

(1999) 02 PAT CK 0037

In the Patna High Court

Case No : C.W.J.C. Nos. 296, 458, 484, 485, 487, 493, 601, 602, 784, 826, 922, 957, 1019, 1168, 1169, 1172, 1193, 1201, 1202, 1375, 1473, 1562, 1587, 1590, 1640, 1788, 2358, 2400, 2578, 2587, 2737, 2740, 3048, 3414, 3624, 3639 and 5120 of 1997 (R) and 349 of 1998 (

Raj Lakshmi Refractories and Ceramics Works

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 19-02-1999

Acts Referred:

Citation : (1999) 02 PAT CK 0037

Judgement

S.J. Mukhopadhaya, J.

1. In all the cases, as common point of law involved, they were heard together and are being disposed of by this common judgment.

2. The petitioners while challenged their respective supplementary energy bills relating to minimum guarantee charges for the period July, (sic) to July, 96, have raised the following issues for determination : (a) whether minimum and maximum guarantee charges (commonly known as M.M.G. charges) can be asked to be paid from retrospective date, mended tariff having come into effect from 14th August, 96; (b) whether such M.M.G. charges shall leviable on monthly basis or annual basis; and (c) whether the Bihar State Electricity Board (for short "Board") can ask the interest for delayed payment.

3. Before determination of aforesaid issues, it is pertinent to men-on that all the petitioners are L.T. consumers as distinct from H.T. consumers.

Earlier some of the similar issues fell for consideration before this Court and then before the Supreme Court, wherein decisions have already been given.

4. The relevant facts for determination of issues show that the Respondent-Board levied tariff including M.M.G. charges, vide Tariff Notifi-ation issued in the year 1991. Subsequent Tariff notification was is-ued on 23rd June, '93 which came into force with effect from 1.7.1993.

The aforesaid Notification dated 23rd June, '93 was challenged by different persons, including Bihar 440 Volt Vidyut Upbhokta Sangh and others before this Court reported in Bihar 440 Volt Vidyut Upbhokta Sangh Vs. The Chairman, Bihar State Electricity Board and Others . A Division

Bench of this Court while deciding the aforesaid cases, framed the following issues:

(a) Whether Sections 49 and 50 of the 1948 Act are ultra vires the Constitution of India?

(b) Whether the 1993 tariff is ultra vires Article 14 of the Constitution of India, read with Sections 49 and 50 of the Act?

(c) Whether the Board has been acting in a most efficient and economical manner as contemplated u/s 18(a) of the 1948 Act and if it be not so, whether the 1993 tariff is liable to be struck down on that ground alone?

(d) Whether this Court can issue any direction to the Board to improve its generation capacity as also to Act in an efficient and economical manner?

(e) Whether the levy of the minimum guarantee charges and the demand charges on monthly basis is justified in law?

(f) Whether the Board had any jurisdiction to charge penal rate for shortfall in the supply of the electrical energy?

(g) Whether enhancement of the amount in security in terms of Clause 15 of 1993 tariff and deletion of the provision amount payment of interest on security deposit is valid in law?

(h) Whether Clause 16.4 of the tariff, whereby and whereunder the transformer capacity is to exceed 150% of the contract demand is valid in law and in any event whether the same should be given prospective effect?

(i) Whether Clause 16.10 of the tariff providing for levy of operational surcharge is ultra vires Sections 49 and 50 of the 1948 Act?

(j) Whether levy of fuel surcharge is valid in law?

(k) Whether the provisions relating to those L.T. consumers who had connected load more than 80 horse-power can be directed to convert the same into High Tension electrical energy is valid in law?

(l) Whether the levy of fixed charges on L.T. consumers is ultra vires?

(m) Whether the levy of fixed charges on air-conditioner is permissible under Sections 49 and 50 of the 1948 Act?

(n) Whether clubbing of different consumers in the same premises is permissible in law?

5. In the aforesaid case, this Court framed two issues in respect of M.M.G. charges. While issue relating to levy of fixed charges on L.T. consumers was shown as issue (1), whether such M.M.G. charge on monthly basis was justified or not, was the issue (e) framed therein.

6. The Division Bench while decided issue(e) and held that M.M.G. charge on monthly basis is illegal, the Board can realise on annual basis, while deciding issue (1), held levy of flat M.M.G. charge as arbitrary.

The aforesaid decision of this Court in the case of Bihar 440 Volt Vidyut Upbhokta Sangh and Ors. (supra) was challenged by the Board and an other before the Supreme Court which was decided and reported in : (1997)11SCC380 . The consumers before the Supreme Court while raised two issues relating to first part of issue (g) and issue (h), the Board challenged the finding of High Court only in respect of second part of issue (g) and issues (i) & (1). No challenge was made in respect of issue (e) relating to charge of M.M.G. on annual/monthly basis. The Supreme Court in respect of issue (1) while quoting the relevant provision of 1993 Tariff (which relates to L.T. consumers) observed and held as follows:

So far as the issue (1) is concerned, two distinct minimum guarantees have been imposed on the low tension subscribers. The said guarantees are as under:

(a) The minimum charge which existed earlier of Rs. 50 per B.H.P. for L.T.I.S.-I and Rs. 70 per B.H.P. for L.T.I.S.-II consumers; and

(b) a new minimum energy consumption charge of 70 units per B.H.P. per month.

