
(2010) 01 JH CK 0080
In the Jharkhand High Court

Swastik Insulated Wires and Strips

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49
Electricity Act, 2003 — Section 56

Citation : (2010) 01 JH CK 0080

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard the learned Counsel for the parties.

2. The petitioner, in this writ application, has prayed for the following reliefs:

(i) For issuance of an appropriate writ for quashing the order dated-08.12.2000 (Annexure-21), passed by the Chairman, Bihar State Electricity Board, Patna, refusing to accept the petitioner's prayer as contained in its representation, which was filed pursuant to the order passed by this Court in C.W.J.C. No. 1615 of 1998 (R).

(ii) For quashing the supplementary Bill of Rs. 7,78,886/-, raised on the basis of the order dated-16.03.1998, passed by the Chairman, B.S.E.B. on the basis of the H.T. tariff though during the period, the petitioner was having, L.T. Connection only.

(iii) For quashing the order dated-28.11.2001, by which a Committee constituted by the Chairman, B.S.E.B. has held that no executive revision of the order passed by the Chairman, B.S.E.B., is possible,

(iv) For quashing the final bill for a sum of Rs. 12,13,881/-, which basically includes the bill for the disconnection period between 14.02.1997 to 11.08.1998 and delayed payment surcharge levied thereupon,

(v) For quashing the A.M.G. Bill for the years 1997-98 and 1998-99, which has been raised for the period when there was no electric connection.

(vi) For issuing a direction upon the Respondents to release the amounts due to the petitioner.

3. The facts of the petitioner's case in brief are as follows:

The petitioner has set up its Factory in 1978 for manufacturing Insulated winding wires & conductors. The B.S.E.B. was one of the purchasers of the petitioner's products.

Before setting up of the Factory, the petitioner entered into an Agreement with the Respondent-B.S.E.B. on 05.09.1977 for the L.T.I.S. connection having connected load of 90 H.P.

The petitioner's unit started production on 01.02.1978.

The petitioner entered into another Agreement with the Respondent-B.S.E.B. on 04.12.1980 with a load of 31 HP, totalling its load to 123 HP.

On 01.07.1993, a new Tariff was introduced by the Bihar State Electricity Board under which the consumers having load of above 80 HP were to be billed in accordance with the H.T. Tariff.

Prior to the introduction of the new Tariff, the petitioner by its letter dated-10.06.1983 (Annexure-1), requested the Respondent-B.S.E.B. to reduce its connected load from 92 HP to 75 HP.

This was followed by another letter of request dated 08.09.1993 (Annexure-2), and again by another letter dated-25.11.1993 (Annexure-3).

Almost one year later, by letter dated-08.09.1994 (Annexure-4), the Electrical Executive Engineer informed the petitioner that the petitioner is required to change the connection from LT to HT and calling upon the petitioner to execute an Agreement in the prescribed Format.

Though the petitioner's request for reducing the load was not considered but in the light of the directions of the Electrical Executive Engineer, the petitioner vide its letter dated 22.02.1995 (Annexure-6), applied for 90 KVA load in H.T. Connection.

In response, by letter dated-25.03.1995 (Annexure-7), the Respondent-B.S.E.B. informed the petitioner that the load of 90 K.V.A. was sanctioned.

A copy of the H.T. Agreement (Annexure-8) was supplied to the petitioner on 14.05.1996 and the H.T. Agreement was executed by and between the petitioner and the B.S.E.B. on 18.07.1995.

More than one year after the execution of the H.T. Agreement, the Respondents raised a bill dated-04.12.1996 (Annexure-9), demanding the petitioner to pay a

sum of Rs. 18.84 Lakhs towards the H.T. Charges calculated from October, 1989 till the date of billing.

The petitioner protested against raising of such an exorbitant bill amount denying its liability to pay the H.T. Charges from October, 1989 and had submitted several letters requesting the Respondents authorities to withdraw the Bill.

In response to the petitioner's protest, the Respondent-B.S.E.B. had constituted a Committee to consider the bill in the light of the petitioner's objections and the Committee after examining the matter, had come to a conclusion that the bill as raised, was not proper.

