
(2001) 07 JH CK 0105

In the Jharkhand High Court

Case No : Civil Writ Jurisdiction Case No. 1751 of 2000 (R)

Rishi Cement Company Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Electricity (Supply) Act, 1948 — Section 23(1), 49

Citation : (2001) 07 JH CK 0105

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : B. Poddar, for the Appellant; V.P. Singh, for the Respondent

Judgement

M.Y. Eqbal, J.—Heard Mr. Biren Poddar, learned counsel for the petitioner and Mr. V.P. Singh, learned counsel appearing for the Respondent-Board and with their consent this writ application is disposed of at this stage.

2. In this writ application the petitioner has prayed for quashing the bill dated 12-5-2000 relating to Annual Minimum Guarantee Charges for the financial year 1999-2000 on the ground that the bill is illegal and wholly without Jurisdiction as In the said bill the Annual Minimum Guarantee Charges for 240 days have been Included during which the electrical line of the petitioner was not in operation on account of disconnection of supply of electricity by the Respondent-Board.

3. In course of agreement, learned counsel agreed that petitioner should make representation against the said bill under Clause 13 of the H.T. Agreement before the appropriate authority and the said claim shall be decided in accordance with law. However, Mr. V.P. Singh, learned counsel for the respondent-Board submitted that while making claim under Clause 13 of the H.T. Agreement petitioner has to pay 50% of the amount of the disputed bill while Mr. Poddar, learned counsel for the petitioner submits that petitioner is not liable to pay 50% of the disputed bill. The contention of the learned counsel for the petitioner is that the moment supply of electricity was disconnected, the agreement between the parties came

to end and therefore petitioner is not liable to deposit 50% of the bill while making claim under Clause 13 of the H.T. Agreement. Mr. Poddar submitted that admittedly, there was no electric connection during the period of 240 days then the question of payment of Annual Minimum Guarantee charges does not arise. In this connection learned counsel relied upon two decisions of this Court in the case of "Rajeshwar Singh v. State of Bihar 1983 BLJ-508 (AIR 1983 Patna 194) and in the case of M/s Dipte Input, v. Bihar State Electricity Board 1987 BLJ 494

4. On the other hand, Mr. V.P. Singh, learned counsel for the respondent-Board submitted that irrespective of the fact that there was no supply of electric energy in the consumer's premises, the consumer is liable to pay Annual Minimum Guarantee Charges so Long as the Agreement exists. Learned counsel relied upon two decisions of the supreme Court in the case of Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, and in the case of General Manager-cum-Chief Engineer, Bihar State Electricity Board and Others Vs. Rajeshwar Singh and Others,

5. In Rajeshwar Singh's case the fact of the case was that the factory of the petitioner along with its raw materials and finished product was washed away by the devastating flood of August, 1975 and therefore on 15-9-1975 the petitioners asked the respondent, Electricity Board to disconnect the line in order to avoid further financial burden. On 6-9-1975 the Board asked the petitioner that up-to-date bill of the industry amounts to Rs. 51,789 should be paid. Electric line was however, disconnected on 16-10-1975. In spite of disconnection, the Board went on raising the bills. However, on execution of fresh agreement electric connection was restored on 15-6-1977. The representation filed by the petitioner disputing the liability for payment of bills was pending and in the meantime line was again disconnected on 19-4-1978. The question then arose as to whether petitioner was liable to pay Annual Minimum Guarantee charges for the period when there was no electric connection in the factory premises of the petitioner. A Division Bench of this court held that petitioner had no liability to pay Annual Minimum Guarantee Charges as there has been no supply of electric connection to the factory premises of the petitioner. A similar view was taken by the single Bench of this Court in the case of Dipte Input v. BSEB.

