
(2002) 09 PAT CK 0086

In the Patna High Court

Case No : C.W.J.C. Nos. 15047 and 11451 of 2001

Shree Kishanganj Flour Mills (Pvt.) Ltd.

APPELLANT

Vs

The Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 27-09-2002

Acts Referred:

Citation : (2002) 09 PAT CK 0086

Judgement

Aftab Alam, J.—These two writ petitions, filed by the same petitioner, though seeking slightly different reliefs, arise from facts which are overlapping and interconnected. These two cases were, therefore, heard together and are being disposed of by this common judgment.

2. The petitioner company, running a flour mill took, in October, 1995 a high tension electricity connection with the contract demand of 250 K.V.A. It is asserted on behalf of the petitioner and not denied by the respondents that since the installation of the connection, except on one occasion it never committed a breach of the contract demand of 250 K.V.A., that is to say, the fluctuations of demand, except on one occasion, never crossed the permissible range of 10% of the contract demand. The only occasion when the maximum demand suddenly jumped upto a very high figure, far above the permissible range of 10% of the contract demand, took place in May, 2000 and the trivector metre reading taken on May 31, 2000 registered the maximum demand of 406 K.V.A. According to the petitioner, this steep and sudden rise in the demand was accidental and not due to any cause or reason attributable to the petitioner. It is stated that on 21.5.2000 there was a thunder storm and the lightening in the storm was responsible for the sudden and abrupt rise in the demand which led to six of the connected motors in the flour mill getting burnt.

3. It is further the case of the petitioner (which is the subject matter of considerable controversy) that on the same day (21.5.2000) a representation (Annexure-5) in this regard was submitted to the Electric Executive Engineer, Electric Supply Division, Kishanganj. On this representation the Assistant Electrical

Engineer made an endorsement on 23.5.2000 and the Electric Executive Engineer on 30.5.2000.

4. The bill for the month of May, 2000 was given to the petitioner in June, 2000 which was raised on the maximum demand of 406 K.V.A. as recorded in the meter. Surprisingly though, in the bills for the subsequent month, the demand charges were once again raised on the basis of 250 K.V.A., being the contract demand of the petitioner.

5. On 19.5.2001 the petitioner was given the impugned bill for Rs. 11,16,307.00 (copy at Annexure 3) for guaranteed energy charges and guaranteed demand charges. The bill was raised, in terms of Clause 16.5 of the tariff on the maximum demand of 406 K.V.A. on the basis of the metre reading registered in May, 2000.

6. The petitioner challenged the A.M.G. bill raised on 406 K.V.A. in C.W.J.C. No. 9735 of 2001 which was disposed of by order, dated 19.8.2001. At that stage this Court did not entertain the petitioner's objections against the bill on merit but directed it to place its grievances before the General Manager-cum-Chief Engineer, Kosi Area Electricity Board. In pursuance of this Court's direction, the petitioner made a representation before the General Manager-cum-Chief Engineer who by his order, dated 11.9.2001 rejected the petitioner's objections and upheld the A.M.G. bill for the period 2000-2001 which was raised not on the contract demand of 250 KVA but on the maximum demand of 406 KVA. C.W.J.C. No. 15047 of 2001 has been filed challenging the order, dated 11.9.2001 passed by the General Manager-cum-Chief Engineer.

7. The other writ petition being C.W.J.C. No. 11451 of 2001 arises from the disconnection of the petitioner's electricity line which took place under the following circumstances.

8. While the petitioner was trying to challenge the impugned A.M.G. bill, dated 9.5.2001 before this Court, it was presented with a disconnection notice, dated 3.8.2001 issued u/s 24 of the Indian Electricity Act. The demand in the disconnection notice was mainly with regard to the same disputed bill, dated 9.5.2001 apart from some smaller amounts for fuel surcharge and energy charges for subsequent months. In pursuance of the disconnection notice the electricity line of the petitioner was disconnected on 14.8.2001 for its failure to make payment of the sum demanded in the notice. According to the petitioner, the disconnection was bad and illegal for want of seven clear days notice.

9. This writ petition was filed on 31.8.2001 and while it was pending the petitioner's representation against the impugned bill was rejected by the General Manager-cum-Chief Engineer by his order, dated 11.9.2001. The petitioner then filed the order writ petition being CWJC No. 15047 of 2001 challenging that order. On 23.1.2001 the two cases were made analogous even before any material order was passed in any one of them.

