

(2000) 03 PAT CK 0083

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 3702 of 1998

Sone Vanaspti Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 01-03-2000

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49(3)

Citation : AIR 2000 Patna 235 : (2000) 2 PLJR 559

Hon'ble Judges : Sanat Kumar Chattopadhyaya, J

Bench : Single Bench

Advocate : L.K. Bajla and Pravin Kumar Sinha, for the Appellant; S.S. Rekhi, for the Respondent

Final Decision : Dismissed

Judgement

Sanat Kumar Chattopadhyaya, J.—The petitioner-Company, for manufacturing Vanaspati Ghee and Refined Oil set up an industrial unit at village Barum, Sone Nagar in the district of Aurangabad in the State of Bihar, which is known as M/s Sone Vanaspati Limited.

2. The electricity energy being a primary raw material for manufacturing such product the petitioner-Company entered into an agreement with the Board on 26-3-1993 on a Contract Demand of 1200 KVA. For some unavoidable financial burden, on 30-11-1993 the petitioner requested the Board for reduction of Contract Demand from 1200 KVA to 500 KVA. The Board by its resolution permitted the petitioner-Company to reduce its Contract Demand to 500 KVA, subject to, however, certain conditions. The decision of the Board was communicated to the petitioner on 17-1-1994, which is Annexure-2. Pursuant to this decision a fresh agreement was entered into between the Board and the petitioner on 31-1-1994, which is Annexure-3. After reduction of the Contract Demand to 500 KVA, according to the petitioner, the highest maximum demand of the petitioner was recorded for the year 1994-95 as 425 KVA. This was recorded in February, 1995. After signing of the new agreement no dispute arose

for some years and the Engineer (commercial) through his letter dated 18-4-1996 informed the petitioner that as per the Board's decision the transformer Installed in the premises was to be changed latest by 31st of May, 1996, by a transformer of capacity within the permissible limit. It was made clear if the transformer was not changed by the said date, bill should be raised as per 33 KV Tariff with effect from 1-6-1996 on the basis of the original Contract Demand of the petitioner i.e. 1200 KVA. Similarly, the Board will also levy surcharge equal to the difference of demand charge as applicable to 33 KV and 11 KV Tariff from the date of reduction of load. This letter is Annexure-4. Subsequently, the petitioner came to know that the decision was taken by the Board in his 438th meeting held on 19-2-1996. The petitioner protested against the letter of the Chief Engineer dated 18-4-1996 contending, inter alia, that the said letter was in violation of the contract. When the petitioner was waiting for some reply of his letter, a supplementary bill on account of surcharge was raised. Thereafter, in all the monthly bills the Board continued to raise bill on the assumed Contract Demand of 1200 KVA. The petitioner was not in a position to replace the then existing transformer as it was financially handicapped and to this effect Secretary of the Department of Industries also wrote a letter to the chairman of the Board on 4-2-1997 requesting the Chairman of the Board to allow the petitioner to retain the then existing transformer of 2000 KVA and not to disconnect the supply of the petitioner. This letter is Annexure-9. In spite of all these facts when the authorities continued to raise the bills on the basis of Contract Demand of 1200 KVA. the petitioner approached the Member, Finance, of the Board, the General Manager and the Chief Engineer including other authorities by filing representation but without any result. The petitioner ultimately filed a representation on 4-2-1997 before the Chairman of the Board, which is Annexure-12. This representation was rejected by the Board and the petitioner was requested to make payment of all the dues for avoiding disconnection of supply of electrical energy. The petitioner, to avoid disconnection offered to pay the genuine dues and requested for not disconnecting the electrical energy. Thereafter on subsequent dates the Superintending Engineer reiterating the stand of the Board threatened the petitioner to disconnect the supply in case of failure to make payment of all outstanding dues. This letter is Annexure-14. On 30-4-1997 the electricity supply line of the petitioner was disconnected and the petitioner finding no way out entered into an agreement to pay Rupees 6.95/- lacs towards the first instalment and on payment of the same the electric connection was restored on 1-5-1997. The petitioner, however, protested before the higher authority of the Board expressing his resentment for forcing it to sign an agreement on payment of the dues. The petitioner moved this Court in C.W.J.C. No. 3792 of 1997 challenging the bill from the month of February, 1997 including the arrears of Rupees 37,17,545/-. This Court directed the Board to abide by the interim order passed in C.W.J.C. No. 1632 of 1997 so far as the demand of fuel surcharge was concerned and also directed the petitioner to file a representation before the Chairman relating to demand of surcharge for using a higher capacity of transformer. The Board was directed to

pass an order on this representation within a specified period and till then the Board was restrained from disconnecting the electric supply of the petitioner's premises on payment of current energy bill. The order of the High Court is Annexure-15. On the representation filed by the petitioner pursuant to order of this Court the Chairman took a decision, which is Annexure-17. The petitioner filed contempt application being M.J.C. No. 254 of 1998 on the allegation that though this Court directed the Board to dispose of the representation but the Chairman himself has taken a decision. The said contempt petition is still pending. This decision of the Chairman was ultimately rectified by the Board and this fact intimated to the petitioner on 9-3-1998.