6. In the case of Bihar State Electricity Board v. Green Rubber Industries, similar question came for consideration before the Apex Court as to whether Annual Minimum Guarantee Charges would be payable by the consumer for the period when there was no supply of electricity by the Board in the premises of the petitioner. Their Lordship after consideration of various clauses of the agreement observed that : at Page 705; of AIR

"It is true that the agreement is in a standard form of contract. The standard clauses of third contract have been settled over the years and have been widely adopted because experience shows that they facilitate the supply of electric energy. Lord Diplock has observed; "If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by the parties whose

bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable." A Schirgder Music Publishing Co. Ltd. v. Macaulay (1974) 3 All ER 616 . In such contracts a standard form enables the supplier to say : "If you want these goods or services at all, these are the only terms on which they are available. Take it or leave it." It is a type of contract on which the conditions are fixed by one of the parties in advance and are open to acceptance by anyone. The contract, which frequently contains many conditions is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect. In view of Clause 4 having formed one of the stipulations in the contract along with others it cannot be said to be nudum pactum and the maxim nudum pactum ex quo non oritur actio does not apply. Considered by the test of reasonableness it cannot be said to be unreasonable inasmuch as the supply of electricity to a consumer involves incurring of overhead Installation expenses by the board which do not vary with the quantity of electricity consumed and the installation has to be continued irrespective of whether the energy is consumed or not until the agreement comes to an end. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered In endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated (sic) clause. This agreement with the stipulation of minimum guaranteed charges cannot be held to be ultra vires on the ground that it is incompatible with the statutory duty. Difference between this contractual element and the statutory duty have to be observed. A supply agreement to a consumer make his relation with the Board mainly contractual, where the basis of supply is held to be statutory rather than contractual. In cases where such agreement are made the terms are supposed to have been negotiated between the consumer and the Board, and unless specifically assigned, the agreement normally would have affected the consumer with whom it is made, as was held in Northern Ontario Power Co. Ltd. v. La Roche Mines Ltd. (1938) 3 All ER 755."

7. It is worth to mention here that in the aforesaid case the Supreme Court took notice of the decision of the Division Bench of this Court in Rajeshwar Singh's case and held that the said decision must be confined to the facts of that case only.

8. Mr. Biren Poddar learned counsel for the petitioner although put heavy reliance on the Division Bench decision of this Court in Rajeshwar Singh's case but the decision of the Division Bench has been set aside by the Supreme Court in the appeal filed by the General Manager-cum-Chief Engineer, Bihar State Electricity Board and Others Vs. Rajeshwar Singh and Others, . The Supreme Court while setting aside the Judgment has observed that : (at page 708; of AIR)

The first question, therefore, is whether the firm was liable to pay the minimum guaranteed charges for the period during which the supply remained

disconnected. In Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, , we have held that the firm would be liable to pay the minimum guaranteed charges unless it could be shown that the contract itself was terminated. The mere disconnection of the electricity supply would not amount to termination. If there was no application for restoration within 7 days of disconnection that would be deemed to be a notice for termination and the contract would be terminated either at the end of the this period of notice or the tenure of the agreement whichever was longer. In the Instant case the fresh agreement was entered into on 30-5-1977 and connection was restored on 15-6-1977. Earlier the connection given on execution of the agreement was on 12-8-1974 and supply was disconnected on 16-10-1975, the earlier agreement must be deemed to have come to an end on execution of the fresh agreement and restoration of connection if it did not terminate earlier under the terms of the agreement. The firm's liability has therefore to be determined on that basis in view of what has just been held in the judgment in Civil Appeal No. 220 of 1987."

9. Having regard to the facts and circumstances of the case and also in view of the fact that the decision relied upon by the petitioner Rajeshwar Singh and Others Vs. State of Bihar and Others, has been set aside by the Supreme Court in the case of General Manager-cum-Chief Engineer, Bihar State Electricity Board and Others Vs. Rajeshwar Singh and Others, , the contention of the petitioner that it has no liability to pay A.M.G. Charges for the period when there has been no supply of electricity, cannot be accepted,

10. In view of the conclusion arrived at by me, if the petitioner wants to make claim in terms of the Clause 13 of the H.T. Agreement, it has to deposit 50% of the disputed amount along with the claim that may be made by it.

11. For the reasons aforesaid, this writ application is disposed of with a direction to the petitioner to make claim representation under Clause 13 of the agreement against the disputed bill in the manner stated hereinabove. It goes without saying that if such claim/representation is made, the concerned respondent shall consider the claim/representation of the petitioner and dispose of the same by passing a reasoned order in accordance with law after giving reasonable opportunity of hearing to the petitioner.