However, on the ground that the bill amount was not paid, the electricity connection to the petitioner's unit was disconnected on and from 14.02.1997.

Being aggrieved, the petitioner moved this Court by filing a writ application vide C.W.J.C. No. 3542 of 1997 (R).

By order dated-21.01.1998, the writ application was disposed of by this Court remanding the matter to the Respondent-Chairman of the Bihar State Electricity Board with a direction to decide the petitioner's representation by passing a speaking order within a period of one month.

In compliance with the directions contained in the order, the Chairman, B.S.E.B. by his order dated-16.03.1998 (Annexure-13), recorded his decision on the petitioner's representation, inter alia, in the following manner:

(a) The bill served under the H.T. tariff for the period October, 1989 to January, 1996 is not in accordance with the tariff provision as well as various judgments pronounced by the Hon"ble High Court.

(b) The existing L.T. connection having load of 80 HP and above, the HT rates are applicable under Board's tariff effective from July, 1993.

(c) The bill for the period after the lapse of two months notice period, i.e. December, 1994 to January, 1996 may be prepared under H.T. Rates.

(d) To arrive at actual average consumption and maximum demand of the first full three consecutive months after installation of trivector meters may be taken. Accordingly revised bills may be served.

(e) The demand bill of Rs. .21,86,885.85 also includes the dispute under C.W.J.C. No. 1093 of 1987 (R), which has to be recalculated in the light of the judgment.

(f) The D.P.S. in such a case will be chargeable on the revised demand w.e.f. the date, when the original supplementary bill was issued.

(g) The claim due to the petitioner, in respect of material supplied by the petitioner to the Board can be released after adjustment of the revised bill to be served in accordance with above decision.

(h) Power supply to the consumer may be restored after completion of the above-mentioned conditions.

Pursuant to the above decision of the Chairman, a fresh Bill dated-23.04.1998 (Annexure-14) for a reduced amount of Rs. 7,78,000 was issued. As per the decision, the bill amount was promptly adjusted against the amount payable by the Board to the petitioner in respect of the materials supplied by the petitioner to the Board. However, the electric connection to the petitioner's unit was restored, only on 19.02.1996.

Thus, the electric connection to the petitioner's unit remained disconnected from 14.02.1997 till 11.08.1998.

Being aggrieved and not satisfied with the revised bill of Rs. 7.78 Lakhs on the ground that the bill should not have included the A.M.G. Charges for the period December, 1994 to January, 1996, the petitioner filed another writ application vide C.W.J.C. No. 1615 of 1998 (R).

Amongst the grounds raised by the petitioner against the disputed revised bill, the petitioner had also referred to the ratio decided by the Division Bench of the Patna High Court, Ranchi Bench in the case of M/s. Bharenagar Carbonisation Works-versus-Bihar State Electricity Board and Ors., in which the 1993 Tariff was under challenge before the Court and in which the Court had observed that the Board can charge a consumer in accordance with the terms and conditions applicable to the H.T. Agreement, only after it has fulfilled all the conditions necessary to make the supply an H.T. Supply and till that is done, the consumer cannot be compelled to pay at a much higher rate without there being any change in the nature of supply so as to qualify as H.T. Supply.

After considering the objections raised by the petitioner, this Court vide order passed in C.W.J.C. No. 1615 of 1998 (R) remanded the matter once again to the Chairman, B.S.E.B. with certain observations and directions.

In compliance with the directions contained in the Court's order, the petitioner filed a fresh representation before the Chairman, alongwith his written notes of argument on 06.04.1999.

In compliance with the directions of the Court, the Chairman, B.S.E.B., by the impugned order dated-08.12.2000 (Annexure-21), recorded his decision on the petitioner's representation in the following terms:

(i) Under the facts and circumstances and the available records, I find that there is full justification on the part of the Board to raise the bills on the basis of H.T. rate of Tariff, 1993, during the period from December, 1994 to January, 1996.

