

(2003) 09 JH CK 0087
In the Jharkhand High Court
Case No : LPA No. 46 of 2003

Sunrise Ingot Pvt. Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Citation : (2003) 3 BLJR 2102 : (2003) 4 JCR 190

Hon'ble Judges : P.K. Balasubramanyan, C.J.;Gurusharan Sharma, J

Bench : Division Bench

Advocate : S.K. Kapoor and M.S. Mittal, for the Appellant; Vijay Pratap Singh Alok Kumar Sinha and Laxmi Murmu, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—This appeal, by the petitioner in C.W.J.C. No. 196 of 2000(R), challenges the dismissal of the said writ petition by the learned Single Judge, The appellant entered into an agreement with the Bihar State Electricity Board for a contract demand of 200 KVA for a high tension connection. By order dated 3.11.1998 the said request was accepted to. According to the appellant, it purchased the requisite furnace having a capacity of 500 kg. and installed the same in the factory premises. The appellant claims that it is a small scale industry engaged in casting works. In the year 1993, as per notification dated 23.6.1993, the tariffs were fixed by the Bihar State Electricity Board. The tariff made applicable to the appellant fell, in the category of High Tension Supply-I which is Item VII in the tariff notification. Thus, the load applied for the appellant was High Tension 200 KVA and the load sanctioned was also 200 KVA on H.T.S.-I Tariff.

2. The Bihar State Electricity Board found that there was widespread pilferage of electricity and the consumption was not based on the connected load or the load applied for. Action was contemplated by the Board. At that stage a consensus was reached between the Board and the Bihar Steel Manufacturers Association. A separate tariff was agreed upon by the Board and the Association. The

consensus, according to the appellant, relates to contract demand of 300 KVA and consumption for induction furnaces. Apart from contending that the said agreement is not binding on the appellant, the appellant being not a member of the Association, it also claims that the demand referred to is not in respect of a consumer like the appellant. The appellant approached this Court, when a notice was issued to the appellant calling upon it to enhance its contract demand from 200 KVA to 300 KVA and informing the appellant that the revised tariff at a higher rate would apply to the appellant. In the writ petition the appellant inter alia prayed for a declaration that the tariff contemplated by the Board was not applicable to the Industry of the petitioner since the industry of the petitioner was not a unit having an induction furnace, but it was only a casting unit and for quashing the demand made to the appellant to enhance the contract demand from 200 KVA to 300 KVA. The other point was based on non-notifying of the tariff and of a having lost its relevance. According to the appellant, the supply was being made to it by the Board based on a minimum guarantee agreement entered into by the parties. The agreement was originally for a term of three years from 4.1.1999 and thereafter it was to be renewed from year to year. Obviously, by this time, the three year period of the agreement has expired and there has been no consensus ad idem regarding the supply thereafter and it could not be presumed that the original agreement stood extended by another year in view of the controversy that had already arisen. But what is contended on behalf of the appellant is that the appellant could not be compelled to raise its contract demand from 200 KVA to 300 KVA. It is submitted that it is for the appellant to decide what should be the contract demand and the Board, once it decided to supply power, could only collect the tariff at the rates prescribed in the tariff order.

3. According to the Board, 600 KVA of power is required for manufacture of 1 M.T. The new rates were adopted with a view to prevent theft. Though the appellant had applied for a contract load of 200 KVA and the Board had acceded to that request, scientific studies have shown that the contract load of 200 KVA was not sufficient for running an industry like that of the appellant and it was in that context that the appellant was asked to enhance the contract load or to raise the contract load to 300 KVA and now that the original period of the agreement of three years was over, it was open to the Board to take the stand that the supply would be made or resumed by the Board only if the appellant raises his contractual demand to 300 KVA. The Board also contended that the unit of the appellant makes ingots and it was a casting unit. In reply, the appellant sought to stick to its position that it could run the industry on a contract load of 200 KVA and there was no justification in asking it to raise the contract load to 300 KVA.

4. The learned Single Judge noticed that the only question argued before him at the time of hearing was that the new tariff sought to be imposed on it was not applicable to the appellant-Unit. After considering the new tariff rates adopted in the year 1999 and published in the Gazette on 6.4.2000, the learned Single

Judge observed "admittedly, the petitioners have been using Induction Furnace through electricity with a capacity of one tonne and for such furnace a minimum of 600 KVA load is required for the purpose of heating the furnace. It is, therefore, clear that the petitioners kept their contract demand for Induction Furnace below 500 KVA so that they may be able to get the benefits of industrial supply. According to new tariff therefore, petitioners' unit engaged in casting of automobile components by using Induction Furnace having capacity of one tonne, is liable to get the contract load of 600 KVA and pay charges according to tariff. I, therefore, hold that the impugned tariff is applicable to the petitioner-Unit."

5. It is argued on behalf of the appellant that there was no proper pleading regarding the scientific studies allegedly relied on by the Board and there is nothing to show that 600 KVA was the minimum load required for a plant having a capacity of 1 Metric tonne. Learned counsel for the Board pointed out that in the counter affidavit filed on behalf of the Board, the plea based on the scientific studies establishing that 600 KVA load is necessary for 1 MT Unit, has been set out and the said case has not been met by the appellant at all. It is also submitted that the Patna High Court had accepted this argument based on the requirement of 600 KVA for manufacture of one MT of steel, in its judgment in C.W.J.C. No. 10842/99 and the said judgment has been affirmed by the Supreme Court in Civil Appeal No. 8394/2002. Of course the said case related to a case of alleged theft of electrical energy but the Court did notice that the feasibility report given to the Electricity Board indicated that 600 KVA was required for each MT furnace and sustained the exercise of power on that basis. On the materials it can not be said that the learned Single Judge was not justified in refusing to interfere with the demand by the Board that the appellant should increase its contract load from 200 KVA to 300 KVA.

6. After all, this Court is not an expert in deciding what is the connected load required for a 1 MT furnace. The Board has pleaded that it has made a study and has realized that 600 KVA connected load is necessary for one MT furnace. There is no material on the basis of which we could discard this stand adopted by the Board. The argument of learned counsel for the Board that this unit had deliberately underestimated the contract load so as to qualify for benefits as a small scale industry, cannot be brushed aside as totally impossible. We also find that the term of the contract between the appellant and the Board has expired and there was no automatic extension of it in view of the disputes that had already arisen between the parties. During the performance of its duty of making an equitable and fair distribution of electrical energy, the Board is entitled to tell a consumer that the consumer should increase its connected load so as to ensure that there is no unauthorised utilization of electrical energy. The Board has only performed its duty when it asked the appellant to increase its contract demand from 200 KVA to 300 KVA. As we have observed, on the materials, we find it difficult to disagree with the conclusion of the learned Single Judge or with the stand adopted by the Electricity Board. In that situation, we find no reason to

interfere with the decision of the learned Single Judge.

7. We, therefore, confirm the decision of the learned Single Judge and dismiss this appeal.

Gurusharan Sharma, J.

8. I agree