

(2002) 06 JH CK 0031
In the Jharkhand High Court
Case No : LPA No. 215 of 1996 (R)

Rolwell Enterprises

APPELLANT

Vs

B.S.E.B. and Others

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Citation : (2002) 06 JH CK 0031

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : S.N. Rajgarhia, for the Appellant; V.P. Singh and Rajesh Shankar, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal under Clause 10 of the Letters Patent is directed against the judgment dated 22.1.96 passed in CWJC No. 2611/95 (R) where by the learned Single Judge dismissed the writ petition and held that the appellant was rightly not allowed remission in the maximum demand charges so claimed by the appellant.

2. The appellant is as High Tension consumer under the respondents-Board. The appellant made a claim before the General Manager-cum-Chief Engineer for the remission in the Annual Minimum Guarantee charges for different years. The General Manager-cum-Chief Engineer considered the claim of the appellant and found that during 1991-92 there was some interruption in the supply of electricity and, as such, allowed remission for the aforesaid year and also for the years 1992-93 and 1993-94. However, the claim of the appellant for remission in maximum demand charges was disallowed on the ground that the appellant exceeded its contract demand in each month during the aforesaid period. The claim of the appellant was disposed of by passing a reasoned order which was challenged by the appellant in the aforementioned writ petition.

3. The learned Single Judge, considering Clause 13 of the H.T. Agreement, held

that since there was no interruption in the supply of electricity and the appellant was not prevented from receiving or using electrical energy, the question of grant of remission in maximum demand charges does not arise.

4. Mr. S.N. Rajgarhia, learned counsel appearing on behalf of the appellant assailed the impugned judgment of the learned Single Judge as being contrary to law settled by the Division Bench of the Patna High Court in the case of Suprabhat Steels Ltd. v. Bihar State Electricity Board and Ors. 1994 BBCJ 369 and also a decision reported in 1996 BBCJ 508. Learned counsel submitted that although respondent No. 2, the General Manager-cum-Chief Engineer allowed proportionate remission to the extent of hours of non-supply on account of Annual Minimum Guarantee charges but illegally refused to give remission in maximum demand charges. Learned counsel further submitted that a consumer is entitled under certain circumstances to claim remission both in Annual Minimum Guarantee charges and Maximum demand charges.

5. We have gone through the reasoned order passed by the General Manager-cum-Chief Engineer dated 25.2.95 (shortly the competent Authority) whereby the representation of the petitioner- appellant for grant of remission was disposed of.

6. As noticed above, the appellant was a High Tension consumer having contract demand of 120 KVA. The competent authority in his order recorded a finding that for the year 1991-92 the consumer had to consume 2, 54, 137 units as per A.M.G. clause against which their actual consumption was 1, 58, 997 units. Thus there was a shortfall of 95, 140 units during the said year, 1991-92. Since there was interruption in the supply of electricity for 697 hours 43 minutes, the competent authority granted proportionate relief in AMG charges. So far maximum demand charge is concerned, the competent authority found that against the contract demand of 120 KVA the appellant had drawn upto 139.95 KVA as maximum demand during the said year and, therefore, it was held that the appellant had exceeded its contract demand in each month during 1991-92 and it has paid not any maximum guarantee against the maximum demand charges. Hence the appellant was not entitled to remission against maximum demand charges. Similarly, for the years 1992-93 and 1993-94 the competent authority allowed remission in Annual Minimum Guarantee charges but refused to grant any relief on maximum demand charges mainly on the ground that during those years also the appellant exceeded the contract demand beyond permissible limit of 10% and it has not paid any minimum guarantee against maximum demand charges.

7. Mr. Rajgarhia put heavy reliance on the decision of the Division Bench in M/s. Suprabhat Steel's case (supra). Learned counsel drew our attention to paras 46 to 50 of the said Judgment. The said paragraphs are reproduced hereinbelow:--

46. In terms of Clause 4 (a) and 4 (c) of the Agreement the Board is entitled to recover annual minimum guarantee charges and maximum demand charges. The

said provisions, however, are subject to the provisions of Clause 13 of the Agreement.

47. Clause 13 of the Agreement in clear terms, thus, applies not only in the case of minimum guarantee charges but also maximum demand charges.

48. The respective General Managers of the concerned Area Electricity Board in their impugned orders, were, therefore, to right in rejecting the claim of the petitioners in relation to the maximum demand charges.

49. It Is true that in terms Of Clause 4 (c) of the agreement a consumer Is to pay 75% of the maximum KVA demand or the contract demand whichever is higher. It is also not disputed at the Bar that a maximum demand indicator is installed in the premises of a High Tension consumer and it records the maximum KVA demand if a consumer draws electrical energy more than the contract demand continuously for half an hour in any month.

50. In terms of the agreement the consumer is liable to pay the maximum demand charges on the basis of the recording In the maximum demand indicator as If the same had been the contract demand for the month in question, but the same, in my opinion, does not mean that if for the rest of the period the Board is unable to supply electrical energy or the consumer is unable to consume electrical energy for one or the other reasons enumerated in Clause 13 of the agreement, it would not get proportionate reduction in the maximum demand charges."

8. There is no dispute that in terms of Clause 4 (a) and 4 (c) of the H.T. agreement the Board is entitled to recover both annual minimum guarantee charges and maximum demand charges but at the same time the consumer is entitled to remission on both AMG charges and maximum demand charges under Clause 13 of the agreement.

9. In the instant case, as appears from the order passed by the competent authority, the consumer did not pay any minimum guarantee charges against the maximum demand* charges for the years 1991-92, 1992-93 and 1993-94. The competent authority, therefore, rightly held that when the consumer has not paid anything against maximum demand charges, the question of grant of remission in the matter of payment of maximum demand charges for the aforesaid years does not arise.

10. The learned Single Judge, in the impugned judgment, took notice of the undisputed fact that the contract demand in the instant case was 120 KVA and the consumer had exceeded the contract demand every month and every year. As noticed above, the General Manager-cum-Chief Engineer, in his order, very categorically mentioned that the consumer did not pay any minimum guarantee against the maximum demand charges during those period. We, therefore, do not find any Infirmary in the order passed by the competent authority. We further hold that the learned Single Judge rightly refused to interfere with the order

passed by the competent authority.

11. For the aforesaid reasons we do not find any merit in this appeal which is, accordingly, dismissed.

H.S. Prasad, J.

I agree.