

(2004) 07 JH CK 0044

In the Jharkhand High Court

Case No : CWJC No. 746 of 1992 (R) and 2574 and 3839 of 1993 (R)

Tata Iron and Steel Co. Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2004) 3 JCR 427

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : Binod Poddar, G.M. Mishra, B.P. Verma and Deepak Kumar Sinha, for the Appellant; V.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—In all the cases, some of the questions being common and there being common petitioner in two writ petitions, they were taken up for hearing together, but nobody appeared in CWJC. No. 3839 of 1993 (R) - Jamshedpur Cement Ltd. v. Bihar State Electricity Board and Anr..

2. In CWJC No. 746 of 1992 (R), the petitioner Tata Iron & Steel Co. Ltd. (hereinafter referred to as the TISCO) has challenged the order dated 24th December, 1991 passed by the Chief Engineer, South Bihar Chotanagpur Electricity Board, Ranchi (hereinafter referred to as the General Manager, Ranchi), whereby and whereunder, he allowed part of the claim of petitioner made under Clause 13 of the High Tension Agreement (hereinafter referred to as H.T. agreement) for reduction from the Annual Minimum Guarantee Charges (hereinafter referred to as the AMG charges) and Maximum Demand Charges (hereinafter referred to as the M.D. charges) in respect of the years 1977-78; 78-79 & 82-83.

The petitioner TISCO has also challenged the AMG Bills of the aforesaid years 1977-78; 78-79 & 82-83.

3. In CWJC No. 2574 of 1993 (R), the petitioner TISCO has challenged the order dated 17th August, 1993 passed by the General Manager, Ranchi. By the said order, the General Manager, Ranchi rejected the petitioner's claim made under Clause 13 of H.T. agreement for proportionate reduction from the AMG charges and M.D. charges in respect of the years 1990-91; 91-92 & 92-93.

In this case, the petitioner has also challenged the AMG bill dated 21st April, 1993 for the years 1990-91; 91-92 & 92-93.

4. In both the aforesaid cases CWJC No. 946 of 1992 (R) & CWJC No. 2574 of 1993 (R), though the petitioner formally challenged Clause 15.2 of tariff, providing levy of delayed payment surcharge on outstanding bills, but at the time of hearing of the cases, this prayer was not pressed by the counsel for the petitioner.

5. As nobody appeared to prosecute the third case CWJC No. 3839 of 1993 (R), we have not gone into the merits, and dismissed the writ petition for non-prosecution.

6. As no specific pleading was made by the TISCO in either of the writ petitions CWJC No. 746 of 1992 (R) or CWJC No. 2574 of 1993 (R), even the relevant list of dates were not mentioned nor supplied separately, the counsel for the petitioner was allowed to file synopsis with list of dates separately which we have taken into consideration, but to the extent of pleading made in the writ petition or the enclosures attached in its support.

7. The case of petitioner TISCO in CWJC No. 746/92 (R) is that, it entered into an agreement with the Bihar State Electricity Board now Jharkhand State Electricity Board ("Board" for short) on 2nd April, 1970 for supply of electricity at the contract demand of 10 MVA w.e.f. 8th April, 1973 on account of increase requirement of electricity. As per agreement, the Board is supposed to supply electrical energy without any break. A consumer is entitled to claim proportionate reduction under Clause 13 of the H.T. Agreement, if such consumer is prevented from receiving or using electrical energy either in whole or in part. During the years 1977-78; 78-79 & 82-83, the petitioner could not consume guaranteed units because of power restrictions imposed by the Board and the tripping during those years. In spite of such power restrictions imposed by the Board and tripping during those years, the Board raised bills of AMG charges amounting to Rs. 12,44,872.80 for the period 1977-78; Rs. 10,32,861.51 for the period 1978-79; Rs. 8,52,057.12 for the period 1982-83, the total being Rs. 31,29,791.43.

In the circumstances, the petitioner claimed reduction from AMG & MD charges under Clause 13 of the H.T. Agreement as and when the bills were raised.