(ii) The supply line of the consumer was disconnected on 25.02.1997 on account of non-payment of the dues and remained disconnected till 10.08.1998. During this period, there was no notice served by the consumer either for determination or termination of the agreement and as such the agreement is deemed to be in

force and in application during the period of disconnection, and accordingly, the demand of the A.M.G. during disconnected period is validly chargeable by the Board,

(iii) The D.P.S. is a statutory provision and as such the same is liable to be charged. In the instant case, I find that DPS has been charged on the bills under H.T. rate of tariff for the period from December, 1994 to January, 1996, and on the amount of AMG charges for the period from 25.02.1997 to 11.08.1998. These two charges are basically the charges covered under the schedule of charge which has been rightly charged by the Board as the consumer did not pay the amount on the due date specified and as such, levying of D.P.S. on the aforesaid amount is fully justified and in conformity with the statutory provisions,

(iv) This dispute is confined to adjustment of the energy bill of the Board against the bill of supply of material by the consumer petitioner to the Board, is an act of set off, permissible under the provisions of the CPC and there is no illegality in such adjustment of the amounts. However, if the petitioner is aggrieved with such act of adjustment by the Board, the petitioner may have liberty to seek other legal remedy as provided under law.

Being aggrieved and dissatisfied with the decision of the Chairman, the petitioner filed a Review application before the Chairman on 08.02.2001 (Annexure-22).

This was followed by a similar representation addressed by the petitioner to the Member (Technical), J.S.E.B. after the formation of the Jharkhand State Electricity Board and also to the Chairman, Jharkhand State Electricity Board.

In response, the petitioner was informed by letter dated-28.11.2001 (Annexure-25), issued by the Secretary, Jharkhand State Electricity Board that no executive revision is possible.

Ultimately, by its letter dated-29.01.2002 (Annexure-27), the petitioner requested the Jharkhand State Electricity Board to disconnect the electric supply to its unit and to raise the final bill.

A representation with such request was also addressed by the petitioner to the Chairman of the J.S.E.B. On 18.04.2002 (Annexure-28).

In response, the final bill dated 01.05.2002 (Annexure-29) was raised demanding a sum of Rs. 12.13 Lakhs from the petitioner.

The petitioner protested against the bill as being highly inflated and illegal. Notwithstanding the protests, the Respondent-J.S.E.B. choose to recover the bill amount from the petitioner by getting a Certificate Proceeding initiated against the petitioner.

4. The controversy involved in the dispute between the parties in the present writ application revolves around two main issues:

(i) Whether the Board could have raised the differential Tariff of H.T. vis-a-vis L.T.

tariff for the period December, 1994 to January, 1996 without the H.T. Line being actually supplied to the consumer?

(ii) Whether the Electricity Board can realise the Annual Minimum Guarantee (A.M.G.) charges for the period from 14.02.1997 till 11.08.1998 during which the electric supply to the consumer had remained disconnected.

A third question, which calls for answer is as to whether the Delayed Payment Surcharge (D.P.S.) could have been levied on the amount of differential Tariff for the period December, 1994 to January, 1996 and on the amount of the A.M.G. Charges levied for the period during which the electricity had remained disconnected.

5. It is in the above background, that the petitioner has filed the present writ application praying for the reliefs as mentioned above.

6. With regard to the first issue as to whether the Respondent-Board could have raised the differential H.T. tariff vis-a-vis L.T. tariff for the period December, 1994 to January, 1996, learned Counsel for the petitioner submits that in the first order of the Chariman, B.S.E.B., which had declared that the earlier bill as raised by the Board for a sum of Rs. 18.84 Lakhs was incorrect and improper, a categorical observation was made in the decision of the Chairman that the bill served under the H.T. tariff for the period October, 1989 to January, 1996, is not in consonance with the tariff provision as well as the various judgments, pronounced by the Hon"ble High Court and the reasons for such observation and decision was also recorded in the first order of the Chairman. Yet, in the second order passed by the Chairman of the Respondent-Board, the reasons and the observations as recorded in the first order have been totally ignored and a perverse order for raising the bill under the H.T. tariff for the period December, 1994 to January, 1996 has been directed. This, despite the fact that during the aforesaid period, the petitioner was extended L.T. Connection only and the H.T. Connection was given much later in July, 1995.

