
(2001) 07 JH CK 0049
In the Jharkhand High Court
Case No : CWJC No. 1615 of 2000

Sheo Shakti Cement Industries-II

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Electricity (Supply) Act, 1948 — Section 23, 49
Electricity Act, 1910 — Section 39, 40
Penal Code, 1860 (IPC) — Section 379

Citation : (2001) 49 BLJR 1804

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

Bench : Single Bench

Advocate : M.S. Mittal, for the Appellant; V.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for issuance of an appropriate direction upon the respondents not to levy any charge for the period 5.2.2000 to 12.5.2000 during which period his electric line was disconnected by the Board and also for quashing the bill for the month of May, 2000 so far as it relates to maximum demand charges.

2. Petitioner is a High Tension consumer having contract demand of 1067 KVA, Petitioner's case is that earlier it had a contract demand of 900 KVA but because of the capacity of the transformer installed in the factory premises of the petitioner the contract demand was increased. It appears that on 17.9.1999 a routine inspection was made in the factory premises of the petitioner and the meter was paper sealed on that day by the inspecting team. A second inspection was also made one week thereafter i.e. on 23.7.1999 and it was found that during the period between 17.3.1999 to 28.7.1999 the consumption was 54,602 units. The respondent-Board, therefore, lodged FIR against the petitioner u/s 379 of the IPC and Sections 39 to 40 of the Indian Electricity Act, 1910 alleging, inter alia, that the petitioner is indulging in theft of electricity. The respondent- Board

raised supplementary bill of Rs. 1,38,28,593/- and the line was disconnected on 29.7.1999. The petitioner challenged the action of the Board in raising the bill by filing CWJC No. 2290/99. This Court, by order dated 2.9.1999, quashed the impugned bill and remanded back the matter to the General Manager-cum-Chief Engineer, Dhanbad Electricity Board to hear the matter afresh and pass orders after giving opportunity of hearing to the petitioner. It is stated by the petitioner that immediately thereafter, the petitioner requested the Board to restore the electric line but the same was not restored. The petitioner, thereafter, filed CWJC No. 3062/99 (R) and this Court, vide order dated 14.10.1999, directed the Board to restore the supply of electricity and, accordingly, it was restored on 23.10.1999. Petitioner's case is that after its line was disconnected on 5.2.2000 the petitioner received current monthly bill for the month of April, 2000 in which the respondent-Board charged maximum demand charge for the entire month. The electric line of the petitioner was restored on 13.5.2000 but in the bill for the month of May, 2000 the respondents charged maximum demand charges for April, 2000.

3. Mr. Mittal, learned counsel for the petitioner mainly contended that the Board has charged maximum demand charges on the basis of KVA reading of 1280 which was for the month of February, 2000 when the line of the petitioner was disconnected. The Board illegally levied KVA charges for the entire period although line was restored only on 13.5.2000. Learned counsel submitted that the Board is not entitled to levy maximum demand charges for the period when there was no supply of electricity in the premises of the petitioner.

4. On the same set of facts the petitioner filed CWJC No. 1380/2000 for quashing the order dated 12.5.2000 passed by the General Manager-cum-Chief Engineer by which he has disposed of the representation filed by the petitioner in terms of the order dated 2.9.1999 passed in CWJC No. 2290/99 (R). The petitioner also challenged the bill raised by the Board for Rs. 1,18,39,891/-. However, the petitioner has filed the present writ application challenging the demand of maximum guarantee charges for the period when there was no supply of electricity. The aforementioned CWJC No. 1380/2000 has been dismissed by this Court by a reasoned judgment dated 28.6.2001 [See 2001 (2) Jhr CR 228 (Jhr)] upholding the correctness of the bill raised by the Board. This case is, therefore, squarely covered by the reasons recorded by this Court in the said judgment. Now the only question that falls for consideration is as to whether the petitioner is liable to pay maximum demand charges for the period when there was no supply of electricity. Admittedly the petitioner entered into an agreement with the Board under which the latter provided H.T. connection in the premises of the petitioner under certain terms and conditions and also under terms and conditions provided in the Act and the Tariff. No where in the writ application the petitioner has said that the Board, in violation of the terms of the agreement, has been charging maximum demand charges for the period when the petitioner did not consume electricity. It is also not the case of the petitioner that the H.T. agreement stood terminated by notice issued from the side of the petitioner or

the respondent-Board.

5. In the case of Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, , the question which fell for consideration before the Apex Court was as to whether the conditions imposed in the agreement for payment of minimum guarantee charges irrespective of the fact whether energy was consumed or not, would be valid and justified. Their lordships in the concluding paras of the judgment held as under :--

"It is true that the agreement is in a standard form of contract. The standard clauses of this 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 parties whose bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable". A Schroeder 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 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 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 has to be observed. A supply agreement to a consumer makes his relation with the Board mainly contractual. Where the basis of supply is held to be statutory rather than contractual. In cases where such agreements 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.

For the foregoing reasons we have no hesitation in holding that the agreement was reasonable and valid and it was not determined with the disconnection of supply to the respondent-firm by the board on 28th September, 1981 but only according to the stipulations in clause 9 (b) of the agreement as discussed above. The liability to pay the minimum guaranteed charges, therefore, continued till the determination of the contract. The Board was, therefore, entitled to submit the bill and make the demand on that account and recover the same according to law."

6. In another case of General Manager-cum-Chief Engineer, Bihar State Electricity Board and Others Vs. Rajeshwar Singh and Others, , a similar view was taken by the Apex Court following the earlier decision in the case of M/s. Green Rubber Industries (supra) their lordships held as follows :--

"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 seven days of disconnection that would be deemed to be a notice for termination and the contract would be terminated either at the end of 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 1.1.1975. The earlier agreement must be deemed to have come to an end on execution of the fresh agreement and restoration of the connection if it did not terminate earlier under the terms of the agreement. The firm's liability, had therefore, to be determined on the basis in view of what has just been held in the judgment in Civil Appeal No. 220 of 1987.

7. Mr. Mittal learned counsel for the petitioner put heavy reliance on the decision of this Court dated 10.3.2000 passed in CWJC No. 3472/99 (R). In the said decision this Court never held that a consumer would not be liable to pay maximum demand charges and minimum demand charges for the period when there was no consumption of electricity, rather, this Court held that the respondent-Board would be entitled to raise fresh bill after disposal of LPA. The LPA has been disposed of simply with a direction to restore supply of electricity subject to payment of certain amount to the Board and till the claim of the petitioner is finally disposed of by the General Manager-cum-Chief Engineer.

8. As noticed above, the claim of the petitioner was disposed of by the General Manager-cum-Chief Engineer vide his order dated 12.5.2000 and the said decision has been upheld by this Court in the Judgment passed in CWJC No. 1380/2000 : See 2001 JCR 542 Jhr.

9. In the facts and circumstances of the case, no relief can be granted to the petitioner. This writ application is, therefore, dismissed.

10. Petition dismissed.