The General Manager, Ranchi rejected the petitioner's claim for reduction in respect to all the aforesaid three years by a common order dated 6th October, 1986 mainly on the ground (a) the consumer had availed power according to its

need and desire without caring the load restrictions imposed by the Board; & (b) the power drawn by the consumer (petitioner) during the restricted and unrestricted period is almost same.

The respondents thereafter, issued demand notice-cum- disconnection notice u/s 20 of the Indian Electricity Act, 1910 to the petitioner and asked it to pay Rs. 4,01,99,937.22. The amount included delayed payment surcharge apart from the principal amount.

At that stage, the petitioner preferred two writ petitions before the Ranchi Bench of Patna-High Court i.e. CWJC Nos. 1526 of 1986 (R) & 1527/86 (R) against the order dated 6th October, 1986 and notice of disconnection. In the meantime, the petitioner deposited a sum of Rupees ten lacs of its own. Subsequently, it deposited another sum of Rupees one crore in pursuance of an interim order of the Court. A Division Bench of the Court finally allowed both the writ petitions by its common judgment dated 20th August, 1988, reported in AIR 1989 Pat 119. The orders passed by the General Manager, Ranchi and the demand notices were quashed and the cases were remitted to the General Manager, Ranchi for fresh decision with certain observations.

Pursuant to Court's direction, the petitioner filed a fresh petition before the General Manager, Ranchi who after hearing the parties passed the impugned order dated 24th December, 1991 and allowed part of the claim of reduction from the AMG and MD charges in respect to the years 1977-78; 78-79 & 82-83. On the basis of such decision, fresh bills were raised by the respondents for the period aforesaid, as contained in Annexures- 2, 3 & 4 to CWJC No. 746 of 1992 (R).

8. The case of petitioner TISCO in CWJC No. 2574/1993 (R) is that it generates electricity and also purchases electricity from Damodar Valley Corporation (hereinafter referred to as the DVC). It also purchases electricity from the Board. It requires regular supply of electricity in bulk quantity for its manufacturing activities at Jamshedpur. It being a sanctioned holder u/s 28 of the Indian Electricity Act, 1910, also supplies electricity to its consumers in the township at Jamshedpur including other Companies falling within its area of supply.

Earlier it (petitioner) entered into an agreement with the Board on 4th September, 1979 for supply of electricity at a contract demand of 20,000 KVA (20 MVA). Subsequently, in pursuance of a supplementary agreement dated 8th December, 1987, the load was increased to 30,000 KVA (30 MVA).

Further case of the petitioner is that the Board failed to supply electricity regularly at the contract demand i.e. 30 MVA, cuts and load restrictions were also made during the years 1990- 91; 91-92 & 92-93, the Board used to cut electricity supply for several hours in a day. Even during the period, the Board used to supply electricity, many times the supply was at a varying MVA i.e. less than the contract demand of 30 MVA. Though the electricity used to be supplied at the contract demand of 30 MVA for a short duration but the Board used to

send the bills to the petitioner every month for the energy consumed showing the supply at 30 MVA. The Board also raised MD charges without allowing any reduction. The petitioner having no other option had to pay the bill amount every month under protest, but it claimed reduction of MD charges under Clause 13 of the H.T. Agreement.

The respondents raised AMG bills for the years 1990-91; 91-92 & 92-93 without allowing any reduction on account of non-supply, of electricity and load restrictions. The bills were worked out taking into consideration audit objection. The petitioner at that stage had to prefer two writ petitions before the Ranchi Bench of Patna High Court i.e. CWJC Nos. 1621 of 1993 (R) & 1628 of 1993 (R). In one case, the petitioner prayed for direction on the respondents to consider its claim for proportionate reduction of MD charges for the years 1990-91; 91-92 & 92-93 and for adjustment/refund of excess amount already realized towards MD charges. In the other writ petition, the petitioner challenged the AMG bills. Both the writ petitions were disposed of by a Bench of High Court by its common order dated 19th May, 1993 allowing the petitioner to move before the General Manager, Ranchi under Clause 13 of the H.T. Agreement, with further direction to the General Manager, Ranchi to decide the claim. The petitioner was directed to pay a sum of Rs. 25,00,000/- in the meantime.

Pursuant to such observations, the petitioner thereafter filed a fresh claim under Clause 13 of H.T. Agreement which has been rejected by the General Manager, Ranchi by the impugned order dated 17th August, 1993.