Learned Counsel argues that in the judgment of the Division Bench of the Patna High Court in the case of Bharenagar Carbonisation Works (Supra), it has been held that the Board can charge a consumer in accordance with the terms and conditions applicable to L.T. Consumer only after it has fulfilled all the conditions necessary to make the supply an H.T. Supply and till that is done, the consumer cannot be compelled to pay at a much higher rate without there being any change in the nature of supply so as to qualify as H.T. Supply.

Learned Counsel submits that the second decision of the Chairman of the Respondent-B.S.E.B. making the petitioner liable to pay the differential tariff of H.T. for the period December, 1994 to January, 1996 is therefore, thoroughly illegal and unjustified.

7. Per contra, justifying the demand for differential tariff on H.T. basis for the aforesaid period, learned Counsel for the Respondents-J.S.E.B. makes the

following submissions:

(a) The reduction of the original bill amount of Rs. 18.84 Lakhs as per the first decision of the Chairman of the Respondent-Board was made on the basis of the audit objections and as per the decision taken, the initial bill of Rs. 18.84 Lakhs was dropped and upon such withdrawal of the Bill, the litigation which the petitioner had initially raised, had virtually ended. Since the disputed bill had covered the period from October, 1989 to January, 1996, the period was accordingly mentioned only in the context of the dispute regarding the audit objections. No issue was raised regarding the demand for payment of differential Tariff of H.T. and L.T.

Learned Counsel explains further, that the inspection of the petitioner's unit had confirmed that though it was covered under the Agreement for L.T. Electric supply but its actual consumption was much above 92 HP. After the 1993 Tariff came into operation, the units, whose consumption was above 80 HP, were required to be billed on the basis of the new H.T. Tariff. However, in accordance with the requirement of the provisions under the new Tariff, the petitioner, who was required to be billed on the basis of the H.T. Tariff considering his actual load of consumption of electricity, was served with a two months' advance notice and after expiry of the period of two months, the period was for billing at H.T. rate was ascertained from December, 1994 to January, 1996 and for this period, the Bill was raised on the basis of the H.T. Tariff. Learned Counsel explains that the notice as per the mandatory provisions was given to the petitioner, to exercise its option of conversion of its electric supply to H.T. connection but since there was no response from the petitioner even after the expiry of two months' notice period, the Respondent-Board was justified, in accordance with the legal provisions, to raise the bill for the differential Tariff.

8. The rival submissions of the learned Counsel on this issue has to be considered both on the basis of the admitted facts as also on the basis of the application of the provisions of the new Tariff of 1993, which came into effect from 01.07.1993.

9. Admittedly, prior to the introduction of the new Tariff, the petitioner by its letter dated-10.06.1993, requested the Respondents to reduce its load to 75 HP from 92 HP. Even after the introduction of the new Tariff, the petitioner continued to submit reminders requesting for the reduction of 92 HP load to 75 HP.

No reason has been assigned by the Respondents as to why the request of the petitioner for reduction of its load was not acceded nor any response given by the Board. It appears on the other hand, that the Board had issued a notice dated-08.09.1994 (Annexure-4) to the petitioner purportedly under the provisions of the new Tariff calling upon the petitioner to complete the formalities within two months from the date of issue of the notice, for availing supply under the H.T. Tariff. It was specified in Clause IV of the Notice that the old L.T. Tariff system shall stand superceded and terminated on the date of conversion to H.T.

Tariff system from the date of energisation and commencement of supply through H.T. supply system (emphasis supplied). The petitioner by his reply dated-02.12.1994 (Annexure-5), had, by adverting to his earlier reply dated-10.06.1993 (Annexure-1) had requested for reduction of the load from 92 HP to 75 HP.