3. Being aggrieved by the decision of the Chairman, which was rectified by the Board subsequently, the petitioner has moved this Court in the present writ application challenging the very jurisdiction of the Chairman to pass the said order. Similarly prayer has been made to quash the bills and to set aside the letter dated 18-4-1996 etc.

4. Mr. Bajla, learned senior counsel appearing on behalf of the petitioner, has strongly contended that the Chairman mechanically passed the order, which was subsequently rectified by the Board without application of mind. According to him, the Board once having entered into an agreement could not have rescinded the same unilaterally by relying on another resolution. He contends that the said agreement being made by statutory authority, terms and conditions of the same could not have been superseded in view of the provisions as contained in Section 49 of the Electricity (Supply) Act, 1948. He continues that the Board was not entitled to levy surcharge or tariff applicable only to the petitioner, which is penal in character. Similarly, before enforcing the Clause 16.4 of the Tariff, 1993, the consumer was entitled to get a notice of at least six months for replacing its the then permissible transformer with a transformer of low capacity and the Board could not have forced the petitioner to change the same within a period of 48 days. Placing reliance in the case of Bihar State Electricity Board and others Vs. Parmeshwar Kumar Agarwala, etc. etc., . Mr. Bajla contends that whatever may be the terms and conditions in the agreement the same cannot be against the Tariff and agreement cannot override any resolution of the Board.

5. The factual backgrounds portrayed by the petitioner has not been accepted by the Board in its entirety. According to the stand of the Board in its counter affidavit the connection under the Contract Demand of 1200 KVA was given to the petitioner pursuant to an agreement. Subsequently on its own request itself the Contract Demand was reduced to 500 KVA. A clear undertaking was given by the petitioner that his demand will increase in due course when it will seek enhancement of load and till then request was made for reduction of existing Contract Demand to 500 KVA. In view of this assurance the Board took a resolution allowing reduction in the Contract Demand to 500 KVA and to use transformer of 2000 KVA on certain conditions. The petitioner agreed with that and gave his undertaking on 31-1-1994. Subject to the conditions the Contract

Demand was reduced to 500 KVA but the petitioner took no steps for increasing his Contract Demand till about February, 1996, in compliance with his own representation. As considerable period was lost, the respondents-Board decided by its Resolution dated 19-2-1996 to levy surcharge of additional transformer capacity and 33 KV supply as agreed by the petitioner. The said decision was communicated to the petitioner-Company on 18-4-1996 requesting him to replace the transformer within the permissible limit laid down in the Tariff notification latest by 31-5-1996. It was indicated to the petitioner that on failure to change the transformer by the said date bill would be raised as per 33 KV supply from 1-6-1996 on its original Contract Demand and the Board will levy surcharge equal to the difference of demand charges as applicable to 33KV consumer and 11 KV tariff from the date of reduction of load, The petitioner, however, did not reduce the capacity of its transformer and moreover when its 2000 KVA transformer got burnt on 29-6-1997, a 1500 KVA transformer was installed by it without reducing the capacity of the transformer within permissible limit. It is further stated that Meter of the Petitioner's premises had stopped since September, 1997 but despite repeated request the petitioner did not give its own Meter for replacement and ultimately Meter installed at the petitioner's premises was replaced and maximum demand recorded in the month of December, 1999, was found as 596 KVA. This reading of the Meter made the petitioner liable for penal charge under Clause 16.9A of the Tariff. As the petitioner did not give any heed to the request made by the Board through its communication dated 18-4-1996, the Board had to increase the Contract Demand to its original level of 1200 KVA and bill was raised on 6-9-1996 in accordance with special agreement. Refuting the allegation that a sum of Rupees thirtysix thousand and odd has been charged in terms of communication dated 18-4-1996, it is categorically stated that the balance amount is due against current bills, which was not paid by the petitioner. The bill for the month of February, 1997, includes the aforesaid due amount of Rupees 11,62,060.68 paise and also the current charge amounting to Rupees 24,55,482.34 paise. Though there was a clear undertaking given by the petitioner but it is making part payment of the current bill on the basis of 500 KVA Contract Demand and, as such, up to May, 1999, there is an outstanding amount of Rupees 2,07,247.37 paise. The replacement of the original transformer of 2000 KVA by another 1500 KVA came to the knowledge of the Board's Officer during an Inspection made on 24-9-1997. To this effect a letter was written to the petitioner to give details of the new transformer. Referring to the agreement as contained in Annexure-H to the counter affidavit it has been stated that the petitioner has suppressed this document from the Court deliberately as by this agreement the petitioner-Company had agreed to pay the dues by the instalments. The factum of entering into this agreement (Annexure-H) by duress has been categorically denied by the respondents by asserting that the petitioner was obliged to pay the bills even under protest and thereafter to make representation before the Billing Authority in accordance with law and for non-payment of such amount the authority was empowered to disconnect the electric supply and under the law the Board was