9. In CWJC No. 746 of 1992 (R), two legal objections have been taken by Mr. Poddar, the learned counsel for the petitioner. It will be convenient to deal with the relevant clauses of H.T. Agreement, in question, before I come to discuss the objections as raised by the parties.

Clause 1(a) of the agreement provides for maintenance of electricity energy by Board at the pressure of 3300 Volts, 5 cycles, 3 Phase, 3 Wire, alternating current system, subject to standard variations. The consumer in its turn is to pay to the Board for the energy so supplied subject to AMG/MD charges in terms with Clause 4 of the agreement. Clause 13 of the agreement provides for contingency in case of failure on the part of the supplier and also failure on the part of the consumer beyond the control of both the parties. The relevant clauses are quoted hereunder :

"Clause 1(a).--The Board shall furnish to the consumer and the consumer shall accept at the point of supply mentioned in the Schedule hereto, on and from the date on which the said premises shall be connected with the supply distributing mains and during the continuance of this agreement, a constant supply of electricity energy at the pressure of 3300 Volts, 50 Cycles, 3 Phase, 3 Wire, alternating current system, subject to standard variations as provided in Indian Electricity Rules, 1956, or any other statutory modification thereof as may be in force from time to time for the purpose and upto the maximum specified

(hereinafter referred to as the contract demand) and under the conditions laid down in the Schedule. The Board will not, however, be responsible for any interruption or diminution or stoppage of the supply due to lock-outs, strikes, break-down of machinery or plant, floods or other force majeure or other cause beyond the control of the Board.

4(a). The consumer shall pay to the Board for energy so supplied and registered as aforesaid at the rates given in the Schedule, provided that the minimum charges as specified in the Schedule appended hereto shall be paid irrespective of whether energy to that extent has been consumed or not.

(b) For the purpose of this Agreement, the maximum demand of the consumer for each month shall be largest total amount of Kilovolt amperes (KVA) delivered to the consumer at the point of supply (during any consecutive 30 minutes) in the month.

(c) Maximum demand charges for supply in any month will be based on the maximum KVA demand for the month or 75% of the contract demand whichever is higher, subject to provision of Clause 13. For the first twelve month's service the maximum demand charges for any month, will, however, be based on the actual monthly maximum demand for the month.

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 cause reasonably beyond control or if the Board is prevented from supply 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."

10. According to the petitioner, under Clause 4 of the agreement a H.T. consumer is required to pay a minimum guarantee charges assessed at the end of the year, if the consumption falls short of the minimum guaranteed units. The formula for calculating the annual minimum guarantee charges has been prescribed in the tariff. As per the H.T. Agreement, the Board may not be liable to pay any compensation to the consumer on account of its failure to supply electrical energy in part or whole or the consumer is unable to receive it but, at the same time, the consumer is entitled to a proportionate reduction in the minimum guaranteed charges and the demand charges. While the consumer remains liable to pay the charges for the energy actually consumed by the consumer, Clause 13 of the H.T. Agreement, inter alia, provides a monthly reduction in the minimum guaranteed charges and the demand charges in the event of non-supply or short supply of electricity.

11. Counsel for the petitioner submitted that in the case where the contract demand agreed upon is 10,000 KVA the AMG charges is levied on the basis of

units, as per formula, it will be as follows :

"10,000 KVA (Contract Demand) x 0.8 Power Factor x 24 hours (per day) x 365 days (annual) x 40/100 (load factor) - 2,80,32,000 units."

It was further submitted that because of power restrictions imposed and tripping by the Board, the petitioner, was not able to consume the guaranteed units during the years 1977-78; 78-79 and 82-83. The Board raised bills on the petitioner for payment of AMG charges and the petitioner filed its claim for reduction under Clause 13 of the H.T. Agreement.

