(2003) 03 JH CK 0115

In the Jharkhand High Court

Case No : CWJC No. 2987 of 2000 (R)

Ranchi Club Ltd. APPELLANT

Vs

Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 146

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : I.K. Bajla and Tapash Kabiraj, for the Appellant; V.P. Singh Rajesh Shankar and Mukesh Kumar, for the Respondent

Judgement

Vikramadiya Prasad, J.—Short question to be answered in this writ is whether the impugned bill Annexure-2 which is sought to be quashed is in accordance with Clause 16.9 A(ix) of the Tariff.

2. The petitioner had three separate electrical connections of 10 KW each in its premises for last 30 to 40 years. In presence of the club office bearers an inspection of the premises was made and the inspection report Annexure-1 was prepared. Total connected load was detected to be 131.644 KW and in the remark column it was recorded that as per the club representative A.C. was not in working condition, compressors was found removed during the inspection but all motors found connected.

3. After this inspection report the board respondent served a notice Annexure-2 upon the petitioner that against the sanctioned load of 30 KW the consumer was found not only exceeding the contracted load but also the limit of 60 KW under the CS III Tariff. A bill was annexed as per 16.9 A(iv) (Annexure-2 and 2/1 then by Annexure-3) when the payment was not made the notices u/s 24 of the I.E. Act was served giving seven days time for clearing the bills on 29th August 2000. When the writ was filed vide order dated 13.9.2000 the Court directed the respondent not to disconnect the electrical connection of the petitioner if the

petitioner deposited the amount of Rs. 3 lacs in two installments which will be subject to the final decision in the writ. If on final decision, the Board will be liable to return any amount in favour of petitioner, they will be liable to pay interest.

4. The respondents appeared and filed counter affidavit defending the annexure aforesaid issued by the respondents stating that in raising the bills the respondents have not exceeded their jurisdiction and there is no error apparent on the record and therefore any writ of certiorari is unnecessary and bill can not be quashed.

5. No much dispute has been raised during the course of argument with regard to inspection though it was feebly submitted that it was not done in presence of the petitioners but when it was found that it has the signature of representative then this argument was not emphasized rather the learned counsel for the petitioner only argued that 16.9 A(iv) of tariff is a penal provision therefore all the terms as contained therein will have the meaning which is assigned to it in the tariff. So actually the meaning of symbol M used in the equation is required to be clarified by the Court.

16.9 A(iv) is extracted herein below.

When connected load is more than the sanctioned load in case of all categories LT connection except domestic service.

Assessment charge :--Rs. CxM (LD-LS) x3

Where, M = Minimum consumption guarantee charge per BHP per month as applicable in the tariff schedule.

LD = is the load detected in BHP at the time of inspection.

LS = is the load sanctioned to the consumer in BHP.

C = This factor be taken equivalent to six months or no of months or part thereof elapsed from the date of connection/installation whichever is less.

In the aforesaid equation assessment charge = Rs. CxM (LD-LS) x3. C is the factor which varies from one moth to six months. LD is a variable factor depending upon the detection of the load, LS is the factor depending upon the load sanctioned in the particular premise. The question is whether this M is a constant factor or whether it is also variable one.

6. It is also noted that M as defined in the aforesaid provision speaks of charge i.e. minimum consumption guarantee charge per BHP per month.

7. Undisputedly the petitioner is a non-domestic consumer and is covered by CS HI of the tariff, as it is a Club. The energy charges for" CS III is as follows :--

(C) For CS-III Fixed charge Rs. 120/- per KW or part thereon, per month.

Energy Charges : (i) For 1st 150 KWh 132 paise per KWh.

(ii) All in excess of 150 KWh, 160 paise per KWh.

