

(2001) 02 JH CK 0063
In the Jharkhand High Court
Case No : CWJC No. 1191 of 2000 (R)

Steel Authority of India Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Citation : (2001) 02 JH CK 0063

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

Bench : Single Bench

Advocate : M.M. Banerjee, A. Sen and A.K. Das, for the Appellant; V.P. Singh and R. Shankar, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In the instant writ application the petitioner has prayed for quashing of the bill and the demand notice issued by the respondent-Board, whereby Board has demanded electricity charges on the basis of total transformer capacity and also threatened that in the event of non-payment of the bill, the electricity line of the petitioner shall be disconnected.

2. The petitioner's case is that in 1991 it has taken HT electric connection with contract demand of 1675 KVA from the respondent-Board and as per 1991 tariff notification the petitioner was entitled to keep 175% of the contract demand i.e. upto 2974 KVA. It is stated that under 1993 tariff notification issued by the Board the transformer capacity of a consumer was reduced from 175% to 150%. Accordingly, the petitioner was entitled to keep transformer capacity upto 2512 KVA. The petitioner's further case is that it has been utilising two transformers at a time each of 1600 KVA and 630 KVA i.e. total 2230 KVA which is well within the permissible limit of 150% of the contract demand. It is contended by the petitioner that it has never consumed electricity beyond the permissible limit of contract demand of 1675 KVA. The petitioner's further case is that whenever the metering unit of the petitioner was burnt the petitioner has paid electricity charges to the respondent-Board at much higher rate. In 1995 a new electric

meter was installed in the permission of the petitioner and in 1997 the respondent No. 3, the Electrical Superintending Engineer, issued letter dated 15.3.1997 stating Board's tariff limiting transformer capacity of 150% and showed total transformer capacity as 4460 KVA including of SAIL Township. The petitioner said to have explained to the Board that the demand was never exceeded beyond 1500 KVA and there was no need to reduce the transformer capacity nor to increase the contract demand. On 17.7.1997 PC/PT unit of metering burnt and the petitioner requested the Board to replace the same. Thereafter when the Board raised bill for the month of March, 98 the petitioner objected to the said bills. It is contended by the petitioner that the respondents have all along been ensuring replacement of PC/CT unit but the same was not replaced, as a result of which bills for much higher rate of electricity has been charged by the Board. It is stated that the respondent-Board sent bill dated 2.12.1998 for payment of Rs. 55,39,983/- on account of monthly bill, arrears bill on [he total transformer capacity and on the basis of 2974 KVA consumption of electricity by the petitioner without ascertaining the actual consumption of electricity.

3. A counter affidavit has been filed by the Board. In paragraph 6 of the counter affidavit, the Board has mainly taken the following stand :--

"6. That before replying to the averments made in the writ application it is stated :--

(a) R&D Centre was given C.T. connection for 1675 KVA contract demand bearing consumer No. HD/1 on 29.3.1984 on 33 KV supply agreement was executed by the Company and Bihar State Electricity Board on 7.10.1991. In the Tariff of 1993 the Transformer capacity to be installed should not be more than 150% of contract demand (Clause 16.4.1).

(b) R&D has installed 2 x 1600 KVA and 2 x 630 KVA Transformer stating that 1 x 1600 and 1 x 630 KVA transformer were kept as "Stand by". However, there is no provision for keeping any transformer as "Stand by".

(c) During inspection 2 x 1600 KVA and 2 x 630 KVA transformers were found installed and connected in the circuit so a letter had been served on the consumer either to reduce the transformer capacity or enhance the contract demand to comply with the provision of the Board's Tariff. As they have not raised as per total transformer capacity of 4460 KVA to 2974 KVA from March, 1998 and they were billed accordingly.

(d) Again confirmation by the petitioner vide their letter No. RD/MSD/E-128 dated 23.3.1999 transformer since end of January, 1999. Inspection were made again by the BSEB and they also confirmed that two transformers were out of circuit since January, 1999. Hence billing were done on 2230 KVA (1600 + 630 KVA) only.