12. Counsel for the petitioner also submitted that in the earlier cases, CWJC Nos. 1526 of 1986 (R) & 1527 of 1986 (R) reported in AIR 1989 Pat 119 : 1989 PLJR 337, the counsel for the Board took similar plea that the Board had imposed restrictions on drawing of electrical energy as per the contract demand & directions were issued to draw energy at varying MVA, which in all case was less than the contract demand, but TISCO did not abide by it and drew energy at the same level at which it usually drew. But the Court did not accept such submission and both the writ petitions were allowed with the following observations and directions :

".....The demand for payment of AMG and MDC, therefore, will depend on the following facts :--

A. Whether there was constant supply of electricity at the contract demand.

B. What were the normal working hours of factory or undertaking of the consumer for which electric connection was taken and whether there was constant supply of energy during working hours.

C. The situations envisaged in Clause 13 of the agreement.

14. Broadly speaking the following principles emerge :--

1. The Board is obliged to supply electrical energy to its H.T. consumers constantly and continuously for all 24 hours.

2. If the Board fails to supply at least 6 hours of electrical energy constantly and continuously at the rate of contract demand, it cannot claim the annual charges i.e. AMG and MDC.

3. If the Board supplies electrical energy for more than 6 hours a day but not continuously for all 24 hours, where the factory runs all 24 hours, the consumer shall be entitled to claim reduction in annual charges.

4. In each case it must be determined as to what were the working hours of the undertaking for which the connection was taken and minimum consumption guaranteed. The reduction must be proportionate to the non-supply of electrical energy during such working hours. Supply or non-supply of electrical energy beyond such working hours is of no consequence in the matter of reduction of annual charges.

5. In all cases the consumer must establish the working hours of the factory and that it was in a position to consume the electrical energy if supplied.

15. It was, therefore, necessary for respondent No. 2 to take into consideration if there had been any interruption in the constant supply of electrical energy to the units of TISCO at Adityapur complex at the contract demand for all 24 hours for the periods 1977-78, 1978-79 and 1982-83. If in fact it found that there had been any interruption, the Board shall be liable to proportionately reduce the annual charges. That the petitioner is entitled to this relief is also supported by the decision reported in Northern India Iron and Steel Co. and Others Vs. State of Haryana and Another, . From the perusal of Annexure-3 to CWJC No. 1527/86 (R) it appears that respondent No. 2 has not taken into consideration all the relevant facts while disposing of the representation of the petitioner. Consequently the ultimate finding recorded by him, that is, rejecting the representation of the petitioner, cannot be sustained.

16. We, therefore, allow this application and remit the matter to respondent No. 2. The petitioner shall be entitled to file further detailed representation, if so advised, within three weeks from today, and if such detailed representation is filed, respondent No. 2 shall consider the representation already filed by the petitioner and also the representation that may be so filed. He shall, after hearing the parties, dispose of the representations keeping in view the observations made in this judgment.

13. It appears that the petitioner filed a detailed representation after the aforesaid judgment claiming reduction under Clause 13 of the H.T. Agreement, as per observations of the Court. During the pendency of such claim for reduction, the relevant Clause 1, 4 & 13 of the H.T. Agreement fell for consideration before the Supreme Court in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, . In the said case, the Supreme Court held as follows :

"7. Clause 4 of the agreement provides for the minimum guarantee and there is no dispute that if the consumer is not able to utilize electricity even up to the level of minimum guarantee this clause provides for payment of charges of minimum guarantee. The real controversy pertains to the interpretation of Clause 13. In fact in Northern India Iron & Steel Co., case AIR 1976 SC 1100, this Court had the occasion to consider a situation of this kind where this Court on this aspect of the matter has observed that where the Electricity Board fails to supply power because of shortage of energy, power cut or any other circumstance as per demand of the consumer according to the contract it will be considered as a circumstance beyond the control of the consumer which prevented it from consuming electricity as per contract. Their Lordships observed as under :

"We are, therefore, of the view that the inability of the Board to supply electric energy due to power cut or any other circumstance beyond its control as per the demand of the consumer according to the contract will be reflected in and

considered as a circumstance beyond the control of the consumer which prevented it from consuming electricity as per the contract and to the extent it wanted to consume. The monthly demand charge for particular month will have to be assessed in accordance with Sub-clause (b) of Clause 4 of the tariff and therefore from a proportionate reduction will have to be made as per Sub-clause (f). We hope, in the light of the judgment, there will be no difficulty in working out the figures of the proportionate reduction in any of the cases and for any period. In case of any difference or dispute as to the quantum of the demand charge or the proportionate reduction, parties will be at liberty to pursue their remedy as may be available to them in accordance with law."

