

(1987) 09 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 1695 of 1986 (R)

Sahu Gupta Industries

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 08-09-1987

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49
Electricity Act, 1910 — Section 22B, 23

Citation : AIR 1989 Patna 8 : (1989) PLJR 132

Hon'ble Judges : N.P. Singh, J;B.P. Singh, J

Bench : Division Bench

Advocate : Debi Prasad and V. Shivnath, for the Appellant; S.B. Gadodia and B. Saran Lal, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Singh, J.—The petitioner, M/s. Sahu Gupta Industries is a partnership firm engaged in the business of Rolling Mill. For running the Mill, the petitioner obtained electric connection from the Bihar State Electricity Board (hereinafter referred to as "the Board") with a contract demand of 3.55 K.V.A. According to the petitioner, it is a high tension consumer and the electrical energy supplied by the Board, Respondent 1 herein is required for the purpose of running the rolling mill. iN this writ application, the petitioner has challenged the legality of Annexure-8A dt. 13-11-1986, which is the decision of the General Manager-cum-Chief Engineer of South Bihar and Chotanagpur Area of the Board, Respondent 2 under Clause (13) of the High Tension agreement, rejecting the claim of the petitioner for grant of relief under the aforesaid clause of the agreement, It has also challenged the communication of the said decision to it under Annexure-8 dt. 13-11-1986. The petitioner has further challenged the notice issued by the Electrical Superintending Engineer dt. 17-11-1986 giving it seven days notice u/s 24 of the Indian Electricity Act, 1910 for payment of the outstanding dues, failing which a threat has been held out for disconnection of the supply of electrical energy to the establishment of the petitioner. By this writ application the

petitioner has sought quashing of Annexures 8, 8A and 9 and has prayed for a direction that the respondents shall not act in pursuance of the aforesaid annexures and shall not interfere with the supply of electrical energy to the petitioner's establishment.

When the writ application came up for admission on 6th April, 1987, after hearing the parties, this writ application was admitted only for consideration on the limited question as to whether lockout/closure is covered by Clause (13) of the High Tension Agreement, so that the consumers could claim proportional benefit for the period during which there was such lockout/closure. It is, therefore, not necessary to refer to the other question raised in the writ application which were also not urged at the hearing of this application, and learned counsel appearing on behalf of the petitioner confined his submissions to the aforesaid question.

2. The case of the petitioner is that for running the rolling mill, the petitioner requires constant supply of electrical energy. The petitioner-firm was receiving the said supply for carrying on its activities till such time as certain labour problems arose on account of which the petitioner was not able to consume the supply of electrical energy made to it. It was stated that there was a workers' union in the establishment of the petitioner, known as, Sahu Gupta Shramik Sangh, which was the recognised union. In or about Aug. 1983, there was a split in the Union and, there came into being two unions who started working against each other on account of union rivalry. The result was that unreasonable and exaggerated demands were made from the management with a view to appease the workers, since both the unions were involved in enrolling members for their respective unions. The efforts of the management could not resolve the disputes, and on account of union rivalry, immense loss to production resulted. A stage came when there was complete slow-down and production came to standstill. Consequently, the factory of the petitioner was closed from 17th Feb. 1984 and an intimation to this effect was given by the petitioner to the Revenue Officer of the respondent-Board by letter dt. 25th Feb. 1984, a copy whereof is annexed as Annexure 1. A perusal of Annexure-1 shows that an intimation was sent to the Revenue Officer of the Respondent Board to the effect that the factory was closed since 17th Feb. 1984 "due to some labour unrest."

The case of the petitioner is that the factory reopened with effect from 29-10-1984 and necessary intimation was sent to Respondent No. 4 by letter dt. 17th Nov. 1984. According to the petitioner, the factory of the petitioner remained closed from 17-2-1984 to 28th Oct. 1984 which fact is also established by the certificate granted to this effect by the Deputy Commissioner of Labour dt. 30th Nov. 1984 a copy whereof has been annexed as Annexure-3. This document also shows that the factory of the petitioner was closed with effect from 17-2-1984 "due to labour trouble" and as a result of mutual settlement, the factory had again started working with effect from 29-10-1984.