(e) Therefore, during the period of the transformers having been connected to

the circuit i.e. from March, 1998 to January, 1999 the petitioner was requested to pay the amount vide letter No. C&R 264 dated 19.2.2000 and C&R 428 dated 22.3,2000.

(f) Supplementary bill for arrear of fuel surcharge was raised as per the Board's 1998 to January, 1999 as the contract demand was raised fuel surcharge was as well charged for the unit charged during that period. Therefore, the bill so raised and notices is not wrong."

4. The respondents' further case is that the petitioner made an agreement on 7.10.1991 for 1675 KVA contract demand and installation of four transformers beyond contract demand of 1675 KVA by the petitioner is not regular and exceeds more than 150% of the contract demand. It is contended that the bill for March, 1998 was issued taking into consideration of total transformer capacity i.e. 4460 KVA which is not unrealistic as total transformer capacity was connected with circuit. Lastly it is contended that CT/PT metering unit was burnt in July, 97 and since then average billing was done as per Tariff.

5. I have heard Mr. M.M. Banerjee, learned counsel appearing for the petitioner and Mr. V.P. Singh, learned counsel for the respondent-Board.

6. Mr. Banerjee, learned counsel, mainly contended that when the impugned bills were raised on the ground that the meter was defective then as per 1993 Tariff there are only three modes of calculation of payment of electricity charges, namely, (i) average consumption of previous 3 months from the date of meter being out of order, (ii) average consumption for the corresponding three months of the previous years' consumption; or (iii) the minimum monthly guarantee whichever is the highest. According to the learned counsel the demand was made by the respondent of the electricity charges on the basis of total transformer capacity of 4460 KVA from March, 98 to January, 99, which is wholly illegal, arbitrary and without jurisdiction.

7. On the other hand, Mr. V.P. Singh, learned counsel, submitted that the very installation of two transformers and keeping one of them "Stand by" was illegal and against the provision of law. It was found during inspection that two transformers were connected with the circuit and immediately letter was sent to the petitioner either to reduce the transformer capacity or enhance the contract demand. Since the petitioner agreed to the said proposal the Board raised bill on the total transformer capacity of 4460 KVA. It is further contended that as the contract demand was raised, fuel surcharge was also raised for the said period and, therefore, a supplementary bill for arrears of bill was raised as per Board's order.

8. After having heard the learned counsel for the parties and after perusing the affidavits and the documents thereto, the first question that falls for consideration is as to whether installation of more than the transformer by the petitioner was against the provision of law as asserted by the respondent-Board. In paragraphs 10 and 11 of the writ petition, it is stated by the petitioner that on

or about 8.4.1985 it was agreed that the respondent-Board will supply electricity upto 1675 KVA to the petitioner. Accordingly the petitioner installed four transformers. Out of four transformers two transformers, one each of 1600 KVA, have been installed in the office complex of the petitioner and two transformers, one each of 630 KVA have been installed in the SAIL, Satellite Township. In paragraph 12 of the writ application it is stated that the petitioner required only two transformers at a time for operation, one each of 1600 KVA and 630 KVA at office complex and SAIL Satellite Township respectively making total of 2230 KVA. In paragraph 13 of the writ petition it is stated by the petitioner that as, a matter of fact it is well within the knowledge of the respondent-Board that prior to March, 98 at a time only two transformers, one each of 1600 KVA and 630 KVA were in use and remaining two of the same capacity were never connected for use. Further in reply to the counter affidavit the petitioner contended that in 1984 when H.T. connection was obtained by the Petitioner there was no restriction on transformer capacity in the Tariff and the two transformer of 1600 KVA each was well within the limit. These factual position has not been denied or disputed by the respondent-Board in the counter affidavit. In that view of the matter, it cannot be said that the installation of more than one transformer during the relevant time was against the provision of law.

9. The next question, therefore, arises for consideration is whether raising of bill of electricity charges for the period March, 1998 to January 1999 on the basis of total transformer capacity of 4460 KVA was justified.

10. For better appreciation of the case of the parties, I will first refer some of the clauses of 1993 Tariff. Clause 16.4.1 reads as under :--

"16.4. Transformer Capacity.--16.4.1. The transformer capacity of H.T. and E.H.T. consumers shall not be more than 150 per cent of the contract demand.