It appears that reading Clause 13 in the present case clearly provides for the contingency and it provides for the failure on the part of the supplier and also failure on the part of consumer in the circumstances like strike, riot, fire, flood, explosion or act of God or any other reason beyond the control of either of the parties! Clause 13 of the agreement reads :

"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 strike, 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 clauses 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". In view of this language of the clause clearly proving for the proportionate reduction of the annual minimum guarantee bills it could not be doubted that the High Court was not right in coming to the conclusion that the respondents were not liable to pay annual minimum, guarantee bills at all. The judgment of this Court also clearly indicated that the respondents consumers are entitled to a proportionate reduction of the minimum guarantee bills. In Clause 13 of the agreement this is clearly stated that the authority competent to determine the proportionate reduction is the Chief Engineer and it appears that it was because of this that the respondents consumers approached the Chief Engineer for consideration. But it appears that learned Chief Engineer also did not clearly understand the meaning of Clause 13. The judgments of the High Court on which reliance is placed have only followed the judgment referred to above.

8. In our opinion, therefore, the High Court was not right in coming to the conclusion that the respondents were not liable at all to pay annual minimum guarantee charges. In fact they are only entitled to the proportionate reduction. The judgment of the High Court clearly states the hours every year in dispute when the power was not supplied and on this basis the respondents consumers will be entitled to proportionate reduction as ordinarily the consumers are expected to have continuous power supply. It is therefore directed that the Chief

Engineer of the Electricity Board on the basis of hours of non-supply as indicated in the High Court judgment and not disputed in the High Court will assess the proportionate reduction of the annual minimum guarantee bills in respect of disputed years indicated above and it is also directed that until this is not done the power supply will not be disconnected on the basis of failure to pay the annual minimum guarantee bills for the periods stated above. However, after the proportionate reduction is made and fresh demand is made, Electricity Board will be entitled to take recourse to the normal procedure if the consumers fail to pay."

14. When the claim of the petitioner was taken up, the General Manager, Ranchi, taking into consideration the petitioner's claim, the decision rendered by the Patna High Court in the case of Tata Iron and Steel Co. Ltd., Jamshedpur Vs. Bihar State Electricity Board and Others, and the decision of the Supreme Court in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, , allowed part of the claim by impugned order dated 24th December, 1991, as quoted hereunder :

"8. Relief in AMG (both in Units and Maximum Demand Charges) based on the above hours of non-supply of power the proportionate relief in AMG in respect of all the period of three years will be as under :

(i) 1977-78

(a) $1,88,10,720 \times 84$ ----- = 1,82,123 Units in AMG (8760-84) = 8676

(ii) 1978-79 $2,03,81,174 \times 43$ ----- = 1,00,538 Units in AMG = 8717 (8760-43)

(iii) 1982-83

$2,56,51,200 \times 125$ ----- = 3,71,325 Units in AMG = 8635 (8760-125)

Relief in MD Charges :

During the year 1977-78, 84 hours of non-supply of power has been calculated as mentioned above, therefore the hours of non-supply per month may be treated as 7 hours per month.

During the year 1978-79 total hours of non-supply of power have been indicated in Appendix-II. Accordingly, hours of non-supply of power per month is as follows :

April 1978 - 25 hours.

May 1978 - 5 hours.

June 1978 - 6 hours.

July 1978 - 4 hours.

Sept. 1978 - 3 hours.

During 1982-83 total hours of non-supply of power has been shown in Appendix II.

For Jan 1983 to March 1983 hours of non-supply of power has been worked out as 31 hours. Accordingly the hours of non-supply of power per month during 82-83 are as follows :

May 1982 - 1 hr.

June 1982 - 7 hrs.

July 1982 - 1 hr.

Aug. 1982 - 10 hrs.

Sept. 1982 - 14 hrs.

Oct. 1982 - 58 hrs.

Nov. 1982 - 3 hrs.

Jan. 1983 - 10 hrs.

Feb. 1983 - 10 hrs.