3. The period 17th Feb. 1984 to 28th Oct. 1984 fell in two accounting years, i.e.

1983-84 and 1984-85. Since the petitioner was prevented from consuming electrical energy, for the reasons that the factory was closed during the aforesaid period, the petitioner was entitled to proportionate reduction of annual minimum guarantee charges and maximum demand charges. Accordingly, it made two separate claims in respect of two financial years claiming relief under Clause (13) of the High Tension agreement. The two claim applications made on behalf of the petitioner on Dec. 4, 1984 have been annexed as Annexure-4 to the writ application. It appears from the said Annexure-4 that in the column provided therefore it was stated that the petitioner had been prevented from using electricity from 17-2-1984 to 29-10-1984 due to "closure of the mill for Labour unrest." In Col. 7(b) of the prescribed form for making claim, "strike" was mentioned as the clause which prevented the petitioner from receiving or using electrical energy supplied by the Board. In col. 7(a) of the claim relating to the period April, 1984 to November, 1984, it has been stated that the petitioner was "prevented from using electrical energy from 17-2-1984 to 29-10-1984 due to closure of the mill for "Labour unrest". But again in Clause 7(a) of the pro forma "strike" has been shown to be the cause owing to which the petitioner was prevented from receiving or using electrical energy supplied by the Board.

4. The petitioner after filing the claims made a representation dt. 27th Feb. 1986. It also filed its written submission (Annexure-7-- dt. 8-10-1986). In its written submissions the petitioner has stated the facts in some detail. The relevant part of the submissions reads as under :

"In Aug. 1983, due to split in the Union there came into being two unions and they started functioning rivalry to each other and although they were functioning rivalry to each other they also started unreasonable and exaggerated demands for the labours only with a view to master supremacy over the other. These activities were causing immense loss to the production of the industry and a stage came when there was complete tool down strike and the production came to a standstill. The consumer intimated this fact to the labour Department. The consumer was not in a position to manage the situation and production and were compelled to incur loss. The consumer has to close down the factory on account of the aforementioned unavoidable circumstances beyond the control of the consumer, i.e. Labour trouble.

The consumer has fundamental right either to carry on or close down industrial establishment. The consumer was facing grave risk of production and also in the financial aspect and it was finding itself to carry on the business (sic) face of the labour unrest."

4A. The petitioner claimed relief under Clause (13) of the High Tension Agreement which provides as follows :

"13. If any time the consumer is prevented from receiving or using the electrical energy to be supplied under this agreement either in whole, or in part due to strikes, riots, fire, floods, explosions, act of God or any other cause reasonably

beyond control or if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all of the causes mentioned above then the demand charge and guaranteed energy charge set out in the schedule shall be reduced in proportion to the ability of the consumer to take or the Board to supply such power and the decision of the Chief Engineer, Bihar State Electricity Board, in this respect shall be final."

5. According to the petitioner, in the facts and circumstances of the case, since the factory was lying closed during the period 17th Feb. 1984 to 29th Oct. 1984, it was entitled to relief under Clause 13 aforesaid.

6. The claim petition of the petitioner was considered by the General Manager-cum-Chief Engineer of Respondent-Board, who heard the petitioner before giving his decision. Written submissions were also filed before him. The decision of the General Manager-cum-Chief Engineer is Annexure-8A to the writ petition. Before him, it was conceded by the petitioner that use of the word "Closure" on the claim application was not meant to convey what "closure" means under the Industrial Disputes Act. What was really meant was that the mill was closed during that period. The case of the petitioner was that the mill had been closed on account of labour unrest. It was not the case of the petitioner that there was either "Closure" or "strike" in the establishment of the petitioner. The General Manager-cum-Chief Engineer found from the material placed before him and the submissions advanced on behalf of the petitioner that the factory was under lockout declared by the petitioner and, in fact, the workmen had prayed for lifting of the lockout so that they may be able to work in the establishment. The factory was closed by the management itself by declaring a lockout and disallowing the workmen from entering the factory premises. He, therefore, held that the facts and circumstances of the case did not justify the grant of any relief under Clause (13) of the High Tension agreement. Since the factory was closed as a result of voluntary act of the petitioner, the petitioner was not entitled to claim proportionate reduction under Clause (13) of the Agreement.

7. It was urged on behalf of the petitioner that in the facts and circumstances of the case, Clause (13) of the Agreement was clearly applicable and the General Manager-cum-Chief Engineer of the Respondent-Board was clearly in error in disallowing the claim and thereby refusing to exercise the jurisdiction vested in him. The question, therefore, which arises for determination is as to what is the true meaning and import of Clause (13) of the Agreement, and whether in the facts and circumstances, the said Clause (13) of the Agreement had any application to the case of the petitioner, Clause (13) of the Agreement has been extracted earlier in this judgment. The aforesaid clause provides that if at any time the consumer is prevented from receiving or using the electrical energy to be supplied under the agreement, either in whole or in part, due to strikes, riots, fire, floods, explosion, act of God or any other cause reasonably beyond the control of the consumer, then the demand charge and guaranteed energy charge shall be reduced in proportionate to the ability of the consumer to take such

