

(2003) 03 JH CK 0048
In the Jharkhand High Court
Case No : CWJC No. 2020 of 2001

Ramchandson and Company

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Citation : (2003) 4 JCR 349

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : B. Poddar, D.P. Mishra and A. Poddar, for the Appellant; V.P. Singh and R. Shankar, for the Respondent

Judgement

Vikramaditya Prasad, J.—The basic question to be answered in this writ petition is whether bills on H.T. Tariff can be raised from a Consumer, whose and whether such a consumer, if he expresses his intention for getting his load reduced, for remaining in L.T. Category, a new L.T. Agreement is required to be executed?

2. The aforesaid question arose out of the facts that the petitioner held a L.T. agreement with a sanctioned load of 80 HP. It was admittedly a Low Tension Agreement. When a surprise inspection was made in the year 1990, Annexure-1, the petitioner was found to be using load of 69.5 HP. According to the petitioner, there is a provision for conversion of the existing LTS having connected load of 80 HP into a HTS consumer. After coming of the Tariff, the respondents raised bill against the petitioner on the basis of H.T. Tariff, which, according to the petitioner, is arbitrary and illegal, so the petitioner requested the respondents to revise the bills on the basis of the LTS Agreement and the respondents assured correction, but as it was not corrected, the payment was stopped with effect from February, 1997, as the respondents were sitting tight over the matter and were not taking necessary steps for correcting the aforesaid bills. Therefore, the petitioner applied for reduction of the sanctioned load of 80 HP to 70 HP on 1.5.1997, the premises was inspected on 5.6.1997 and the connected load was found to be 69.5 HP, Annexure-5. On the basis of that report, the Electrical

Executive Engineer sought permission from the Electrical Superintending Engineer, Elec. Supply, for reduction of the sanctioned load of the petitioner from 80 HP to 70 HP and also a permission to raise the bills against the petitioner under the LTIS Tariff, Annexure-6. The Superintending Engineer did not take any action and the bills were again raised during the year 1996-97, 1997-98. 1999-2000 and the dues became Rs. 10,25,920.23. Annexure-7. Thereafter, the petitioner was served with a notice and was asked to make payment, otherwise Certificate proceeding would be filed against it, Annexure-8 and ultimately, a notice was issued under the Bihar & Orissa Public Demand Recovery Act. The petitioner has come to this Court for quashing (i) the energy bills, Annexure-7, (ii) of the Certificate Proceeding, Annexure-8, (iii) for a declaration that the disconnection of the Electrical Connection on 1.5.1997 was without any notice and in violation of the Section 24 of the Indian Electricity Act and (iv) also for a declaration that the petitioner was entitled to be served the energy bills on the basis of the LTIS Tariff.

3. The respondents appeared and contested the ease. According to the respondents, the petitioner was using 80 HP load, which comes under the H.T. Category under the new Tariff and the security deposited under the LTIS was considered to be the security deposited for the H.T. Agreement and in spite of several intimation, the petitioner did not execute the H.T. Agreement and went on accepting the bills as per the H.T. Tariff and the petitioner, in spite of the best efforts, did not comply the formalities. The notice was served for filing Certificate Proceeding, but the petitioner did not take any action and did not file any objection, Annexure-C. The bills were raised as per the HTS-1 Clause 3(6) of the Tariff and the petitioner is entitled to reconnection/fresh connection only after payment of the dues along with dues accrued for the discontinued period.

4. The new Tariff was noticed on June, 23, 1995 in the official gazette. Clause 3 of the Tariff reads as follows :--

"3 (a) The terms and conditions for supply of electricity as also the rate of tariff as contained in the tariff schedule to the notification shall, where applicable, amend, add to and/or replace the corresponding part of the previous tariff.

(b) Where the terms and conditions of the agreement entered into between the Board and its consumers are at variance with the terms and conditions as contained in this notification the latter shall prevail and such agreement will be deemed to have been amended accordingly."

There is no dispute on the point that the sanctioned load of 80 HP under the New Tariff does not fall in the category of High Tension though it was under the LTIS category under the Old Tariff. Obviously because of the mischief of the Clause 3 of the Tariff, there was a deemed conversion of the LTIS agreement into an H.T. Agreement and rightly the Board then treated the said connection as H.T. Connection and raised bills accordingly on the basis of the H.T. Tariff.

5. In the entire Tariff, there is no provision other than the aforesaid for

conversion of an H.T. Agreement automatically in LTIS Agreement. The legal status of the existing LTIS Agreement becomes that of the H.T. Agreement and therefore, if the petitioner did not want that he should continue in H.T. Category, then the option left to it was to get the LTIS Agreement executed. The stand of the respondents is that the petitioner had not completed any formality. It has been held by the Apex Court that the LTIS and HTS are two different classes. It is just because of the mischief of Clause 3 that the agreement of the petitioner became a H.T. Agreement. Thus, this is a case of deemed conversion. For an H.T. Connection, many formalities are required to be completed and new type of connection has to be made, which is not required in LTIS Cases. The respondents, after the deemed conversion into H.T., on their part had to do nothing new in the premises, though they became entitled to raise bills as per the H.T. Tariff on the basis of that provision. The petitioner, as it appears, had applied for reduction of load from 80 HP to 70 HP, which is clear from Annexure-6, which is a letter dated 6.6.1997, and on inspection dated 5.6.1997, the connected load was found to be 69.5 HP though, according to the respondent, it was found to be 71.75 HP. According to the petitioner, no action was taken on the request, Annexure-6, of the Electrical Executive Engineer and the payment of the bills had not been made by the petitioner.