March 1983 - 11 hrs.

The relief in MD charges may please be calculated by Electrical Superintending Engineer, Electrical Circle, Jamshedpur by following formula for all the three years taking hours of non-supply as mentioned above,

MD charged for the month, hours of non-supply during the month/Total hours during the month.

DECISION

It is therefore decided that the Consumer shall be given relief as discussed in para 8 above."

15. The stand taken by the petitioner is that its claim for reduction from AMG and MD charges was mainly on account of failure of Board to supply electricity at the contract demand of 10 MVA. The supply was made at varying MVA ranging from 1 MVA; 2.5 MVA; 3.5 MVA & 10 MVA. The Board failed to supply electricity throughout at the same pressure, i.e. @ 10 MVA. The Supreme Court decision in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, , therefore, has no bearing on the petitioner's claim to the extent of reduction of AMG and MD charges as was sought for on the ground of non-supply of electricity at the contract demand.

16. Learned counsel for the respondents refuted the argument. According to him, the Supreme Court judgment in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, is also binding on both the parties. The law having been laid down, the claim of all the consumers including the

petitioner herein, has to be considered in accordance with law laid down by the Supreme Court. As per the said decision of Supreme Court and the Board's rule relating to tariff, proportionate reduction can be allowed on the basis of hours of non-supply of power. Even if the consumer is unable to utilize the power, the consumer is liable to pay the AMG and MD charges.

17. Learned counsel for the Board referred to impugned order dated 24th December, 1991 and submitted that the claim for each and every year for reduction as claimed, namely 1977-78, 1978-79; and 1982-83 has been considered in detail. Taking into consideration the fact that the petitioner failed to utilize the power upto the contract demand in any month during the years 1977-78; 78-79 & 82-83; in spite of supply of uninterrupted and unrestricted power, the AMG and MD charges were raised. To the extent there was actual failure to supply electricity during certain hours the same has been taken into consideration and proportionate reduction to that extent has been allowed to the petitioner for the years 1977-78; 78-79 & 82-83.

18. The main grievance of the petitioner is that the period below 59 minutes during which no electricity was supplied has not been counted for allowing proportionate reduction of AMG and MD charges as per the decision of Patna High Court reported in AIR 1989 Pat 119. According to the counsel for the Board, the petitioner has been granted benefit under Clause 13 of the H.T. Agreement as per decision of the Supreme Court in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, .

19. The Division Bench of the Patna High Court in the case of petitioner reported in AIR 1989 Pat 119, observed that if the Board fails to supply at least six hours of electrical energy constantly and continuously at the rate of contract demand, it cannot claim the Annual charges i.e. AMG and MD charges (See Paragraph 14.2 of the judgment)

On the other hand, the Supreme Court in the case of B.S.E. Board v. Dhanawat Rice & Oil Mills, reported in AIR 1989 SC 1030, while going through the same Clause 13 of the H.T. Agreement, held that the High Court was not right in coming to the conclusion that the consumers were not liable at all to pay Annual Minimum Guarantee charges. In fact, they are only entitled to the proportionate reduction.

20. Under Article 141 of the Constitution, the law declared by the Supreme Court is binding on all the Courts within the territory of India. What is binding is the ratio of the decision of the Supreme Court and not any finding of fact. When a High Court allows several writ petitions by a common judgment giving certain declaration relating to a law but the State appeals to the Supreme Court only in one of the petitions and the Supreme Court in that appeal upholds the validity of the law, such law declared by the Supreme Court would, in view of Article 141 is binding upon all the parties before the High Court and not merely the particular petitioner against whom the State had preferred appeal.

In the present cases, as the Supreme Court interpreted Clause 13 of the H.T. Agreement and gave its finding, the petitioner cannot take plea that the law laid down by the Supreme Court is not binding in view of the observations of Patna High Court made in its case AIR 1989 Pat 119.