(iii) Minimum monthly consumption-50 KWh per KW. (emphasized)

8. The energy charge as per the aforesaid provision provides that minimum monthly consumption is 50 KWh per KW. Obvious that all this energy charges are on the basis of the sanctioned load and to be followed in usual course when there is no allegation of unauthorized use of load. Thus if a consumer has a sanctioned load of 4 KW then the monthly minimum consumption will be 50x4 200 KWh similarly if a consumer has 10 KW sanctioned load this will be 50x10 = 500 KWh. Thus this minimum monthly consumption will depend upon the number of KW sanctioned in the premises of the consumer. If this view is not taken then it will mean that irrespective of the sanctioned KW the monthly minimum consumption will always remain the same i.e. 50 KWh for each of the consumer. If this view is taken then in that circumstances there will be no distinction between the consumers having larger KW under the same category of consumer having the smaller number of KW in the same category as they will be required to pay the same monthly minimum charge and it will make word per KW as used redundant. Thus this minimum monthly consumption is to be calculated per KW.

9. The petitioners in paragraph 35 of the counter Affidavit, extracted below has calculated the minimum monthly consumption on the basis of 50 KWh only and has ignored the word per KW.

That as per the connected load of 116 KW on the basis of which the impugned bill is stated to have been prepared, the assessment charge works out to as mentioned below :--

Rs. CxM (LD-LS) x3 i.e. ''C'' being the factor to be taken in terms of months, the maximum being 6 is taken as 6. For determining the value of M a reference has to be made to the tariff of non domestic consumer to find out the minimum consumption guaranteed charge per BHP per month which as per the tariff schedule which is 132 paise per KVA for the first 150 KWh and the minimum monthly consumption is fixed at 50 KWh per KW. The charge per KWh in " excess of 150 KWh is fixed at 160 paise per KWh. Even after taking into consideration the higher of the two i.e. 160 per KWh, the minimum consumption guaranteed charge per BHP works out to Rs. 80/- per month. The value of M as such has to be taken as 80 LD and LS are the denominators for Load Detected and Load Sanctioned, respectively. The Load detected according, to the respondents themselves being, 116 KW and the Load sanctioned being 30 KW, on the basis of the aforesaid formula the following is the calculation :--

6x80 (116-30)=6x80x3=Rs. 1,23,840/-.

Thus the value of rupees as per the aforesaid formula comes to Rs. 1,23,840/-, which is to be assessment charge as per the said clause, That on the basis of the land which could have been legally taken to be the connected load, as stated above, the load detected works out to 70 KW and on that basis, the assessment charge works out to as stated below :--

6x80 (70-30) = 6x80x40x3 = Rs. 57,600/-.

10. Similarly the respondents have calculated the bills on the basis of 50 units though their calculation is based on Per 1 KW. For 1 KW load under CS-III tariff minimum.

chargeable is fixed charge -120.00 Unit Charge @ Rs. 1.32 for 50 Units - 66.00 Fuel surcharge @ 1.9055 for 50 Units - 95.275 Total -281.275 M. 281.275x746 Per H.P. CMx3 6281.275x,746x3 5062.95x.746 Say5063x.746 LD 116KW116/.746H.P. LS 50KW 30/.746 Assessment CMx3 (LD-LS) -5063X.746 (116/.746-30/.746) 5063x86 Rs. 435,418/- .

11. In any opinion both the calculations are mistaken one, the word per KW has its own meaning and is required to be given effect to and therefore the word M used in the tariff, which is the main question in the writ has been used in the aforesaid sense. The term M is not constant rather a variable factor depending on the number of KW.

12. The second question will arise whether the fuel surcharges can be, levied on the aforesaid bill The equation does not speak only of monthly minimum guarantee rather it speaks of charge, if a consumption is made then the charges has to be calculated thereon. The scheme of bill as contained in 16.10 of the tariff provide that the CS-IH categories of the consumers are required to pay the operational charges which includes the fuel surcharge. Thus while calculating the charges of minimum monthly consumption this charge has to be taken note of.

13. In the aforesaid circumstances the impugned bill is quashed for altogether different reasons than for the reasons given by the petitioner. The Board respondent is directed to re-prepare the bill within one month and serve it on the petitioner and petitioner will be given three weeks time thereafter for paying the bill and till that date no disconnection will be made, no delay surcharge will be leviable as this is a case of revision of bill not due to fault of petitioner.

