
(1996) 01 PAT CK 0021
In the Patna High Court
Case No : C.W.J.C. No. 2611 of 1995 (R)

Rollwell Enterprises

APPELLANT

Vs

B.S.E. Board and Others

RESPONDENT

Date of Decision : 22-01-1996

Acts Referred:

Citation : (1996) 1 BLJR 641 : (1996) 2 PLJR 179 : (1997) 2 RCR(Civil) 33

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—The orders of respondent No. 2, General Manager-cum Chief Engineer dated 25.2.95 and 11.6.93 as contained in Annexures 1 and 3 respectively have been impugned in this writ application. A further prayer has also been made to direct the respondents to grant proportionate remission to the petitioner on account of maximum demand charges and interest thereon.

2. The petitioner, a firm, a consumer of High Tension electricity under the respondents-Board. By order dated 25.2.95 respondent No. 2 allowed remission on account of Annual Minimum. Guarantee charges but refused to grant any remission in respect of maximum demand charges for the periods 1991-92, 1992-93 and 1993-94. The petitioner represented, after receipt of the aforesaid order, praying therein to allow remission on account of maximum demand charges but the said request has been turned down by respondent No. 2 by his order as contained in Annexure-3.

3. Mr. Ragarhia, learned Counsel appearing on behalf of the petitioner submits that respondent No. 2 has committed illegality in refusing remission in respect of maximum demand charges because non-supply of electricity should have been taken into account by him before refusing the said prayer. Advancing his argument, he submits that as because the Board was not in a position to supply the contract demand of 120 KVA regularly, the petitioner was entitled for

remission in view of the decision reported in 1994 BBCJ 369 and Dumraon Textiles Limited Vs. The Bihar State Electricity Board and Others, .

4. A counter affidavit has been filed on behalf of the Board in which it has been categorically stated that bill has raised on the basis of unit consumption only and not on maximum demand or power factor.

5. Mr. Rajendra Prasad, learned Counsel appearing on behalf of the respondents-Board, with reference to Clauses 15(2) of the Tariff notification of the Board has submitted that as the petitioner has consumed more than contract demand there cannot be any question of remission. Distinguishing the aforesaid two decisions of this Court, he submits that in those cases the Board admittedly was not able to " supply the contractual quantity of energy and, as such, this Court held that the petitioners of those cases were entitled for proportionate remission. In this case, however, the case is otherwise. Here, the petitioner has been found to have not only availed power to the full of their capacity but exceeded to their contract demand in each month during the year.

6. Respondent No. 2 who is to decide such type of dispute has taken into account the fact that during 1991-92 there was some interruption in supply of electricity and, as such, allowed certain relief. Similar relief was also allowed for the years, 1992-93 and 1993-94 but as far as the relief claimed for maximum demand is concerned, the respondent No. 2 has come to a finding that the petitioner has exceeded its contract demand in each month during the aforesaid three periods and, as such, the petitioner is not entitled for remission as prayed for.

7. It is not in dispute that the contract demand or the maximum demand in this case was 120 KVA and the respondent No. 1 has found that in 1991-92 the petitioner had drawn up 139.95 KVA, 186-43 KVA in the year, 1992-93 and 188.49 KVA during 1993-94.

8. The representation filed by the petitioner was also disposed of by reasoned order dated 11.6.93 by respondent No. 2. He has taken note of the fact that the factory of the petitioner was closed due to workers strike for 152 days and had there been no closure of the factory, the consumer would have consumed 41.328 units more. He has opined that the petitioner is not entitled to avail maximum demand in view of the fact that strike fell in each month partially and the maximum demand was recorded accordingly. After recording his finding, he has held that the petitioner is entitled to relief in respect of A.M.G. units only and not in respect of maximum demand.

Clause 15(2) of the Tariff reads as follows:

The following minimum base charge shall be realisable from the H.T.S./B.H.T. and R.T.S. consumers as per the appropriate Tariff.

(a) In respect of demand charge : Subject to the minimum contract demand mentioned in this Tariff for each category of services the consumer shall pay the monthly maximum demand charges as per the appropriate Tariff based on the

actual maximum demand of that month of 75 percent of the contract demand whichever is higher, as the minimum per month.

In respect of energy charges : It shall, be payable monthly in the manner as indicated below:

(i) For 18 KV/6 KV 3.3 K.V. services HTST- Energy charges based on load factor of 25 per cent and power factor of 85 per cent on contract demand shall be payable at the rate on 110 paise per unit.

(ii) For 33 KV service (HTB-11) Energy charges based on load factor of 30 per cent and power factor of 85 per cent on contract demand, shall be payable at the rate of 104 paise per unit.

(iii) For 132 KV Extra High Tension Service (EHTS) - Energy charge based on load factor of 50 per cent and power factor of 85 per cent on contract demand shall be payable at the rate of 102 paise per unit.

(iv) for 132 KV/25 KV Railway Traction service (RTS) - Energy charge based on load factor of 25 per cent and power factor of 85 per cent on contract demand shall be payable at the rate of 98/100.5 paise per unit respectively

After noticing the arguments of the learned Counsel for the parties and the relevant. Clauses of the Tariff as also the agreement. I am of the view that Clauses 13 of the H.T. agreement contemplates that whenever a consumer is prevented from consuming energy up to the level of its contractual demand, proportionate remission in maximum demand charges has to be allowed. This is what has been held by this Court in the aforesaid two reported decisions. However, in a case where there is no restriction of power supply or the consumer was not prevented from receiving or using the electrical energy, either in whole or in part due to strike, riots, fire, floods, explosions, act of God or any other case reasonably beyond the control for continuous period of more than 24 hours (proportionate to the month), the consumer is not entitled for proportionate remission.

9. In the present case it is not the case of the petitioner that it was prevented from receiving or using the electrical energy on the aforesaid grounds. On the other hand, respondent No. 2 has held that the petitioner's unit has consumed more than contract demand in the respective years and, in such view of the matter, in my opinion, the petitioner is not entitled to get remission, as prayed for.

10. In the result, I find no merit in this application which is accordingly, dismissed.