

(1988) 04 OHC CK 0043

In the Orissa High Court

Case No : Second Appeal No. 28 of 1980

Sagarmal Ramananda Munda Mill and Others

APPELLANT

Vs

Orissa State Electricity Board

RESPONDENT

Date of Decision : 08-04-1988

Acts Referred:

Electricity Act, 1910 — Section 22, 23

Citation : (1988) 66 CLT 395

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : S.S. Das, on behalf of A.K. Padhi, for the Appellant; B.R. Sarangi, on behalf of G. Rath, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—The Defendants are the Appellants. They are aggrieved by the judgment of the learned Subordinate Judge, Berhampur, decreeing the Respondent's suit against them for a sum of Rs. 2185.62.

2. Facts admitted and not in dispute He within a narrow compass and are narrated bellow. The Appellants have a mm at Aska Road, Berharnpur. For supply of electric energy to the mill, they entered into an agreement (Ext. 1) with the Respondent on .

14-6.1967. Supply of energy was discontinued from June, 1972. Even then the Respondent demanded a sum of Rs. 1863.49 as arrear minimum energy charges. The defence of the Appellants was that according to the terms of the agreement (Ext. 1) after discontinuation of electric supply, the Respondent was not entitled" to claim the minimum charges. So the sale dispute between the parties is whether according to the terms of the agreement (Ext. 1) even after discontinuation of electric supply the Respondent was entitled to claim and, realise the minimum charges from the Appellants. .

3. The learned Munsif held that the agreement still subsisted but the Respondent

was not entitled to claim the minimum charges after discontinuation of electric supply to the Appellants' mill. Therefore, he disallowed the Respondent's claim of Rs. 1863.49, but gave a decree in part for a sum of Rs. 442.95 which is not in dispute. The Respondent appealed before the learned Subordinate Judge, Berhampur, who held that it could not be deprived of the minimum charges. Therefore, the sum of Rs. 1863.49 was decreed in favour of the Respondent.

4. The first point for consideration is whether the agreement (Ext. 1) between the parties still subsists. In order to determine this point, Clause 1 of the agreement (Ext. 1) is quoted below:

I. This agreement shall continue to be in force for a period of five years commencing from June, 1967 and thereafter shall to continue unless and until the same shall be determined by either party giving to the other, six calendar months' notice in writing of his intention to terminate this Agreement.

After expiration of the agreed period of five years, there is no evidence to enable this Court to arrive at a conclusion that by act of the parties as indicated in Clause 1, the agreement was terminated. Therefore, there is no other way but to hold that in terms of clause I, the agreement between the parties subsisted till filing of the suit.

5. The second point for consideration is whether the Respondent could claim the minimum charges according to the terms of the agreement (Ext. 1) even after discontinuation of supply of energy to the mill of the Appellants. In order to determine this point, it is necessary to quote Clause 13 of the agreement (Ext. 1):

13. CHARGES TO BE PAID BY CONSUMER: The Consumer shall (subject to the provisions hereinafter contained) pay to the Engineer for the power demand and electrical energy supplied under this Agreement, the charges to be ascertained as mentioned, the charges to be ascertained Resolution on tariff to be inserted here).

SMALL INDUSTRIES:

This Tariff is applicable up to and including demand from 1 k. w. to 19 k. w.
ENERGY CHARGE:

14 paise for unit per month.

MINIMUM CHARGE:

A minimum charge of Rs. 6/- per KW or Rs. 4.50 per BHP of connected load per month shall be levied.

VOLTAGE OF SUPPLY:

This tariff is available at 400 volts, 3 phase. But power supply upto 3 BHP may be made at 230 volts, single phase.

PENALTY FOR LATE PAYMENT:

The bills shall be paid within 30 days from the date of the bill. If the payment is not made within the said period of 30 days from the date of the bill, a delayed payment surcharge of 2 paise per unit shall be levied on the bill.

POINT OF SUPPLY:

The Tariff is applicable for one point of supply.

UNITS CONSUMED FOR LIGHTING INSIDE FACTORY PREMISES:

Consumption for lighting purposes to the extent of 5% of total consumption of the month confined only to the factory premises to be billed at the above rate. Extra consumption if any will be billed at the normal domestic Tariff.