10. As the disconnection of the line was causing serious loss to the petitioner, it agreed to make payments of the dues, as claimed by the Board, in instalment and subject to the conditions as indicated in the Board's letter, dated 29.7.2002. On payment of the 1st instalment in terms of that letter, the electricity line of the flour mill was restored and this fact was taken note of in the order, dated 8.8.2002 passed in these two cases. In that order, this Court gave the following directions:

It will be open to the petitioner to make payment of the impugned bill in the manner indicated in the letter, dated 29.7.2002 and to have his electricity line restored on that basis. Any payment made by the petitioner in terms of the letter, dated 29.7.2001 will be completely without prejudice to his claim in these two writ petitions and rights and liabilities of the party will finally abide by the decision of this Court.

11. As noted above, CWJC No. 11451 of 2001 was filed by the petitioner challenging the disconnection of its electricity line. Hence, after the restoration of the line the main prayer made in that writ petition became somewhat irrelevant and incongruous. The petitioner then filed an amendment petition stating that the action of the Board in disconnecting his electricity line in violation of the mandatory provision of Section 24 of the Indian Electricity Act and without giving him seven days clear notice was invalid and illegal and, therefore, the petitioner would not be liable to pay any charges for the period of disconnection and the action of the Board in putting him to bill even for the period of disconnection was unauthorized and unsustainable in law.

12. It was in these facts and circumstances that these two writ petitions were finally heard with the petitioner praying for (i) setting aside of the order, dated 11.9.2001 passed by the General Manager-cum-Chief Engineer and quashing of the impugned bill, dated 9.5.2001 and (ii) a direction to the Board restraining it from putting the petitioner to bill for the period its line was disconnected from 14.8.2001 till its restoration in August, 2002 on the plea that the disconnection was illegal and invalid.

13. The petitioner assails the A.M.G. bill, dated 9.5.2001 raised on 406 K.V.A. by pointing out that its flour mill drew energy for entire year (or for that matter ever since the installation of the electricity line) without violating the tariff provisions relating to contract demand except on one occasion on May, 21, 2000. It is stated on behalf of the petitioner and much stress is put on the point that though the demand, on that one occasion, registered an abrupt, sudden and steep rise upto 406 K.V.A. it was not due to any design by the petitioner or even due to any cause attributable to the petitioner. It is stated that the petitioner actually suffered substantial damage, inasmuch as six of mill's motors were burnt as the result of the sudden, abrupt and steep rise in the over load. It is further stated that the electrical system, motors and other equipments operating in the flour mill were incapable of drawing or sustaining the heavy load of 406 K.V.A. and hence, six of the motors were burnt due to the sudden inflow of energy at 406

KVA.

14. Having stressed the point that the rise in demand was not by design or even due to any reason attributable to the petitioner, the sudden rise in demand is sought to be explained by the petitioner by stating that a thunder storm and lightening at that time had caused the inflow of energy at such high demand in the mill's electrical system. In this regard reference is also made to a representation (Annexure 5) which according to the petitioner was submitted before the Electric Executive Engineer on 21st May, 2000.

15. On behalf to the Board, it is emphatically denied that any representation was filed before the Electric Executive Engineer in May, 2000 and with regard to Annexure-5 the petitioner is accused of committing forgery. In the supplementary counter affidavit filed on behalf of the Board a photo state copy of the representation is annexed as Annexure-B and in that copy though the typed date is shown as 21st May, 2000 and the endorsement made in the hand of the Assistant Electrical Engineer also bears the date 23.5.2000, the initials and the endorsement by the Electric Executive Engineer bear the date 30.5.2001.

16. In course of hearing Mr. Mihir Kumar Jha also produced the original representation in which the position of the dates is the same as in Annexure-B to the Board's supplementary counter affidavit. Mr. Jha submitted that this representation was filed by the petitioner in May, 2001 but it was ante-dated by one year to make it appear as having been submitted on 21.5.2000; that the petitioner had also taken the Board's Electric Assistant Engineer in his collusion who put the date 23.5.2000 under the endorsement made by him in hand but the Electric Executive engineer gave the correct date and year and under his initial and endorsement the a Electric Executive Engineer correctly gave the date as 30.5.2001. Mr. Jha further submitted that the petitioner had not only submitted an ante-dated representation before the Board but had also committed forgery by changing the date put by the Electrical Executive Engineer from 2001 (01) to 2000 (00) and had filed the forged document (Annexure-5) before this Court.