If any consumer is found violating this provision his service connection will be disconnected.

Similarly Clause 16.8 and 16.9 reads as follows:--

"16.8 Billing when meter has either gone defective or burnt or stopped.--In the event of meter being out of order i.e. burnt/stopped or having ceased to function for any reason during any month/months, the consumptions for that month/months shall be assessed on average consumption of previous 3 months from the date of meter being out of order or the average consumption for the corresponding three months of the previous year's consumption or the Minimum Monthly Guarantee whichever is the highest. Such consumption will be treated as actual consumption for all practical purposes until the meter is replaced/rectified. Operational surcharge, power factor surcharge and electricity duty shall be levied on consumption so calculated.

16.9. (A) Detection of unauthorised load.--If at any time the 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 below and may also disconnect the supply without notice:--

I. Necessary assessment for compensation in the following malpractice and theft of energy cases shall be made as below :--

(a) In cases of use of energy through artificial means or by adopting any appliance.

(b) In case of using energy by creating obstruction in running of meters or interfering with the system of supply or wires etc.

(c) In case of dishonest abstraction of electrical energy or running of energy when supply is disconnected...."

11. From reading of the aforesaid clauses of 1993 Tariff particularly 16.4.1 and 16.9 it is clear that if the transformer capacity is increased at the instance of the consumer in violation of terms of the H.T. Agreement and the tariff the Board can disconnect the supply of electricity. It further provides that if the consumer is found exceeding contracted load without specific permission of the Board then the later may besides disconnection of supply of electricity raise bill in respect of the electrical energy so consumed or used by the consumer.

12. In the light of the aforementioned provisions if the petitioner exceeded the transformer capacity or enhanced the contract demand upto 4460 KVA then the raising of impugned bill cannot be held to be unjustified. Respondent-Board raised the impugned bill as per the total transformer capacity of 4460 KVA since the petitioner used all the four transformers during the period March, 1998 to January, 1999. As noticed above, during inspection 2 x 1600 KVA and 2 x 630 KVA transformers were found installed and connected in the circuit and thereby the transformer capacity of all the four transformers were found 4460 KVA. The Board immediately served a letter to the petitioner asking it either to reduce the transformer capacity or enhanced the contract demand. In response to the said letter petitioner confirmed vide their letter dated 23.3.1999 that all the four transformers were four connected in the circuit but two of the transformers were disconnected and be- came out of the circuit since January, 1999. It is worth to reproduced herein below the letter dated 23.3.1999 send by the petitioner to the Board, a copy of which has been annexed as Annexure-12/1 to the writ application ;

"The Electrical Superintending Engineer, Bihar State Electricity Board Kusai Colony Ranchi-834 002.

Sub : Energy Bill of RDCIS (Cons. NO. HD/1)

Dear Sir,

Kindly refer to our letter No. RD/ MSD/E-128 dated 20.10.1999. We have already

disconnected power supply from stand by transformer since end of January" 99. It is observed that time to time the voltage variation is taking place. RDCIS being a Research Institute maintains costly and sophisticated electrical and electronic equipment which may get damaged due to voltage variation unless something is done from your end to maintain its voltage constant.

Though promises were made to replace the burnt metering unit for obtaining actual power consumption figure, the job has not yet been done.

I earnestly request you to instruct your concerned department to replace the burnt metering unit immediately and save us as well as BSEB from raising wrong bills.

Thanking You,

Copy to: 1. GM(M&U) 2. Sr. Manager I/C{MSD}

Yours faithfully, Sd/- (S.K. Bose) General Manager (P&A)

13. From the aforesaid letter, it is evident that all the four transformers were connected in the circuit and two of them were disconnected and kept out of circuit since January, 1999. In that view of the matter, I am of the opinion that the impugned bill raised by the Board for the energy and the fuel surcharge during that period i.e. March, 1998 to January, 1999 is fully justified.

14. In the facts and circumstances of the case, I do not find any illegality or infirmity in the impugned bill raised by the respondent-Board. No relief can be granted to the petitioner. This writ application is, therefore, dismissed.

15. Writ application dismissed.