21. So far as the claim of reduction as was made by the petitioner under Clause 13 of the H.T. Agreement is concerned, no specific pleading has been made by the petitioner in CWJC No. 746 of 1992 (R) to suggest that on a particular date of a particular month, the Board failed to supply electrical energy continuously at the contract demand at least for six hours. Annexure-7 to the writ petition is the application of petitioner claiming remission from payment of AMG charges and claim for proportionate refund from MD charges under Clause 13 of the H.T. Agreement for the year 1977-78. The said application is also vague, though it is pleaded that the Board failed to supply the contracted power on continuous basis to enable the petitioner to put all its units into operation, details of hours of non-supply, particular date of non-supply and month have not been shown therein.

The chart enclosed with the application under Clause 13 (Annexure-7) is also vague. The petitioner has not given therein " the particulars such as date and/ hours on which Board failed to supply electrical energy at contract demand in one or other particular month during the year 1977-78. Vague claim has been made, as quoted hereunder.

CHART I

Calculations of AMG charges payable to B.S.E.B. for 1977-78 as per the Order of the High Court

(i) (ii)

Month No. of days Board failed to supply at least 6 hours Electrical Energy in a day at Contract Demand. No. of days and MVAH. The Board supplied electrical energy at Contract Demand in a day for?

(iia) (iib)

No. of Days NVAH supplied No. of days MVAH supplied

April 1977 10 1 203.75 19 4,560.00

May 1977 22 1 198.75 8 1,920.00

June 1977 23 6 1,241.75 1 240.00

July 1977 10 11 2,128.125 10 2,400.00

August 1977 6 6 1,219.385 19 4,560.00

September 1977 6 18 3,507.01 6 1,440.00

October 1977 7 10 1,899.34 14 3,360.00

November 1977 25 3 459.75 2 480.00
 December 1977 18 8 1,519.69 5 1,200.00
 January 1978 19 9 1,791.903 3 720.00
 February 1978 14 6 996.854 8 1,920.00
 March 1978 17 4 697.491 10 2,500.00
 Total 177 83 15,864.026 105 25,200.00

22. Similar are the applications for the year 1978-79 [Annexure 7(a)] and the year 1982-83 [Annexure 7(b)], wherein vague claim has been made by the petitioner and no specific instance has been shown.

In absence of such specific instance relating to non-supply of electrical energy in a day at contract demand for a period more than six hours, if the General Manager, Ranchi decided the claim as per record available with the Board, it cannot be held to be illegal. Further, such specific instance of non-supply of electrical energy on a particular day of a month at contract demand for more than six hours having not shown in the writ petition or in the application for claim for remission under Article 13 of the H.T. Agreement, it is not possible for this Court to determine whether there is factual error in the calculation or not.

23. The impugned order passed by the General Manager, Ranchi also cannot be held to be arbitrary as he allowed the remission to the extent the petitioner was entitled on the basis of the records available with the Board and detailed in the impugned order dated 24th December, 1991 (Annexure 8 to CWJC No. 746 of 1992 (R)).

24. So far as CWJC No. 2574 of 1993 (R) is concerned according to the petitioner (TISCO), the Board is not in a position to supply electricity to its consumers on continuous basis and resorts to serve load restrictions and power cuts everyday. It rarely supply full electricity to the consumers as per the agreement. During the years 1990-91; 91-92 & 92-93, the Board failed to supply electricity to the petitioner at the contract demand of 30 MVA. There was total power cuts for several hours in a day. Even when the supply was made, it was at a varying MVA, less than the contract demand of 30 MVA Electricity at the contract demand of 30 MVA was supplied for a very short duration. In spite of the same, the Board raised bill every months for the energy consumed by the petitioner, as also the MD charges without any reduction. The petitioner had to pay the bills every month under protest and claimed reduction towards MD charges.

25. Counsel for the petitioner submitted that if the supply is made at lesser MVA than the contract demand of 30 MVA, the AMG cannot be worked out on 30 MVA. The petitioner was entitled to reduction in AMG charges and proportionate MD charges for the period during which there was no supply of electricity or the supply was at a lower pressure than 30 MVA.

The General Manager, Ranchi by impugned order dated 17th August, 1993 rejected the petitioner's claim for proportionate reduction from MD charges for the years 1990-91; 91-92 & 92-93.

Learned counsel for the petitioner submitted that the General Manager, Ranchi rejected the claim on erroneous ground. Though it was admitted that the Board allowed power on a restricted basis throughout the year, but no proportionate reduction from MD charges and energy charges has been allowed. The decision of Supreme Court in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, and other decisions of the Court have not been followed.

