law within a period of eight weeks from the dale of receipt of a copy of this order. One of the reasons why this Court considers to remand this matter to the respondents for taking a final decision in accordance with law is because a supplementary affidavit has been filed in CWJC No. 644 of 2000 wherein, an office order No. 630, dated 13.8.2002, issued by the Jharkhand State Electricity Board has been brought on record which states that in partial modification of an earlier notification dated 21.6.1993 issued by the Bihar State Electricity Board, it has been notified for general information that by virtue of powers conferred u/s 49 of the Electricity (Supply) Act, 1948, the Jharkhand State Electricity Board has decided to withdraw the levy of fuel surcharge on unconsumed units applicable to all categories of consumers of Urban Areas. This order is said to have come into effect with effect from 1.8.2002,

14. In that view of the matter, it will be more appropriate for the respondents to deal with the issues and take a final decision within the period specified as aforesaid.

With the aforesaid observations and directions, this writ petition is disposed-off.