The High Court has come to the conclusion that the Board is entitled to frame two types of tariffs in exercise of its power under Sections 45 and 59 of the 1940 Act. But the High Court has struck down the guarantee at (b) above on the following reasoning:

(i) There is no provision for adjustment.

(ii) There is no provision for remission of the electricity by reason of tariff, load shedding or power cuts.

(iii) Admittedly such proportionate reduction is granted in the case of High Tension consumers and, in our opinion, there cannot be any justification whatsoever for not extending such benefit to L.T. consumers. The L.T. consumers have thus, in our opinion been discriminated against.

We are of the view that the High Court fell into patent error in reaching the conclusion that there was discrimination between the two types of consumers i.e. High Tension consumers and the Low Tension consumers. These are two distinct and separate classes. The minimum tariffs/guarantees insofar as the Low Tension consumers are concerned, have been fixed keeping in view the nature of supply to these consumers. The Low Tension consumers cannot be equated with the High Tension consumers. The High Court fell into patent error in clubbing the two categories together to prove the charge of discrimination. We, therefore, set

aside the reasoning and the conclusions of the High Court so far as issue (1) is concerned and we hold that the levy on two distinct minimum guarantee charges quoted above is valid and in accordance with law. The appeals are disposed of in the above terms. In view of the disposal of the above appeals, the special leave petitions stand disposed of/dismissed accordingly. No costs.

7. After decision of Supreme Court, the Board came out with amended tariff notification in respect of earlier notification dated 23rd June, 93 communicated vide letter No. 472 dated 14th August, 96. Vide aforesaid amended notification, while certain amendment was shown in respect of some of the tariff clauses (not concerned with the present cases), in respect of L.T. consumers (Symbol L.T.I.S.), made the following provisions:

C. LOW TENSION INDUSTRIAL AND MEDIUM POWER (SYMBOL : L.T.I.S.):

The Hon"ble Supreme Court held that levy of fixed charges as well as minimum monthly charges is valid. Thus, the tariff is applicable in toto.

8. It is only after issuance of aforesaid amended notification vide letter dated 14th August, 96, impugned supplementary energy charges bill in respect of M.M.G. charges for the period July, 93 to July, 96 was issued to the petitioners, which have been challenged in their cases.

9. The Counsel for the petitioners in respect of first issue relating to demand of arrears of M.M.G. charges (period July, 93 to July, 96) submitted that the Board even after Supreme Court judgment never decided to realise the M.M.G. charges of the earlier period, rather it came out with an amended tariff notification on 14th August, 96, so far as L.T. consumers are concerned, it is stated to be payable in toto. The amended tariff notification having come into effect from 14th August 96, the Board and its authorities have no jurisdiction to ask for M.M.G. charges of the earlier period, (July, 93 to July, 96). Such action amounts to giving retrospective effect to the amended notification dated 14th August, 96, which is not permissible. The aforesaid submission made on behalf of the petitioner cannot be accepted in view of the fact stated above and the reasons as shown hereunder.

10. It has already been pointed out that the provision of flat M.M.G. charges was levied vide notification dated 23rd June 93, which came into effect since 1st July, 1993. It was only because of pendency of certain writ petitions against such 1993 notification, M.M.G. charges were not realised from the petitioners.

This Court vide judgment dated 18th April, 94 in the case of Bihar 440 Volt Vidyut Upbhokta Sangh (supra), while held that the M.M.G. charges on monthly basis is illegal and can be realized on annual basis, held levy of minimum guarantee at flat rate as arbitrary, The Supreme Court, however, set aside the aforesaid finding in respect of issue (1), wherein flat M.M.G. charge was levied for L.T. consumers and held the same as valid, in accordance with law.

Thereby, it can be safely stated that flat M.M.G. charge, as laid down vide tariff

notification dated 23rd June, 1993, though remained in eclipse for certain period because of judgment of this Court in Bihar 440 Volt Vidyut Upbhokta Sangh (supra), after decision of Supreme Court in the case of Bihar State Electricity Board and Anr. v. Bihar 440 Volt Vidyut Upbhokta Sangh as reported in , the tariff notification dated 23rd June, 93 again came into effect from 1st July, 93.

So far as the so-called amended notification dated 14th August 96 is concerned, in respect of M.M.G. charges of L.T. consumers, the authorities neither made any amendment to the same and allowed to remain it as toto and thereby it cannot be held to be an amendment from retrospective effect in this respect. However, such effect of M.M.G. charges stands modified so far as it relates to charge of the same on monthly basis, which is to be read as charge to be made on annual basis in view of judgment passed by this Court in the case of Bihar 440 Volt Vidyut Upbhokta Sangh (supra).