17. Mr. Jha strongly argued that the petitioner was liable to be shown the door and his writ petition was fit to be dismissed in limine for resorting to falsehood and forgery.

18. It is indeed true that in the original representation the Electric Executive Engineer has put the date as 30.5.2001 both on the face of the representation where he put his initials and on its reverse where he wrote a long note in hand and in the copy of the representation enclosed as Annexure 5 to the writ petition the figures 01 appear to have been changed to 00 at both places. But I fail to understand what would the petitioner gain by this interpolation and forgery.

19. It is not in dispute that the bill for the month of May, 2000 which was given to the petitioner in June, 2000, was raised on the maximum demand of 406 KVA. on the basis of the metre reading taken on 31.5.2000. The petitioner had duly

made payment of that bill. Thereafter, the bills for the succeeding months were raised again on the contract demand of 250 KVA and the petitioner went on making payment of those bills. It was only on 9.5.2001 that the impugned A.M.G. bill was raised on the maximum demand of 406 KVA and the due date for payment of this bill was 29.5.2001. Thus the occasion to make any protest or raise an objection against the A.M.G. bill drawn on the maximum demand of 406 KVA arose for the petitioner for the first time in May, 2001. In those circumstances, the petitioner had no need to manufacture or create a document to show that he had made the protest in May 2000 itself. The petitioner might have quite reasonably and legitimately raised the objection and submitted its representation in May, 2001 after receiving the A.M.G. bill. There was no need for him to change the year in the representation by interpolation or forgery to show that the representation was filed in 2000. By doing this, the petitioner does not improve its case in any way and a representation shown to have been filed in 2001 would not have placed the case of the petitioner at any disadvantage.

20. I am, therefore, satisfied that only on the basis of the discrepancy of dates in the petitioner's representation at Annexure 5, this writ petition is not liable to be rejected.

21. Coming now to the merits of the case, the first thing that the Court would like to take note of is that at first the officials of the Board themselves appeared to be in two minds regarding the application of Clause 16.5 of the Tariff to the meter reading of 406 KVA registered in May, 2000. It is noted above that the bill for the month of May (given to the petitioner in June, 2000) was raised on the basis of 406 KVA but Clause 16.5 was not applied for raising bills for the months of June, 2000 to March, 2001. It is to be borne in mind that the maximum demand charges form part of monthly bills and in case the provision of Clause 16.5 was invoked and applied to the meter reading of 406 KVA on 31.5.2000, then there should have been no difficulty in levying maximum demand charges on 406 KVA in bills for the months of June, 2000 to March, 2001. It was only when the A.M.G. bill for the year, 2000-2001 was raised in May, 2001 that the authorities finally invoked Clause 16.5 of the Tariff and levied maximum demand charges on 406 KVA. The delay of practically one year in invoking the provision of Clause 16.5 of the Tariff in the facts of this case is suggestive that the officials of the Board were themselves not certain whether or not the punitive provisions will have any application in the facts and circumstances of the case.

22. This takes us to the order passed by the General Manager-cum-Chief Engineer by which he has rejected the petitioner's representation against the impugned bill, dated 9.5.2001 raised on the basis of 406 KVA by application of the provision of Clause 16.5 of the Tariff.

23. The greater part of the order is devoted to considering the petitioner's explanation for such abrupt, sudden and steep increase in the demand on a particular day. As noted above, according to the petitioner, it was due to the thunder-storm and natural lightening. The General Manager completely

debunked the explanation that the flow of energy at such high power was due to any thunder-storm or lightening on that date and he has given good reasons not to accept the explanation given by the petitioner. To the extent the General Manager has rejected the petitioner's explanation, it is the expert's views and this Court is not a position to find any fault with that part of the order. Mr. Rekhi, learned Counsel for the petitioner was unable to satisfy this Court that there was any error in the order of the General Manager in so far as it rejected the explanation given by the petitioner that the sudden rise in load was due to lightening and thunder-storm on that day.

24. But interestingly the General Manager does not record a positive finding that the shooting up of the load was by design and was due to some wilful and deliberate Act on the part of the petitioner. It appears that the General Manager was himself somewhat at a loss in finding a satisfactory explanation for this episode. In the concluding part of the order, he observed as follows:

However the fact remains that the reading of maximum demand for May 2000-2001 recorded on meter in abnormally high which in all probability is due to some short circuit or meter zaamming (sic jamming) in consumer premises due to which abnormally high over load has been drawn by the consumer's factory for a short period and the consumer should pay for the same.