26. From the monthly meter reading of certain months, as enclosed by the petitioner with CWJC No. 2574 of 1993 (R) and the impugned order, it appears that the Board restricted supply during certain months. But from other enclosures and counter affidavit filed by the Board, it will be evident that in spite of restrictions of supply put by the Board, the petitioner draw usual energy during those months and years. For example, in the month of September, 1990, the energy as per allotted load was 41,84,750 (KWH), but in the said month of September, 1990 the petitioner drawn and consumed energy more than the allotted load i.e. 99,87,000 (KWH).

In some other months, the petitioner failed to consume the energy as was allotted to it. For example, in the month of May, 1990, the energy allotted as per load was 1,35,09,000 (KWH), but the petitioner could consume only 85,51,500 (KWH).

27. Thus, it will be evident that the restrictions of load even though made in one or other month during the aforesaid years, in no manner it affected the petitioner who consumed energy as per its requirement irrespective of allotted load.

This will be evident from the figures year-wise submitted by the Board, as was noticed by the General Manager, Ranchi and referred to in the impugned order dated 17th August, 1993 :

Month	Energy as per Actual energy Allotted Load consumed (KWH)	(KWH)
April"90	57,22,000	40,05,000
May"90	1,35,09,000	85,51,500
June"90	1,05,99,500	65,08,500
July"90	64,38,000	74,10,500
Aug"90	76,07,000	70,99,500

Sept"90	41,04,750	99,87,000
Oct"90	91,84,750	53,49,000
Nov."90	43,25.250	35,97,000
Dec."90	73,14,000	61,86,000
Jan"91	39,97,500	24,99,000
Feb"91	58,50,250	20,85,000
March"91	53,78,000	24,75,000
6,31,10,000	5,67,69,000	KWH
1991-92		
April"91	57,05,500	39,39,000
May"91	61,82,750	28,50,000
June"91	1,08,01.500	46,11,000
July"91	61,45,000	33,91,717.5
Aug"91	52,45,000	20,70,000
Sept"91	62,03,500	37,89,000
Oct"91	1,02,53.000	74,16,000
Nov."91	75,06,500	53,31,000
Dec."91	82,07,500	45,18,000
Jan"92	80,04,500	46,62,400
Feb"92	59,72,500	27,30,000
March"92	60,81,000	43,92,000
8,63,08,250	4,96,99.717	KWH

1992-93

April"92	52,00,000	36,15,000
May"92	37,55,000	33,27,000
June"92	38,16,000	24,60,000
July"92	70,49,500	63,39,000
Aug"92	89,31,000	70,23,000
Sept"92	89,76,000	57,42,000
Oct"92	74,96,000	39,34,000
Nov."92	81,22,500	49,18,638
Dec."92	81,24,000	31,62,000
Jan"93	1,09,07,500	45,57,000
Feb"93	92,70,000	28,47,000
March"93	1,37,02,500	58,59,000
8,63,74,000	5,27,69.000	KWH

28. When considered all pros and cons of the case and the facts as stated above, which have been meticulously considered and discussed by the General Manager, Ranchi, I find that there is no illegality in the impugned order dated 17th August, 1993 passed by him.

29. In the facts and circumstances, as the petitioner failed to make out any case to interfere with the impugned order dated 24th December, 1991, as challenged in CWJC No. 746 of 1992 (R) and the order dated 17th August, 1993, as challenged in CWJC No. 2574 of 1993 (R), this Court is not inclined to interfere with the consequential AMG bills for the years 1977-78; 78-79 & 82-83 (as challenged in CWJC No. 746 of 1992 (R) or the bills for the years 1990-91, 91-92 & 92-93 as challenged in CWJC No. 2574 of 1994 (R).

30. There being no merit, both the writ petitions are dismissed.

31. So far as CWJC No. 3839 of 1993 (R) is concerned, the same being not pressed, it is dismissed for non-prosecution. However, in the facts and circumstances of the case, there shall be no order, as to costs, with respect to

any of the case.

Lakshman Uraon, J.

32. I agree.