10. While considering the issues raised, in the context of the challenge to the 1993 Tariff, and also in the context of the objection of the writ petitioner therein, to the bills raised by the Electricity Board on the basis of the revised Tariff at HP rates, a Division Bench of this Court, in the case of M/s. Bharenagar Carbonization Works (Supra), had made its observations in the following manner:

If the tariff applicable to a consumer is materially charged imposing a heavy financial burden on the consumer, the consumer must be given an option either to receive the supply as H.T. consumer or to apply for reduction of load, so that he continues to incur liability for electrical energy consumed as I. T. Consumer... The Board must take a final decision in accordance with law. In the absence of any such application for reduction of contract demand, The Board can charge a consumer in accordance with the terms and conditions applicable to H. T. agreements, only after it has fulfilled all the conditions necessary to make the supply a H. T. supply i.e. supply of electrical energy at 11 K.V.A. and affixing of transformer and maximum demand indicator. Till that is done, the consumer cannot be compelled to pay at much higher rates without there being any change in the nature of supply so as to qualify as H. T. supply. This is particularly so because the Board cannot compel the consumer to fulfill the requirements of an Agreement not entered into by and between the parties. If such an Agreement is implied by reason of change of tariff, obviously the consumer can be called upon to pay the charges in accordance with the H.T. agreement only after all the conditions necessary for H. T. supply are fulfilled by the Board. The Board cannot compel the consumer to pay charges according to the tariff treating it as a H.T. Consumer without first converting the supply to a H. T. supply. The obligations are mutual, and unless the Board does all that it is obligated to do, and supplies electricity as H.T. supply, it cannot call upon the consumer to pay according to Tariff applicable to H.T. supply while in reality the supply is I. T. Supply.

11. In the instant case, undisputedly, the petitioner had submitted its application on 10.06.1993 requesting the Board to reduce its load from 93 HP to 75 HP. Several reminders to such requests continued to be made by the petitioner till October, 1993 but the Board did not give any response to the several requests of the petitioner. It is in the two months' advance notice dated-08.09.1994 (Annexure-4), issued to the petitioner, that the Board had indicated that the petitioner is required to complete the necessary formalities for conversion from L.T. To H.T. Supply system. As per the provisions of the new Tariff of 1993, the Board was also required to inform the Consumer in the mandatory notice that the consumer had the option to reduce its load so as to continue as an L.T. Consumer.

12. Admittedly, within two months from the date of receipt of the notice, the petitioner had replied reiterating its request for reduction of the load from 92 H.P. to 75 HP. Such request has to be deemed as the petitioner's exercise of option for continuing with the L.T. Supply by reduction of the load. The Respondent-Board should therefore, have considered the petitioner's request treating the same as exercise of its option and to have acted accordingly, with all promptness and in all fairness. Instead, the Respondents continued to prevail upon the petitioner to obtain the H.T. connection and under such circumstances, the petitioner had opted by its letter dated-22.02.1995 (Annexure-6) for the H.T. connection and applied, thereby for 90 KVA load. It was only by its letter dated-25.03.1995 (Annexure-7) that the Board had informed that it had sanctioned for the 90 K.V.A. load and it was only thereafter that a copy of the H.T. Agreement to be executed by and between the petitioner and the Respondent-Board was supplied to the petitioner and thereafter the agreement was executed on 14.05.1996.

The Respondent-Board cannot claim that since the petitioner's actual load consumption was found to be more than 80 HP, it no more remains as a Low Tension Consumer and the charges have to be levied according to the new Tariff at H.T. rates. The Tariff Rules do not indicate or even suggest that every supply of installed load of above 80 HP is a high tension supply.

13. From the aforesaid facts, it is obvious that till 20.02.1996, the Board did not commence supply of electricity under the H.T. Supply system to the petitioner and till that date, the supply of electricity to the petitioner remained under the L.T. System and under the old L.T. Agreement. Applying the admissions made by the Respondent in Clause IV of their two months' advance notice, and applying the ratio decided by the Division Bench of this Court in the case of M/s. Bharenagar Carbonization Works (Supra), the old L.T. Agreement shall be deemed to have been superceded only from the date of energisation and commencement of supply through the H.T. Supply system. The Respondent-Board cannot therefore, raise any bill towards differential tariff prior to the date of commencement of the supply through the H.T. supply system and the demand for payment of the differential tariff from December, 1994 to January, 1996 is, therefore, illegal and the bill demanding the payment of the differential tariff for the period between December, 1994 to January, 1996 being illegal, it cannot be sustained in law. This issue is answered accordingly.

