

(1999) 04 PAT CK 0050

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 2045 of 1998

Shiv Shambhu Hard Coke

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49

Citation : AIR 2000 Patna 76 : (1999) 47 BLJR 1253 : (1999) 2 PLJR 665

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : A. Sen, for the Appellant; Rajendra Prasad, for the Respondent

Judgement

Nagendra Rai, J.—The present writ application has been filed by the petitioner for a direction to restore electric line, which has been disconnected without notice to it and also to quash the bill, which has been raised against the petitioner by treating it as H.T. consumer and to raise the bill on the basis of its sanctioned load of 79 H.P., which is under L.T. consumption.

2. The facts, which are not in dispute, are that the petitioner is a partnership firm and has established a Hard Coke Plant at Tundi Road, Panchrukhi, P.S. Gobindpur, District Dhanbad. The petitioner applied for electricity connection and he was given electricity connection in 1995 and the sanctioned load of the petitioner was 79 H.P. According to the petitioner, the load at no point of time exceeded the above sanctioned load. The petitioner has been consuming electricity within the sanctioned load and has been paying electric charges regularly to the Board. At no point of time, it was brought to the notice of the petitioner that the machine installed by the petitioner consumes electricity exceeding the sanctioned load. The meter of the petitioner became defective and later on a new meter was installed on 10-8-1998 and without any notice on 6-10-1998, electric line of the petitioner was disconnected. The petitioner made representation on 7-10-1998 and, thereafter, it was intimated by the Board by letter dated 7-10-1998 that the

electric line of the petitioner has been disconnected as it has exceeded the load of 79 H.P., which was detected at the time of taking reading of the new meter vide Annexure-3.

3. It is asserted on behalf of the petitioner that at no point of time, the machines were inspected by the competent authority to find out as to whether the petitioner, in fact, exceeded the sanctioned load and only on the basis of the reading of the new meter, the Board has disconnected the electric line of the petitioner.

4. The petitioner filed an application for amendment of the writ application on 19-11-1998, wherein he has also challenged the letter dated 14-11-1998, by which a supplementary bill of Rs. 7,18,563/- has been raised as per H.T. tariff. According to the petitioner, the respondents cannot disconnect the electric line without notice and they also cannot raise bill on the basis of H.T. tariff without completing the formalities for supplying line at H.T. energy. There is no Inspection report or material on the basis of which. It can be said that the petitioner had exceeded the contracted, sanctioned load of 79 H.P.

6. The stand of the Board, as appears from the counter-affidavit, is that the consumption of electricity above 79 H.P. is treated as H.T. consumption and the consumer is liable to pay the energy charges accordingly. The meter of the petitioner became defective and during that period, the bill was raised average basis in terms of the tariff of the Board and the petitioner paid the same to the Board. The petitioner from the very beginning was consuming electricity more than the sanctioned load, as a result of which the meter became defective and the consumer used to pay electricity charges raised on average basis. Thereafter in August, 1998, the tiivector meter has been Installed in the premises of the petitioner with a view to check the theft of the electricity by the consumer in different manner. If a consumer consumes electric energy more than the sanctioned load, the maximum demand charge, which is known as K.V.A., shall be recorded in the aforesaid meter. On 6-10-1998. the factory premises of the petitioner were inspected in presence of the petitioner and the total load was recorded in the K.V.A. i.e, maximum demand as 87.7, which is more than 79 H. P. Again in September, 1998, the K.V.A. was found as 80.5 H.P., which is more than the sanctioned load. The consumption of electricity more than the sanctioned load is a theft and when this matter came to the notice of the authorities of the Board, they have disconnected the electric line of the petitioner, for which there is no provision in the tariff for giving notice before disconnecting the line when the loss is caused to the Board by theft of electricity by a consumer. There is specific provision under Clause 16.9 of the 1993 Tariff that if consumer is found exceeding the contracted load without specific permission of the Board, the Board may without prejudice to its other rights under the agreement or under the provisions of the Electricity Act, estimate the value of the electrical energy, so extracted, consumed or used shall be calculated as provided therein and may also disconnect the supply without notice and in

exercise of the aforesaid power, the electric line of the petitioner has been disconnected. It is further stated that the supplementary bill has been prepared in terms of Clause 16.9(A) of the Board's Tariff. The total demand of consumption comes to Rs. 7,18,563.00, out of which the petitioner had deposited a sum of Rs. 1,52,509.00 and as such a sum of Rs. 5,66,054.00 is still due from it, which the petitioner is liable to pay and unless the said amount is paid, the electric line, of the petitioner cannot be restored. It is further stated that on 14-11-1998, the factory of the petitioner was again inspected, on which date some discrepancies were detected, for which respondent-Board would issue supplementary bill for further amount, which shall be calculated in accordance with the Tariff of the Board.

6. The petitioner filed a rejoinder to the counter-affidavit, where in apart from reiterating the aforesaid facts, the petitioner has asserted that the petitioner has not ex-ceeded sanctioned or contracted load and the action of the Board for treating It as a H.T. consumer is wholly impermissible in law.