(emphasis added)

25. It is, thus, to be seen that on the one hand the General Manager speculates that the flow of energy on the abnormally high over load of 406 KVA for a short period was in all probability due to some short circuit or meter jamming. And on the other hand, he holds that the consumer should pay the maximum demand charges for the whole year on the raised over-load simply because such a reading was recorded in May. In other words, he holds the consumer liable to face the punitive provision of the Tariff though he might not be at fault or responsible for the withdrawal of energy at such abnormally high over-load for a short period.

26. I am unable to appreciate this approach for the application of Clause 16.5 of the tariff. Clause 16.5 is as follows:

16.5 Surcharge for exceeding the contract demand:

If during any month in a financial year (April to March next year) the actual maximum demand of a consumer exceeds 110 per cent of the contract demand then the highest demand so recorded shall be treated as the contract demand for that financial year and the minimum base charges both in respect of maximum demand and energy charge shall be payable on that basis.

27. As the plain language of the tariff suggests, if the over-load in any month is found to have been raised by 10% of the contract demand, the consumer becomes liable to be put to bill for the entire year, taking the raised over-load as his contract demand. It is also undisputed that the demand is recorded in the

trivector meter at half hourly intervals. If the contract demand of a consumer is 100 and in case in one half-hour period during the entire year the meter records an over-load of 150 KVA, then the consumer will be put to billing for the whole year both for maximum demand and energy charges, taking his contract demand to be 150 in place of 100.

28. It is, thus, to be seen that an indiscretion or mistake by the consumer even for a half hour period would make him liable to billing, for the whole year, at a much higher rate. It is, therefore, clear that Clause 16.5, like some other clauses in the tariff, e.g., Clause 16-9 is a punitive clause intended to keep in line unscrupulous consumers and to prevent them from committing theft of power or unauthorized raising of the over-loads.

29. Hence, it follows that before invoking the punitive provisions of the tariff (in this case Clause 16.5) there must be some materials on the basis of which the concerned authority may be able to come to a finding that the rise in the demand was by design or by some deliberate or wilful act by the petitioner. In nine out of ten cases or even in ninety nine out of hundred cases, the inference that the unauthorized rise of the demand was by a wilful and deliberate act of the consumer may be obvious and may not require any detailed consideration but there may be one case in a hundred or even a thousand, like the one in hand, where it may be difficult to come to a finding on the basis of the available materials that the hand of the consumer was apparent and obvious.

30. In such cases, to my mind, it would be wholly unfair, unjust and unreasonable to mechanically invoke the punitive provision of Clause 16.5 unless the competent authority in the Board was satisfied on the basis of available materials that the unauthorized rise in the load was attributable to some action on the part of the consumer.

31. In this case, the objective finding is that some motors in the flour mill got burnt as a result of the sudden and abrupt rise in the over-load. It is the case of the petitioner that the system installed in the flour mill and the infra-structure laid out there was incapable of taking the high load of 406 KVA. No one would try to draw energy at such abnormally high over-load which might result into the burning down of the unit itself or some of the equipments installed in the unit. It has also come on the record that two fuses of 11 K.V. power transformer had blown up. It, therefore, remains for the General Manager to examine whether the sudden, abrupt and abnormally high rise in the over load on 21.5.2000 or any other day in May, 2000 can be attributed to some act of the petitioner.

32. For the reasons discussed above, I am unable to uphold the order of the General Manager, dated 11.9.2001 and in my view the matter must go back to him to reconsider the petitioners objections to the impugned bill in the light of this judgment.

33. The impugned order, dated 11.9.2001 is accordingly set aside and the matter is remitted to the General Manager-cum-Chief Engineer, Kosi Electric Supply

Area, Saharsa for passing a fresh order on a reconsideration of the petitioner's representation in accordance with law and in the light of the observations made here-in-above.

34. Coming now to the other case, C.W.J.C. No. 11451 of 2001; In this case the claim of the petitioner is that the disconnection of his electricity line of 14.8.2001 was bad and illegal for want of seven days clear notice and hence, he is not liable to pay any charges for the period of disconnection from 14.8.2001 to August, 2002. On this issue too, the facts are brief and without controversy.