14. Coming to the second issue, which relates to the demand for the payment of the A.M.G. charges for the period, 14.02.1987 till 11.08.1998, the admitted facts declare that during the aforesaid period, the electricity supply to the petitioner's unit remained disconnected. Such disconnection was made on the ground that the petitioner had failed to pay the amount of bills.

15. Learned Counsel for the Respondent-Board, while justifying the demand for payment of the A.M.G. charges for the disconnected period, would explain that the electric supply to the petitioner's unit had to be disconnected on account of

non payment of the amount of the revised bill. Such disconnection was legal in view of the non-payment of the bill amount and the A.M.G. charges, which is based upon the terms of Agreement and have to be paid by the petitioner even for the period when the electric supply remained disconnected. Learned Counsel, in this context, refers to and relies upon the judgment of the Supreme Court in the case of Bihar State Electricity Board-versus-M/s. Green Rubber Industries and Ors. reported in AIR 1990 SC 699.

16. In the case of Bihar State Electricity Board-versus-M/s. Green Rubber Industries (Supra), while considering the issue as to whether the stipulation in the Agreement between the Consumer and the Board to pay the Minimum Guarantee Charges irrespective of the fact as to whether the energy was consumed or not, is reasonable and valid, has held that such stipulation in the Agreement cannot be termed as invalid. The Court had observed that the Electricity Board had disconnected the electricity supply in exercise of its right under the terms of the Agreement, on account of the consumer defaulting in payment of the electricity bills. The ratio as decided by the Supreme Court in the aforesaid judgment lays emphasis on the scope of exercise of the powers by Electricity Board under the terms of the Agreement, for disconnection of electric supply. It implies therefore, that such exercise of powers, even under the terms of the Agreement have to be made justifiably and not unjustly. If the act of disconnection suggests abuse of power, it has to be deemed that the electric supply was illegally discontinued to the consumer and in case of such illegal disconnection, the consumer cannot be saddled with the liability of the payment of the A.M.G. charges. This view finds support of the judgment of the Division Bench of this Court in the case of M/s Electric (Patliputra) Power Equipment Pvt. Ltd.-versus-The Bihar State Electricity Board and Ors. reported in 1992 (2) PUR 62, in which the judgment of the Supreme Court in the case of Bihar State Electricity Board-versus- M/s. Green Rubber Industries (Supra) was also relied upon. It was held by the Court in the case of Electric (Patliputra) Power Equipment Pvt. Ltd. (Supra), that since the electric supply was illegally discontinued to the consumer by the Electricity Board, the consumer is entitled to full remission of the electric charges including the A.M.G. charges for the period of illegal discontinuance of electric connection.

17. In the instant case, as it appears, after the first order passed by the Chairman on the petitioner's representation, and deciding upon the dispute raised by the petitioner against the initial bill dated-23.04.1998 (Annexure-14), a revised bill of Rs. 7,78,000/- was raised against the petitioner. Being aggrieved on the ground that the bill amount included the amount of the differential tariff, the petitioner had filed a writ application before this Court vide C.W.J.C. No. 1615 of 1998 (R). The Board, in its turn, after raising the bill for the aforesaid amount of Rs. 7,78,000/- had proceeded to adjust the bill amount from the amount which the Board had to pay for the materials supplied by the petitioner to the Board. Even after adjusting the bill amount, the electricity to the petitioner's unit remained disconnected till it was restored after about five

months on 11.08.1998.

As it appears, the facts indicate that against the first bill raised by the Respondent-Board, the objections and the protests raised by the petitioner was considered and being satisfied with the grounds of objection, the bill was withdrawn. The petitioner could not, therefore, have been accused of non-payment of the amount of the first bill. The amount of the revised bill, raised after the first order of the Chairman of the Board, was deemed to have been paid by the petitioner consequent upon the adjustment of the amount by the Board against the amounts payable by the Board to the petitioner. Under such circumstances, the petitioner could not have been accused of incurring any liability on the ground of non-payment of the amounts of bill. It is manifest from the above facts that there was no legitimate and justified ground for the Respondent to disconnect the electric supply to the petitioner's unit. It has to be held that the disconnection of the electric supply was made in utter abuse of the powers reserved by the Board under the terms of Agreement and such disconnection has to be deemed as illegal. Since the disconnection itself was illegal, the Respondent-Board cannot legally claim or demand, payment of the A.M.G. charges for the period when the electric supply remained disconnected. The petitioner is entitled to remission of the electric charges for the period of illegal discontinuance of electric disconnection.