power. Clause (13) leaves no room for doubt that the events mentioned therein, such as strikes, riots, fire etc. are not exhaustive and there may be any other causes akin to those mentioned therein, reasonably beyond control of the consumer, which may prevent the consumer from receiving or using the electrical energy supplied to it under the Agreement. It also envisages that the cause must not be the result of consumer's volition. It is important that there should not merely be a strike, riot etc. but it must also be of such nature as would prevent the consumer from receiving or using the electrical energy. For the application of Clause (13) of the Agreement, both conditions must be fulfilled, namely, that there should be one of the causes, such as strike, riot, fire or any other similar cause, and further that the cause must have the result or effect of preventing the consumer from receiving or using the electrical energy. The words have not to be understood in any technical sense, but they do conceive of a situation in which the cause must be of such character that it should prevent the consumer from receiving or using electrical energy. For example, it will not be enough if there are merely riots in the establishment of the petitioner or there may be fire or explosion in the establishment of the petitioner, but it must further be established that on account of such riots, fire or explosion, the consumer was prevented from receiving or using the electrical energy. The words "Strike", "riots," "flood", "fire" or "explosion" are merely descriptive of the type of events that may possibly lead to the creation of a situation in which the consumer may be prevented from receiving or using electrical energy supplied to it. Causes may be many more, and if the causes are akin to those mentioned in the clause, resulting in preventing the consumer from receiving or using electrical energy, the aforesaid Clause (13) will be attracted. In substance, not only the causes, but the result thereof must also be established. This, in my view, is a fair interpretation of Clause (13) of the agreement.

8-9. Where a party claims benefit of a clause in the agreement, it is for the claimant to establish all the conditions necessary for applicability of that clause. In the instant case, therefore, it was for the petitioner to establish that on account of any cause beyond its control, akin to those mentioned in Clause (13), it was prevented from receiving or using the electrical energy supplied to it. At different places, different description of the events has been given by the petitioner, but before the General Manager it was clarified that there was no "Closure or", "strike" in the establishment, as understood under the Industrial Disputes Act. What had happened was that there was labour unrest on account of which the petitioner imposed a lockout and closed down the establishment for sometime. It is nowhere stated as to what was ; the nature of the labour unrest. "Labour unrest" is a vague term which may include a whole variety of situation ranging from something most insignificant to something very drastic. A variety of situations may be conceived when one speaks of labour unrest. It was, therefore, for the petitioner to establish that the labour unrest was of such nature that the petitioner had no option but to close down the factory by imposing lockout. It is not stated that on account of labour unrest, there was a law and order situation

which prevented the petitioner from carrying on its business activity, or that any event took place which rendered it highly dangerous to carry on its normal business activity without danger to the establishment. A very vague claim has been made that there was labour unrest and, therefore, the factory was closed. In the writ petition, it was stated that on account of labour unrest there was loss of production. It may be that on account of labour unrest, the working conditions may not be as congenial as is desirable. It may well be that from the point of view of profitability, it may be more prudent to close down the establishment than to run the same. In my view, such situation would not attract Clause (13) of the Agreement, since in the aforesaid situations the consumer is not prevented from receiving or using the electrical energy supplied to it. To close down the establishment is a decision which the management voluntarily takes, and may be that the decision is a prudent one. But that is not to say that Clause (13) of the agreement is attracted to such situations. Even when it is possible to carry on business activity and to consume electrical energy supplied by the Board, the consumer may take a commercial decision not to run the factory and to close it down with a view to reduce losses. Such cases are not covered by Clause (13) of the Agreement, because in such cases the consumer is not prevented on account of reasons beyond his control to receive or use the electrical energy. The consumer decides not to receive or consume the energy supplied, The decision is taken not by reason of any compulsion which prevents it from receiving or using the electrical energy, but on account of the decision it takes voluntarily to close down its establishment.

10. In the instant case, as noticed earlier, there is complete lack of material to show as to what was the nature of labour unrest. All that is stated is that there was factual rivalry between two factions of the union which led to production loss. Even the written submissions of the petitioner do not throw any more light on the factual aspect of the matter. The written submissions are highly legalistic and lacking in factual content. No facts have been stated to establish the nature of the unrest. There is nothing to show as to what was the magnitude of the loss of production or as to whether there were any untoward incidents or as to whether there was a law and order situation in which the factory could not run. A mere averment of "labour trouble" without any further particulars, is hardly enough to claim any relief under Clause (13) of the agreement.

11. In the facts and circumstances of this case, if the petitioner closed down its factory, it cannot be said that for any of the reasons specified in Clause (13) or any reason akin to it, the petitioner was prevented from receiving or using the electrical energy. In my view, therefore, the General Manager-cum-Chief Engineer was fully justified in coming to the conclusion that Clause (13) of the high Tension agreement was not attracted to the facts and circumstances of the instant case.

12. In this view of the matter, it must be held that the writ application is without merit. The same is accordingly dismissed. In the facts and circumstances of the

case, there will be no order as to costs.

N.P. Singh, J.

13. I agree.