35. A disconnection notice, dated 3.8.2001 was issued to the petitioner u/s 24 of the Indian Electricity Act. In this notice, a demand was made for a sum of Rs. 12,56,064 out of which Rs. 11,16,307 represented the A.M.G. bill, in dispute. The notice, dated 3.8.2001 was sent by registered post on 7.8.2001 and it was received by the petitioner on 10.8.2001. According to Section 24 of the Indian Electricity Act, the electricity connection of the petitioner on the basis of this notice could be disconnected not before 18.8.2001. But the petitioner's line was admittedly disconnected on 14.8.2001, that is to say, before the expiry of seven clear days from the date of receipt of the disconnection notice.

36. Faced with this fact position, the Board found it difficult to justify the disconnection of the petitioner's line on the basis of the notice, dated 3.8.2001. The disconnection of the petitioner's line was, therefore, sought to be justified on the basis of two earlier notices. It was stated in the counter affidavit that disconnection notices u/s 24 of the Indian Electricity Act were earlier issued to the petitioner on 15.12.2000 and 1.2.2001 and the disconnection was made in pursuance of those earlier notices.

37. It is to be seen that the notices relied upon by the Board were issued in December, 2000 and February, 2001, that is to say, more than six months before the date of disconnection. It may further be noted that after the issuance of the two notices an agreement was arrived at and executed between the petitioner and the Board on 28.2.2001 in connection with the dues under the two notices. In terms of the agreement, the petitioner was required to pay the dues in instalments. The first instalment was paid at the time of execution of the agreement and the future instalments were paid by the petitioner by handing over post-dated cheques. The agreement further stipulated payment of compensatory charge @ 2% which were to form part of the future monthly bills. It is an admitted position that the Board had received the post-dated cheques from the petitioner in terms of the agreement and all the cheques on being presented were duly credited to Board's account in time.

38. As regards payment of compensatory charges in future bills, the bill of January, 2001 was given on 8.2.2001. The bill was for a sum of Rs. 4,02,718 in which the amount of compensatory charge was only Rs. 6331. The petitioner paid this bill sans the compensatory charge amounting to Rs. 6331. Although it is not the practice in the Board to accept part payment of the bill but, it was

explained that as the compensatory charges amounted to a very small sum the Board accepted the payment of the bill made by the petitioner even without the compensatory amount. For the months of March and April, the petitioner paid the full bill which included the compensatory charges. Then again for the months of May and June, the petitioner paid the bills without payment of the compensatory charges which were admittedly a very small portion of the total bill. After June, the petitioner did not pay the bill raised by the Board. The unpaid bill of July, 2001 thus formed the demand in the disconnection notice, dated 3.8.2001.

39. In the facts and circumstances stated above, it is impossible for me to justify the disconnection of the electricity line on 14.8.2001 on the basis of the demand notices, dated 15.12.2000 and 1.2.2001. It is seen above that those two notices had led to the agreement, dated 28.2.2001 on the basis of which the petitioner had made payment of the dues in instalments by post-dated cheques. The petitioner had of course defaulted in payment of the compensatory charges @ 2% for three months and had also not paid the bill of July, 2001 but the bill of June, 2001 and the unpaid compensatory charges had formed part of the demand notice, dated 3.8.2001.

40. The earlier notices, dated 15.12.2000 and 1.2.2001 were clearly superseded by these intervening facts and the disconnection of the line on 14.8.2001 cannot be justified by any means on the basis of those two earlier notices. The admitted position is that the line was disconnected before the expiry of seven clear days from the date of receipt of the notice, dated 3.8.2001. The disconnection must, therefore, be held to be invalid in the light of the decisions in the case of Hotel Satkar Pvt. Limited v. Bihar State Electricity Board and Ors. 1980 B.B.C.J. 2000, Mahamad Iqbal Vs. The State of Bihar and Others I.V.O. Pharmaceuticals (P) Ltd. and Others Vs. Bihar State Electricity Board and Others and S. Fakruddin and Others Vs. The Govt. of A. P. and Others,

41. It, therefore, follows that the petitioner will not be liable for payment of any charges for the period commencing from the date of disconnection to the date of restoration of its electricity line.

42. The Board is accordingly directed to draw a fresh account of the petitioner in the light of this judgment.

43. It is expected that the General Manager-cum-Chief Engineer shall pass a fresh order on the petitioner's representation against the disputed bill, as directed in this judgment, within two months the date of receipt/production of a copy of this judgment in his office. Till then the electricity line of the petitioner shall not be disconnected for non-payment of the disputed bill.

44. In the result, C.W.J.C. No. 11451 of 2001 is allowed and C.W.J.C. No. 15047 of 2001 is allowed to the extent indicated in this judgment. There shall be no order as to costs.