not required to see the financial condition of consumers.

6. From the facts noted above it appears that while contention of the petitioner is that the Board was not entitled to raise bill as per Contract Demand of 1200 KVA because admittedly the said Contract Demand was reduced to 500 KVA, the stand of the Board is that reduction of the Contract Demand was only a temporary measure, which was allowed by the Board considering the assurance given by the petitioner that it will ask for enhancement of the Contract Demand and that having not enhanced for more than two years, the Board had no option but to direct the petitioner to change the transformer of its limited capacity and to pay the arrears of the bill. So the point for consideration is as to whether the petitioner is bound by the agreement entered into between the Board and the Company and secondly whether the Board had any power to enter into an agreement, which goes against the Tariff?

7. To answer the first question some relevant documents are required to be seen. Admittedly after executing of the agreement for Contract Demand of 1200 KVA on 10-4-1993 the petitioner by his letter dated 27-9-1993 (Annexure-A) expressed his desire to reduce the contract load to 500 KVA as the said Company was put to some financial troubles. In the said letter assurance was given that "as and when our demand increased we again intimated you for enhancement of load as required from time to time". This letter was by the Administrative Officer of the Company. On such assurance the Board agreed to reduce the Contract Demand and also allowed to use 2000 KVA transformer subject to the conditions, inter alia, that "the existing 33/0.4 KVA, 2000 KVA transformer will be allowed for the purpose of availing power supply at 33 KV. But since the maximum permissible limit of transformer capacity is 150% of the contract demand as per the Board and the Tariff, hence the consumer has to give a written undertaking to pay a surcharge for higher installed capacity of transformer if the Board so decides, at a late date." Thus, subject to the aforesaid agreed conditions Contract Demand was reduced to 500 KVA with existing 2000 KVA transformer. It was noticed by the Board that till February, 1996, the petitioner did not take any action to increase its Contract Demand as assured by its letter dated 27-9-1993. The Board took a resolution on 19-12-1996 to levy surcharge on additional transformer capacity. Pursuant to this resolution the Board by its letter dated 18-4-1996 directing the petitioner to replace the transformer within the permissible limit latest by 31-5-1996 or to face several consequences. This communication is Annexure-C. It further appeals that the petitioner did not give any importance to this letter of the Board and instead, when 2000 KVA transformer was burnt out, it replaced another transformer of 1500 KVA, which was uncontrovertedly beyond the capacity in relation to the reduced Contract Demand. Not only this, it also came to the knowledge of the Board that since September, 1997 though the Meter in the petitioner's premises was stopped it did not replace the defective Meter inspite of request made by the Board and ultimately when new Meter was installed at the petitioner's premises maximum demand recorded was 596 KVA. The statements of accounts as contained in

Annexure-E cannot be said to be inflated one inasmuch as these bills show that different headings on which the bill was raised. Whatever may be the position there are no two opinions that the petitioner-Company agreed to pay the amount of this bill, which is clear from Annexure-H to the counter-affidavit. Considering this aspect of the matter I am of the view that the petitioner having entered Into an agreement with the Board now cannot be allowed to say that the agreement was against the Tariff or subsequent agreement for making payment by instalments was under any duress. Having taken advantage of the agreement by getting reduced Contract Demand with certain conditions it does not lie in the mouth of the petitioner to say that the said agreement was void being against the public policy, it is well settled that once a contract is reduced to writing, by operation of Section 91 of the Evidence Act it is not open to any of the parties to seek to prove the terms of the contract with reference to some oral or other documentary evidence to find out the Intention of the parties. Reference, if any, may be made to the decision of the Supreme Court in the case of Tamil Nadu Electricity Board and another Vs. N. Raju Reddiar and another, . In the present case the petitioner is not only bound by the agreement dated 27-9-93 (Annexure-A) but also the subsequent agreement dated 30-4-1997 (Annexure-H) under which the petitioner-Company agreed to pay all the dues.

