
(2007) 08 PAT CK 0151
In the Patna High Court
Case No : CWJC No. 2760/03

Sudhanshu Cold Storage Pvt. Ltd., Begusarai APPELLANT
Vs
Bihar State Electricity Board and Others RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Electricity (Supply) Act, 1948 — Section 79

Citation : (2007) 4 PLJR 562

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard. The petitioner has come to this Court challenging the order passed by the General Manager-cum-Chief Engineer, Bihar State Electricity Board, Mithila Area, Darbhanga, (Annexure 1) by which the petitioner's claim in terms of Clause 13 of H.T. Agreement for the period 2001-02 has been rejected as being beyond 90 days from due date of the payment of the bill in this regard. This has purportedly been done in terms of notified resolution of the Board no. 810, dated 29.7.1994, issued with reference to Section 79 of the Electricity Supply Act, 1948.

2. In order to appreciate the dispute, it is first necessary to note clause 13 of the agreement as between the parties.

"13. If at any time the consumer is prevented from receiving or using the electrical energy to be supplied under this agreement either in whole, or in part due to strikes, riots, fire, floods, explosions, act of God or any other case reasonably beyond control or if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all of the causes mentioned above then the demand charge and guaranteed energy charge set out in the Schedule shall be reduced in proportion to the ability of the consumer to take or the Board to supply such power and the decision of the Chief Engineer, Bihar

State Electricity Board, in this respect shall be final."

3. Such agreement between the consumer and the Board is quasi statutory standard form agreement, which a consumer has no option but to sign on the dotted line. This clause 13 allows the consumer to claim remission from payment of demand charges and guaranteed energy charges on consequences stipulated therein being inability to consume electricity to the extent guaranteed or inability to supply electricity to the extent guaranteed, in proportion to inability. These are even though standard form a contract, contract as between the parties. Clause 13 by itself does not put any restriction on the party within which such a claim is to be lodged. The parties are, thus, bound by the said agreement. No party can restrict the exercise of this right unilaterally so that the right to claim remission would stand extinguish de hors the said contractual stipulation.

4. Then in 1994 with reference to Section 79 of the Indian Electricity Supply Act, 1948, the Board notified its resolution no. 6700, dated 20.7.1994; by notification no. 810, dated 20.7.1994 prescribing guide lines for settlement of claim under clause 13 of the H.T Agreement. What is important to note that these are the guidelines for settlement of claim and, therefore. subordinate to the agreement and in furtherance of the agreement. This is a very important aspect of the matter. The said resolution neither professes to nor intends to amend the agreement nor modifies it. It only professes to provide guidelines. Clause 4(b) thereof reads as follows:-

"4(b) The bill served for the full amount of shortfall in AMG charges shall contain a clause that "if the consumer challenge the demand made, he may submit a claim under appropriate clause of the agreement within a period of three months (90 days) after due date of the bill with the details on the basis of which relief has been claimed in Board's prescribed proforma."

5. This clause 4(b) of the notification clearly supports my view aforesaid and clearly shows the intention of the Board. The intention of the Board was not to alter or amend or modify clause 13 in any manner. It merely provided that the bills which are henceforth to be served would require a new clause to be inserted in the bills (not agreement). In my view, this was so because by a subordinate action the principle cannot be amended. The subordinate action has to be within the confines of the superior and for the purposes of implementing the superior and not restricting or amending the superior. This notification being guidelines would not and does not take away or restrict the exercise of quasi statutory contractual right as given in the agreement. The terms of the bill or the clauses in the bill which are unilaterally prepared and issued by the Board cannot take place of a binding agreement between the parties nor modify and/or amend it.

6. In the present case, it would be seen that AMG bill for the period 2001-02, with which are concern, was issued on 6th April, 2002 and the due date of payment was 25.4.2002. The bill does not contain any such stipulation, as contemplated by clause 4(b) of the said notification even though the bill was

being issued in the year, 2002 and the notification is of the year 1994. In this connection, I am fortified by a judgment of Jharkhand High Court interpreting the same very notification and the same very Clause 13. In the case of Banarshilal Jhunjhunwala vs. Bihar State Electricity Board & Ors. since reported in AIR 2001 Jharkhand 48 under similar circumstances it was held that the period of 90 days, as sought to be provided in Clause 4(b) of the said notification would not come into operation at all in absence of the same forming part of the bill served on the consumer as was envisaged by Clause 4(b) itself. In the present case also for the same reason, the same result is to follow. Consequently, the order of General Manager-cum-Chief Engineer, Mithila Area, Darbhanga, as contained in Annexure 1 is quashed and he is directed to reconsider the matter of remission on merit expeditiously, as the matter is already very old, preferably within a period of four months, as contemplated by Clause 6(a) of the said notification itself, from the date of filing of the order of this court before him. The petitioner will have liberty to bring any additional material which he would wish to bring on records. The writ petition is consequently allowed.