18. Learned Counsel for the Respondent contends that if the petitioner, as a consumer, had any objection against the bill amounts then under the provisions of the Electricity Act, it could have availed the remedies provided therein by raising its protest but only after payment of the bill amount. Learned Counsel, in this context, refers to the terms as contained in Clause 15.4.d of the 1993 Tariff and also to the provisions of Section 56 of the Electricity Act.

19. No doubt, the provisions under Clause 15.4.d of the Tariff Rules of 1993 provides that the consumer can raise a protest against a bill only after payment of the bill amount and the provisions of Section 56 of the Electricity Act, 2003 also lays down a more or less similar provision, but such objections cannot be taken by the Respondent-Board at this stage when the petitioner's objections against the disputed initial bill was entertained by this Court vide the writ application filed by the petitioner and the disputed initial bill was subsequently withdrawn by the orders of the Chairman of the Respondent-Board. No occasion arose for the petitioner to deposit the revised bill amounts separately while raising its protest against the subsequent revised bill, in view of the fact that the amounts was deemed to have been paid by the petitioner upon the adjustment made by the Respondent-Board against the due payable to the petitioner.

20. Referring now to the last issue as to whether the delayed payment surcharge (DPS) could have been levied on the two amounts, namely, the amounts of the differential tariff for the period December, 1994 to January, 1996 and the A.M.G. charges for the period 14.02.1997 till 11.08.1998 when the electric supply remained disconnected, learned Counsel for the Respondents-Board, would argue

that Clause 16.2 (h) of the 1993 Tariff stipulates that the interest/surcharge @ two per cent per month, will be charged for the period of delayed payments. Learned Counsel submits that the D.P.S. charges for the period December, 1994 to January, 1996 and from February, 1997 to August, 1998 have been found justified by the Chairman, B.S.E.B. in the second order. Since the provisions of Clause 16.2 (h) of the 1993 Tariff, which have been issued under the powers conferred to the Board u/s 49 of the Electricity (Supply) Act, 1948, has never been declared as ultra vires by any Court of law, the same have legal and binding force upon the petitioner.

21. The above arguments of the learned Counsel cannot be accepted. As per the discussions on the two previous issues, I have already recorded my findings that the bills towards the differential tariff for the period December, 1994 to January, 1996 and the bill for payment of AMG charges for the period when the electricity supply remained disconnected, was illegal and not justified and the petitioner could not be held liable for payment of the amounts of the aforesaid bills, which was illegally raised. The application of the provisions of Clause 16.2 (h) of the 1993 tariff, does not arise against the petitioner and therefore, the demand for payment of D.P.S. charges, is unjustified and illegal.

22. In the facts and circumstances of the case and the discussions made above, I find merit in this writ application. Accordingly, this writ application is allowed. The impugned order dated-08.12.2000 (Annexure-21) of the Chairman, Bihar State Electricity Board, Patna, the impugned revised bill for a sum of Rs. 7,78,886/-, the final bill dated-01.05.2002 (Annexure-29) for a sum of Rs. 12,13,881/-, the A.M.G. Bill for the year 1997-98 and 1998-99 (Annexure-19) and the Certificate Proceedings initiated against the petitioner vide the Certificate Case No. 50 of 2003-04, are hereby quashed. The Respondents are directed to refund the amount of Rs. 7,78,886/-, which was realized from the petitioner, along with interest @ six per cent per annum from the date when the amount was adjusted against the amounts payable by the Board to the petitioner, till the date of final payment. The Respondent-Board shall also pay the amounts due to the petitioner against the materials supplied by it to the Respondent-Board. The above directed payments shall be made by the Respondent-Board within three months from the date of receipt/production of a copy of this order.

23. Let a copy of this order be given to the learned Counsel for the Respondents.