8. The power of the Board for entering into an agreement in special circumstances mentioned therein u/s 49(3) of the Electricity (Supply) Act, 1948 has been interpreted by their Lordships in the Supreme Court reported in Indian Aluminium Company Vs. Kerala State Electricity Board, , According to the Supreme Court the Board has power in special circumstances to fix different tariffs for the supply of electricity. The Board Can in exercise of power conferred under Sub-section (3) enter Into an agreement with a consumer for supply of electricity for a specific period of time. Such a stipulation would amount to fixing of special tariff and it would clearly be in exercise of the power to fix special tariff granted under Sub-section (3) of Section 49. In the aforementioned case the point for consideration was as to whether the Board has power to enhance the rates for supply of electricity notwithstanding an agreement binding it to supply electricity at certain rates where it finds that the contractual rates are less than the cost of generation, distribution and supply of electricity and in the result there is loss to the State Electricity Board in its operations ? Rejecting the contention made on behalf of the Board their Lordships, Inter alia, observed that "once the agreements were made containing these stipulations, it was not competent to the Board to override these stipulations which were binding as having been validly made in exercise of statutory power. The Board could not enhance the charges in breach of these stipulations. To hold that the Board could unilaterally revise the charges notwithstanding these stipulations would mean that the stipulations had no binding effect, or in other words the Board had no power to enter into such stipulations. That would negate the existence of statutory power in the Board under Sub-section (3) of Section 49 to fix the charges for a specific period of time, which would be contrary to the plain

meaning and intendment of the section."

9. From the aforesaid authoritative pronouncement, it is clear that once the Board entered into an agreement in exercising its power u/s 49(3) of the Act it is bound by the stipulations made in the agreement. If this be the position of the Board in respect of a contract entered into by it with a consumer, in my view, the petitioner-Company in this case is also bound by the terms and conditions of the agreement: The petitioner-Company's request for reduction of the Contract Demand on certain assurance was accepted by the Board in order to safeguard the interest of the Company. It agreed with the said proposal but with certain conditions. Admittedly the petitioner did not even try to enhance his Contract Demand and, as such, the Board had no option but to direct him to replace the transformer of 2000 KVA to its permissible capacity limit and even that was not done. When the original 2000 KVA was burnt out the petitioner instead of installing a transformer of limited capacity replaced the burnt out transformer by 1500 KVA transformer. There are no two opinions on this fact that if a higher capacity of transformer is installed for supply of less KVA energy, there is always chance of pilferage and electric theft. The Board waited for more than two years so that the petitioner could enhance his Contract Demand and that having not done, the Board was justified in directing the petitioner to replace the transformer and to pay the arrears of amount. When with an open eye the petitioner entered into an agreement, it cannot escape from the said agreement. The argument of Mr. Bajla that considering the financial condition of the petitioner-Company equity demands that some indulgence to be given to the petitioner, in my opinion, has no force. It is well settled that a person who seeks equity must show equity. In this case equity is not in favour of the petitioner.

The last argument of Mr. Bajla that the Chairman of the Board could not have disposed of the representation of the petitioner when this Court directed the Board to dispose of the same, in my view, also has no merit. This Court noticed that the petitioner filed a representation to the Chairman of the Bihar State Electricity Board as well as the General Manager, which were still pending at that stage. The writ application was disposed of with a direction to the Bihar State Electricity Board to pass an order. This Court, in my view, did not categorically observe that the Chairman before whom the representation was pending would not dispose of the representation. The Chairman of the Board disposed of the same and his decision was subsequently rectified (ratified) by the Board, which suggests that the Board has also affirmed the decision of the Chairman. The order of the Chairman is also reflected from the letter of the Director Accounts (Revenue) dated 3-9-97 as contained in Annexure-17. The Chairman took into consideration of the fact that the consumer has agreed to pay the surcharge so decided by the Board by making representation to the Board for grant of instalment facility to pay the same. The instalment facility has been allowed and the consumer has also made some payments. The Chairman also noticed that the demand raised by the Board is in order and the consumer has already accepted the same by entering into a contract while signing of agreement of the

instalment.

I find no irregularity or unreasonableness in the order of the Chairman, which has been ultimately rectified (ratified) by the Board as appears from Annexure-19.

10. Having considered the facts and circumstances of the case, I am of the view that the petitioner is not entitled for any relief in this application.

11. In the result, this writ application is dismissed.