7. Learned counsel for the petitioner submitted two points. Firstly, he submitted that the disconnection of electric line without notice to the petitioner is in breach of the provision contained in Section 24 of the Indian (Electricity) Act. In support of the aforesaid submission, he relied upon two Division Bench judgments of this Court in the cases of I.V.C. Pharmaceuticals (P) Ltd. v. Bihar State Electricity Board, reported in 1994 (2) Pat LJR 810 and Mohamad Iqbal v. State of Bihar, reported in 1994 (1) Pat LJR 267. Secondly, he submitted that there is no material before the authorities to raise a bill on the ground that the consumption of the electricity by the petitioner was beyond the sanctioned load of 79 H.P.

8. Learned counsel for the Board, on the other hand, submitted that the use of electricity beyond the contracted or sanctioned load is a theft of electricity and the loss is caused to the Board and as such in such a case, the Board or its officers, after having knowledge of that fact, can disconnect the line and no notice is required before disconnection. The requirement of notice, as contemplated u/s 24 of the Act, is not envisaged in such a case. He also submitted that the tariff itself provides disconnection without notice in case of use of electricity beyond the sanctioned contracted load. He further submitted that the inspection of the meter was made in presence of the petitioner and it was found that the consumption was beyond the contracted load and that was also recorded in the K.V.A. Thus, there was enough material before the Board to come to the conclusion that the consumption of electricity by the petitioner was beyond the sanctioned load and the raising of the bill as H.T. consumer is fully justified in this case.

9. The first question to be determined is as to whether in a case where a consumer is found to have been using more electricity than the sanctioned or contracted load, a notice is required before disconnection or not? Section 24 of the Indian Electricity Act, 1910, runs as follows :--

"24. Discontinuance of supply to consumer neglecting to pay charge--

(1) Where any person neglects to pay any charge for energy or any (sum, other than a charge for energy) due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days" notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line of other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses Incurred by him in cutting off and re-connecting the supply, are paid, but no longer.

(2) Where any difference or dispute (which by or under this Act is required to be deter- mined by an Electrical Inspector, has been referred to the Inspector) before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision."

10. The Board, in exercise of the power conferred u/s 49 of the Electricity (Supply) Act, 1948, has framed Its revised tariff on 21-6-1993. Clause 16.9 provides that in case of detection of unauthorised load, the Board may, without prejudice to its other right under the agreement or under the provisions of the Electricity Act, estimate the value of the electric energy, so extracted, consumed or used by calculating in the manner as indicated in the aforesaid clause and may also disconnect the supply without notice. The Division Bench in the case of I.V.O. Pharmaceuticals (P) Ltd. and Others Vs. Bihar State Electricity Board and Others held that before disconnection, notice has to be given in terms of Section 24 of the Act and in absence of that, the disconnection will be illegal. In that case, the line was disconnected for non-payment of the bill and this Court held that the disconnection without notice is illegal. That was not a case where the disconnection was made on the ground of detection of using electricity beyond the sanctioned load, which amounts to a theft of the electricity and as such the said ruling has no application to the present case.

11. In the case of Mahamad Iqbal Vs. The State of Bihar and Others , the sanctioned load of the petitioner was 1 H.P., but at the time of Inspection, the same was found to be 12 H.P. or 15 H.P. The bills were raised on that basis and in default to pay, the electrical line was disconnected. This Court held that the Board being a public authority discharge Governmental function. A consumer depends upon the authorities of the Board for its day to day amenities which are essential for human existence. It is the State within the meaning of Article 12 of the Constitution of India. It is thus required to act fairly, judiciously and in accordance with the principles of natural justice. Its action thus must be fair and conform to the standards of public morality. Its Officers cannot act arbitrarily or raise demand for substantial amount of money without affording opportunity of hearing to the consumer. This Court further held at paragraph No. 17 of the said Judgment as follows :--

"17. There cannot be any doubt that the respondent-Board has jurisdiction to disconnect the electrical energy, once it is found that the consumer have consumed the electrical energy beyond its sanctioned load. However, even in such a case, it is Incumbent upon the Bihar State Electricity Board to come to a definite finding, if any dispute is raised in this regard. However, I may add that such dispute must be bona fide one. I am further of the opinion that even in relation to the dispute the Board should apply the principles of natural justice."

12. Thus, this Court in the aforesaid case, held that if the consumer has consumed electricity more than the sanctioned load, if a dispute is raised, the matter is to be decided applying the principle of natural justice. This Court never said that in a case where it is detected that the consumer is consuming electricity more than the sanctioned load, the Board at the time of disconnection must give an opportunity of hearing before disconnection. The only law laid down in that case, as stated above, is that in case a dispute is raised regarding the bill charging on the basis of the actual consumption, which is beyond the sanctioned load, then the principle of natural Justice has to be followed.