(ii) RESTRICTED SUPPLY:

For supply restricted to the hours between 10 PM to 8 A. M through time switches, energy charges shall be made at 12 paise per unit with a minimum charge of Rs. 4.50 per KW of connected load per month.

The words "connected load" underlined above are very significant in order to construe the intention of the parties to the agreement (Ext. 1) with regard to payment of minimum charges. According to Mr. S. S. Das, learned Counsel appearing for the Appellants, in common parlance, "connected load" would mean and indicate the electric line loaded with energy. In other words, if the line is not loaded with energy, it cannot be construed as "connected load". Load, according to Mr. Das, is, therefore, synonymous with energy. But "connected load" has a technical meaning as defined in Orissa State Electricity Board (General Condition of Supply) Regulation, 1981 which is statutory. Regulation 3 (ix) has defined "connected load" as follows:

Connected load" means the aggregate of the manufacturer's rating of all the apparatus including portable apparatus on the consumer's premises which is supplied with energy and apparatus in respect of which declaration has been made by the consumer for taking supply. This shall be expressed in KVA. KW or Horse Power (H. P.), as the case may be. If the ratings are in KVA, the same should be converted to KW by multiplying the KVA with a power factor of 0.9. If the same or any of the apparatus is rated by the manufacturer in HP, the HP ratings shall be converted into KW by multiplying it by 0.746.

From the above definition it is clear that "connected load" is not synonymous with supply of energy, but it has got a definite meaning in the sense that even if there is no actual supply of energy, yet on account of installation of the apparatus in the manufacturer's premises, as well as in the premises of the consumer, and the readiness of the former for supply of energy according to the contract demand, the minimum charges according to Clause 13 of the agreement was leviable. In other words, even after discontinuation of supply of energy, during subsistence of the contract between the parties the minimum charges

according to the agreement had to be paid for the additional reason that there was no existence of any clause in the agreement so the contrary. The above view finds support from a decision of the Supreme Court reported in *The Amalgamated Electricity Company Ltd. Vs. The Jalgaon Borough Municipality*, . It was held that a clause in an agreement for supply of energy by which the licensee was assured of minimum consumption- of energy by the consumer and for payment of the same whether it was consumed or not, is not void u/s 23 of the Electricity Act. The clause embodies that is known in common parlance as doctrine of minimum consumption and is in direct compliance with the proviso to Section 22 which ensures a provision for minimum guarantee for supply of electricity. Licensee is entitled to recover minimum charges in pursuance of that clause. It was specifically held as follows:

Moreover, it is obvious that if the Plaintiff company was to give bulk supply of electricity at a concessional rate of 0.5 anna per unit it had to lay down lines and to keep the power ready for being supplied as and when required. The consumers could put their switches on whenever they liked and therefore the Plaintiff had to keep everything ready so that power is supplied the moment the switch was put on, In these circumstances it was absolutely essential that the Plaintiff should have been ensured the payment of the minimum charges for the supply of electrical energy whether consumed or not so that it may be able to meet the bare maintenance expenses", 6. Mr. Das in support of his contention placed reliance on a Bench decision of this Court in *M Is. Orissa Tiles Limited. Barang represented through Jugal Kishore Jhun Jhunwala. Managing Director v. The Orissa State Electricity Board* F. A. No. 139 of 1974-D/20-2-1985, in which the terms of the agreement were almost identical except that with regard to the minimum charges the consumer had agreed to pay on the contract demand and not on the "connected load", In view of the agreement relating to minimum charges, in that case it was held that even though the agreement subsisted, yet after discontinuation of supply of electricity according to the contract demand, the consumer was not liable to pay the minimum charges. The view expressed in the aforesaid decision is not binding for the reasons that the agreement therein was slightly different and the conclusion was reached without making reference to the decision reported in *The Amalgamate Electricity Company Ltd. v. The Jalgaon Borough Municipality*, (supra).

7. In the ultimate analysis. I am of the view that the Appellants were bound to pay the minimum charges according to Clause 13 of the agreement (Ext. 1) and the learned Subordinate Judge was justified in passing a decree for the amount claimed, as minimum charges in favour of the Respondent.

8. In the result, therefore, the appeal is without merit and is dismissed. Parties shall bear their own costs.