
(2002) 03 JH CK 0003

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5516 of 2001

R.D. Alloys Pvt. Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 18-03-2002

Acts Referred:

Citation : (2002) 03 JH CK 0003

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : M.S. Mittal, A.K. Yadav and A.L. Sinha, for the Appellant; V.P. Singh and Rajesh Shankar, for the Respondent

Judgement

S.J. Mukhopadhaya, J.—One of the issues to be determined in this case is as to whether in the event of meter being out of order i.e. burnt/stopped or having ceased to function for any reason during any month/months, how the Board will assess the consumption for such month/months.

2. The counsel for the petitioner relied on a number of decisions of learned Single Judge as passed in the cases of Shree Shyam Steel v. B.S.E.B. and Ors. [C.W.J.C. 3182/99(R) I, disposed of on 9th March. 2000. Automobile Ancillary Industries v. B.S.E.B. and Ors. IC.W.J.C. No. 2981/ 94(R)]. disposed of on 16th June. 1995; Quality Rubber Industries v. B.S.E.B. and Ors., IC.W.J.C. No. 185 of 1996(K)], disposed of on 18th October. 1996 and Machine Shop v. B.S.E.B. and Ors., reported in 2002(1) JCR 75 (Jhr) to suggest that the consumption for such month/ months should be assessed on average consumption of previous three months from the date of meter being out of order.

3. The learned counsel for the Board placed reliance on Clause 16.8 of 1993 Tariff, which reads as follows :

"16.8. Billing when meter has either got defective or burnt or stopped.--In the event of meter being out of order/ burnt/stopped or having ceased to function for any reason during any month, the consumption for the month/months shall be

assessed on an average consumption of previous three months from the date of meter being out of order or the average consumption for the corresponding three months of the previous years consumption of the minimum monthly guarantee whichever is highest. Such consumption shall be treated as actual consumption for all practical purpose unless the meter is replaced or rectified. Operational surcharge, power factor surcharge can be levied on consumption so calculated...."

4. The learned counsel for the Board submitted that the average consumption of not only previous three months or the corresponding three months" consumption to be seen, but also the minimum guarantee charges to find out as to whichever is highest,

5. The learned counsel for the petitioner relied on the Division Bench decision of Patna High Court in Bihar 440 Volt Vidyut Upbhokta Sangh Vs. The Chairman, Bihar State Electricity Board and Others . It was submitted that the Court in the said case held that the provision of levy of proportionate minimum guarantee charges on monthly basis is illegal and the Board can realise such charges only on annual basis (Paragraph 136 of the judgment).

6. It was submitted that if the Board is not in a position to find out the average minimum monthly guarantee charges of corresponding three months, as it is to be made annually, there is no occasion to find out the average of three months" of minimum monthly guarantee as per Clause 16.8 of 1993 Tariff.

7. The aforesaid submission made on behalf of the petitioner is attractive and is also supported by the decisions of this Court, as delivered by the learned Single Judges, as referred above.

8. In the circumstances, the case is remitted with direction to the respondents to determine and issue fresh bills in respect to the period, the meter was defective or stopped on the basis of the average consumption of previous three months or the average consumption for the corresponding three months of the previous years whichever is higher.

9. The competent authority is to do the needful for compliance of the order within two months from the date of receipt/production of a copy of this order.

The writ petition stands disposed of.