6. As stated, at least by the time when the petitioner made a request for reduction of the load, on which the Electrical Executive Engineer sent a letter to the Electrical Superintending Engineer, Annexure-6, the petitioner had made its intention clear that it wanted the load to be reduced, meaning thereby that it wanted to become LTIS consumer. In such a circumstances, the question is whether the petitioner was required to further complete any formality for such a new connection. H.T. Connection requires different types of equipments and fitting as against the LTIS connection. Therefore, if the H.T. Agreement is entered into, the respondent-Board is also required to do something thereafter.

7. Now in this case, the petitioner was already a LTIS consumer and there was an agreement existing for that, but only because of the mischief of the Clause 3 of the Tariff, that Agreement became a H.T. Agreement. Till the date the petitioner did not object to it, the Board has definitely legal right to say that the petitioner is an . H.T.S. Consumer, even though they had not made any arrangement for supply of the electricity as per the H.T. provisions. The moment the petitioner says that it wants to get load, reduced, it discloses its intention to remain as a LTIS Consumer. In such a circumstances, as the document of LTIS Agreement was also in existence, only an office order would be sufficient to revive that LT Agreement as it originally was, without any further legal formality.

8. There may be cases, when the H.T. Agreement was there before coming of the Tariff into force and then a prayer is made for reduction of the load and for conversion into a LTIS Connection/Agreement, in that case, the conversion cannot be allowed for the simple reason that the Board has already done many things and provided special equipments to supply power as per the H.T.

requirements and therefore, for becoming a LTIS Consumer from H.T. Consumer, will require a lot of technical maneuvering and therefore, such a consumer will have to determine H.T. Agreement first and then has to observe certain formalities by making fresh application for LTIS Connection, disclosing his requirement. In the instant case, as the LT Agreement was already in the form of a duly executed document, to ask again that it should fill up the same form -and make fresh requisite for something, which appears to be unjust. Therefore, in such a circumstance, as the Board had not to do any other thing, i.e. to remove its H.T. Equipment as will be necessary in the case of the H.T. Consumer, the Board may simply pass an order that as the petitioner wanted to reduce its load and stick to the original agreement, the original LTIS Agreement is restored. In my opinion, no new formalities are required to be completed by the petitioner. Therefore, when the Electrical Executive Engineer wrote letter to the Electrical Superintending Engineer, Annexure-6, the aforesaid type of order would have been the most just and proper. But till the date, the petitioner did not disclose its intention positively that it wanted to remain in LTIS Agreement, even after reducing of load, the petitioner is precluded from saying that H.T. Tariff was not applicable to him in view of the Clause 3 of the Tariff. Nothing has been brought on record by the petitioner to show that actually on which date it made a request to the Board for reducing the load and thereby for allowing it to remain in LTIS Category. Only oral averments have been made and no documents has been produced by the petitioner in this regard in support of its request. Hardly this request can be construed sometimes with effect from the date when the inspection was made as per Annexure-5 to know the real load or from the date when it filed a petition before the Electrical Executive Engineer, which led to Annexure-6, but prior to that date, the petitioner is liable to pay on the H.T. Tariff.

9. In the result, (a) it is held that due to mischief of Clause 3 of the Tariff, the LTIS consumer having sanctioned load of 80 HP Automatically becomes an H.T. Consumer and till he does not clearly indicate his intention for being allowed to remain in the LTIS Category, in which he was prior to the Tariff, the bills raised against him as per H.T. Tariff are valid and legal;

(b) It is also held that since there was already in existence a LTIS Agreement, which stood automatically converted into an H.T. Agreement, so when the consumer indicates his intention to remain in the LTIS Category, no fresh formality required, rather an office order would be sufficient to reset that Agreement as LTIS Agreement;

(c) The situation would be different when there was an H.T. Agreement prior to the Tariff and the Consumer wanted to get it converted into a LTIS Agreement. In such a case, the H.T. Agreement has to be determined and new LTIS Agreement has to be entered into by completing formalities for the simple reason that an H.T. Agreement was already in existence.

10. The question posed is answered accordingly and the writ petition is partly allowed and the direction is given to the respondents to revise the bills from that

date on which the petitioner made its intention by a positive act clear for reducing its load and for allowing it to continue as LTIS Consumer. The Proceeding in the Certificate Case is consequently quashed and if the revised bills are not paid, then the authority may proceed according to law against the petitioner. It is made clear that any bill raised on the H.T. Tariff prior to that date is legal and valid and the petitioner Is liable to pay it.