13. The natural Justice is one of the facet of the fundamental rights and the principle of ante alteram partem is the basic concept of the principle of natural justice. In the field of administrative action, this principle has been applied to ensure fair play and Justice to the affected person. However, It is not a cure of all the ills. Its applicability depends upon the facts and circumstances of the case taking into consideration the ends of justice. Justice means justice to both the parties, The principle of natural Justice is meant to achieve the ends of justice, which cannot be perverted to achieve the opposite one. In other words, instead of serving cause of Justice, if the application of the principle of natural justice result into injustice and affects the public interest, its application will be treated to have been excluded in such a case. The requirements of natural justice are flexible and can be moulded in such a way that the public interest does not suffer. In the case of *Jamaat-E-Islami Hind Vs. Union of India (UOI)*, , the Apex Court held that the natural justice is to be tailored to safe- guard the public interest, which must always, outweigh the lesser interest.

14. Even if there is no provision in a rule that the principle of natural justice is to be followed in the sense of giving opportunity of hearing before taking an action, it has to be read into the provision to ensure against the failure of justice. However, where the rule excludes either expressly or by necessary implication, any decision or order cannot be faulted on the ground of breach of principle of natural justice unless the Court comes to the conclusion that the decision is vulnerable on other grounds.

15. Section 24 of the aforesaid Act covers a case where disconnection has been made for non-payment of charges. It does not cover a case where the consumer is found to have been consuming electricity more than the sanctioned load, in other words, he is attending or committing theft of the electricity. Clause 16.9 of the Tariff itself provides that in a case where the consumption is beyond the

sanctioned load, the Board can disconnect the line without notice. The said Tariff provides power to the Board to disconnect the electric line even without a notice and this provision is a reasonable one when the officers of the Board find that the electricity is being consumed beyond the sanctioned load, meaning thereby the electricity is being consumed without making payment to the Board, which amounts to stealing the electricity of the Board and in such a situation, immediate step, that is to be taken by the Board, is to disconnect the electric line and to protect the electricity being illegally consumed by the consumer. In such a case, an opportunity of hearing will not serve the cause of justice nor will it be in public interest. If giving of opportunity of hearing will not be waived at that stage, the same will amount to support immorality or illegality, which cannot be the object of the principle of natural justice.

16. It is well-settled that urgent action could be taken without notice on the ground of public policy, health and safety. In such a case, it is not possible to give a hearing before taking action. Thus, I am of the considered view that no hearing is required before disconnection of electric line when the electricity is being consumed its sanctioned load. In my view, provision of Clause 16.9 of the Tariff is wholly valid and has been made with a view to meet the emergent situation to protect the property of the Board and as such the application of principle of natural justice in such a case has rightly been excluded in public interest. None of the Division Bench decisions, relied upon by the petitioner, says that in the case of disconnection of electric line on the ground as applicable in the present case, hearing has to be given before disconnection. Thus, the first point raised on behalf of the petitioner is rejected.

17. Coming to the second point, it appears that the inspection was held in presence of the petitioner and it was found that the consumption made by the petitioner is more than the sanctioned load. On the basis of that, in terms of Clause 16.9 of 1993 Tariff, a bill has been raised. The petitioner has disputed the bill on the ground that only because of entry in the K.V.A. about the consumption more than the sanctioned load, the consumer cannot be charged as H.T. Consumer. It is submitted on behalf of the petitioner that unless formalities, as required to be fulfilled by the H.T. consumer and complied with by the Board, no bill can be raised as H.T. consumer.

18. If a consumer has a sanctioned load and if it is found that he is consuming more electricity than the sanctioned load, then it is entitled to pay bill raised on the basis of the actual consumption found by the Board. The consumer cannot be allowed to say that unless an agreement is entered into between the Board and the H.T. consumer and other formalities are complied with by the Board, the consumer is not liable to pay for the actual consumption. If this will be allowed, then that will be giving a protection to the immorality and corruption. The persons having taken electricity line upto the sanctioned/contracted load, will use more electricity and will deny the payment on the ground of technicality that the formalities of H.T. consumer have not been completed. This submission of the

petitioner is rejected.

19. The petitioner, as stated above, disputes the raising Of the bill on the ground that the consumption is not beyond the sanctioned load. He has filed two representations before the Board. A Division Bench of this Court in Mahamad Iqbal Vs. The State of Bihar and Others has held that in a case where the consumer has consumed electricity beyond the sanctioned load, the Board has come to a definite finding, if dispute is raised in this regard, after complying with the principle of natural justice. I am in full agreement with the view taken by the Division Bench. The same is binding on me. As the petitioner has raised a dispute, this question has to be decided by the Board after giving an opportunity of hearing to the petitioner and if it is found that the petitioner is using more electricity than the sanctioned load, then it is liable to pay on the basis of the actual consumption in terms of the Tariff of the Board. However, if it is found that he is not using consumption of electricity beyond the sanctioned load, then the bills have to be raised on the basis of the sanctioned load. Accordingly, the Board is directed to dispose of the representation filed by the petitioner within a period of six weeks from the date of production of a copy of this Judgment. Till the matter is decided by the Board, if the petitioner deposits 50% of the amount of the bill raised against it, including the amount already paid, and gives an undertaking to deposit the remaining amount, as determined by the Board after disposal of the representation, within one month thereafter, then its electric line should be restored immediately on fulfilment of the aforesaid condition.

20. In the result, this writ application stands disposed of with the aforesaid direction. However, there shall be no order as to costs.