11. For the reasons stated above, I decide the first issue (a) in affirmative, in favour of the Board and hold that they are entitled to come out with supplementary energy bills so far as it relates to M.M.G. charges for the period July, 93 to July, 96 in respect of L.T. consumers who never paid the same.

12. So far as the next issue (b) relating to M.M.G. charges on monthly or annual basis is concerned, the same stands decided in the case of Bihar 440 Volt Vidyut Upbhokta Sangh (supra). In the said case, aforesaid issue was shown as issue (e) and this Court held as follows:

In the case of Bihar Chambers of Commerce and Anr. 1993 (I) P.L.J.R. 36, the Division Bench of this Court held that the system of calculation on monthly basis introduced in the said tariff as irrational and unreasonable as well.

The opinion of the Division Bench in the case of Bihar 440 Volt Vidyut Upbhokta Sangh (supra), was also same when it held that the provision of levy of proportionate M.M.G. charges on monthly basis is illegal and the Board can realise such charges only on annual basis.

As the aforesaid issue (e) relating to charge of M.M.G. on monthly basis was not challenged by the Board before the Supreme Court in their cases : (1997)11SCC380 , the finding of this Court stands affirmed, in this respect, and the Board cannot issue supplementary energy bill in respect of M.M.G. charges on monthly basis and are required to issue the same on annual basis.

13. Thereby, issue (b) as framed in these cases stands decided in favour of consumers and against the Board.

14. So far as issue (c) as framed in these cases relating to interest for delayed payment is concerned, one may take into consideration that such provision of delayed payment surcharge has been laid down in the 1993 tariff (dated 23rd June, 93).

15. According to the petitioners, of stay granted by this Court, the M.M.G.

charges were not paid. There was no laches on the part of any one or other petitioner. Even under 1993 tariff, the bills were to be prepared on the basis of "B.H.P." instead of "H.P." but wrong bill has been made on the basis of "H.P." instead of "B.H.P." There being dispute in respect of such bill, the petitioners cannot be held responsible for non-payment of amount on the basis of such wrong bills as supplied by the Board.

16. In the case of Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, , the Supreme Court held that after disposal of a writ petition by High Court, a consumer would not be relieved of his obligation to pay late payment surcharge for the period, the stay order had remained operative. However, this Court in the case of Gaya Roller Flour Mills Pvt. Ltd. v. B.S.E.B. and Ors. reported in 1995 (2) PLJR 715, held that no liability on account of delayed payment surcharge can be fastened on a consumer where he had disputed the correctness of the bill and the authorities subsequently corrected the bill by making fresh calculation.

17. Lenient view was taken by the Supreme Court in the case of Chotanagpur Chambers of Commerce and Industries v. B.S.E.B. and Anr. (unreported), in SLP (Civil) No. 15244/94, wherein while giving opportunity to such appellant to pay arrears within a stipulated period, the Supreme Court observed that late payment charges shall not be permitted.

18. In the present cases, as the original writ petitions preferred by the persons before this Court Bihar 440 Volt Vidyut Upbhokta Sangh and Ors. (supra), wherein interim stay was granted, was initially allowed, but subsequently part of the same was reversed by the Supreme Court and the Board still proceeded in issuing bills calculating M.M.G. charges monthly basis, apart from the fact that they had not denied that it has been calculated and issued bill on H.P. basis instead of B.H.P. basis, I hold that the Board and its authorities should not force the petitioners to pay charge for delayed payment in terms with 1993 notification.

19. Thereby, the issue (c) as framed in these cases, stands decided in favour of the petitioners and against the Board.

20. Accordingly, while I direct the petitioners to pay the amount in terms with bills as issued by the Board in respect of M.M.G. charges for the period July 93 to July, 96, give liberty to the petitioners to raise dispute relating to calculation mistake, if any, in other bill, if made on the basis of H.P. instead of B.H.P. and if charged (M.M.G. charges) on monthly basis instead of annual basis. If any one or other petitioner prefers such application before the competent authority raising the doubt relating to such calculation mistake, the authorities will verify the same and communicate the decision to such applicant. If any mistake, in this respect, is found in one or other bill, they will issue revised bill of energy to such person and if it is found that any excess amount has already been deposited by such person in pursuance of earlier bill, such excess amount be adjusted against future bill.

21. The petitioners are directed to pay the amount in terms with one or other energy bills received by them against the arrears of M.M.G. charges for the period July, 93 to July, 96 immediately and if such amount is paid within a period of eight weeks, the Respondent-Board will not charge any amount towards delayed payment. However, if any one or other petitioner fails to pay the same within the aforesaid period of eight weeks from today then the Board and its authorities will be entitled to raise demand, for payment of delayed charge, if not made.

22. All the writ petitions stand disposed of with the aforesaid observations and directions. However, on the facts and circumstances, there shall be no order, as to costs. Order accordingly.