

(2004) 03 JH CK 0049
In the Jharkhand High Court
Case No : Writ Petition (C) No. 5275 of 2001

Raj Refractories Pvt. Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board and Another

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 476

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.S. Mittal, for the Appellant; Delip Jerath, for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. M.S. Mittal, learned counsel for the petitioner and Mr. Delip Jerath learned counsel for the respondents.

2. The prayer made in the Writ Petition is for quashing the order communicated by letter dated 27.7.2001 as contained in An-nexure-6 whereby and whereunder the General Manager-cum-Chief Engineer has rejected the prayer in relation to relief regarding maximum demand and has observed that if any surcharge is paid by the petitioner, the same will be adjusted against future period.

3. According to the petitioner, the Bill in question (Annexure-1) was for the period 1999-2000 for a sum of Rs. 91,946 approximately. Upon receipt of the aforementioned bill, the petitioner deposited 50% thereof and receipt to that effect was issued by the Board on 9.8.2000 (Annexure-2). The petitioner thereafter filed an application for relief under the provisions of Clause 13 of the HT agreement wherein he stated that supply was not given as per agreement and that the petitioner was prevented from receiving or using energy on account of power interruption. In fact, along with the aforementioned claim the petitioner enclosed therewith the details regarding interruptions in power.

4. Mr. M.S. Mittal, learned counsel for the petitioner relies upon the provisions of Clause 4 (a) of the agreement which has been quoted at paragraph 5 of the Writ

Petition. The submission of Mr. Mittal is that the agreement itself is specific in relation to continuous supply of power. He further argues that the concept of Annual Minimum Guarantee is a concept that ensures or assures a consumer that in the event he receives constant power, he is only then, asked to give Annual Minimum Guarantee charges. According to him, if the consumer is prevented from receiving continuous power then the Board is not entitled to raise bills on the basis of Annual Minimum Guarantee charges.

5. Upon perusal of the order passed by the General Manager-cum-Chief Engineer, it is evident that while on the one hand he admits power interruption to the extent of 968 Hrs. 04 minutes yet while refusing to grant relief in respect of maximum demand, he says that there is no such restriction. The points raised by Mr. Mittal are whether:-

A. remission of each and every minute of non supply of electricity is to be granted?

B. remission on account of KVA charges has also to be given?

C. can the ability of consumer to consume electricity be the basis of granting remission? and

D. what would be the formula, on the basis of which remission has to be granted?

6. In support of the aforementioned points of law, Mr. M.S. Mittal relied upon various judgments and he has also produced photocopy of a judgment passed by an Hon''ble Single Judge of this Court in CWJC No. 3280 of 1994 (R) and other analogous cases. It appears that while delivering judgment, the Hon''ble Single Judge framed almost the same issues which have been raised by Mr. M.S. Mittal as stated above. This Court is of the opinion that the issues involved in the aforementioned cases are also applicable and/or involved in this case. Since in this case the petitioner diligently filed his application for relief under the provisions of Clause 13 of the HT Agreement, the respondent must therefore, reconsider the matter strictly in the light of the judgment produced in Court by Mr. M.S. Mittal and which has been referred to above.

7. For the foregoing reasons, this Court therefore sets aside the Order dated 25.7.2001 which was communicated to the Petitioner by Annexure-6 and as a consequence thereof, the matter stands remanded to the respondent No. 2 to pass a fresh order in accordance with law and in the light of the observations made herein.

8. The Writ Application is accordingly disposed off. No order as to costs.