
(2013) 05 JH CK 0057
In the Jharkhand High Court
Case No : CWJC No. 852 of 2000 (R)

Tata Yodogawa Limited

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49, 49(3)

Citation : (2013) 4 AJR 339

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : N.K. Poddar, Amit Poddar, Vikas Pandey, Darshan Poddar and Piyush Poddar, for the Appellant; Anil Kr. Sinha, Mr. Ajit Kumar and Mr. Saket Upadhyay, for the Respondent

Judgement

Aparesh Kumar Singh, J.—Though the petitioner had initially challenged the vires of the tariff for consumers of Induction Furnaces contained in the Board's internal communication dated 24th September 1999 (Annexure-5) and the retrospective application of the said tariff with effect from 01st September 1999, but during the course of the proceedings, the petitioner had abandoned such a prayer which was also recorded in the order dated 14th September 1999 passed in the instant writ application. The petitioner has since then confined its prayer in the writ application to the challenge to the applicability of such tariff to the Induction Furnace of the petitioner. Therefore, the sole question which needs to be decided in the present writ application is, whether the tariff schedule communicated by the Bihar State Electricity Board (in short "BSEB") vide annexure-5 dated 24th September 1999 and the Gazette Notification dated 15th March 2000 (Annexure-C to the counter affidavit) is applicable to the petitioner or not? The answer to such question will determine whether the petitioner is liable to pay the impugned Bills raised pursuant to annexure-13 dated 16th March 2000 for the sum of Rs. 32,13,848/-. In order to challenge the applicability of the said tariff notification to the petitioner's Unit, learned Senior Counsel for the petitioner has made the following submissions: According to the

petitioner, it is having a Roll manufacturing Unit at Gamharia, Adityapur, Jamshedpur. Its primary activity is manufacturing of Rolls which is a tailor made product and the Induction Furnaces are used merely in conjunction with other types of Furnaces for manufacture of said Rolls. Besides the melting set up the Foundry consists of Heat Treatment Furnaces, Mould Drying Ovens, Roll Casting facilities. The Machine Shop comprises of several Heavy Duty Machine Tools like Lathes, grinding machines & milling machines. For the purposes of running the said Unit, the petitioner entered into an agreement dated 01st of April 1979 with the respondent BSEB for supply of electricity for 10,500 KVA i.e. equivalent to 10.5 MVA under tariff H.T.S-II having consumer no. HJAP/25 which is contained at annexure-1 to the writ application. As per the agreement entered into between the petitioner and the BSEB, the purpose of seeking supply of energy was for manufacture of cast rolls and ingots. It is not in dispute that since the date of agreement, petitioner's Unit categorized as HTS-II category of consumer, has been continuously drawing energy from the erstwhile BSEB under the tariff notification issued from time to time and lastly, 1993 tariff of the Board dated 23rd June 1993. The present cause of action however arose on account of tariff schedule notified by the erstwhile BSEB on 15th March 2000 which was made specifically applicable to the Induction Furnaces of the consumers of the Board. According to the learned Senior Counsel for the petitioners, the said tariff notification was made retrospectively applicable from 01st September 1999.

2. The Background of introduction of such a tariff schedule for a special category of consumers having Induction Furnaces was on account of deliberations between the respondent Board and the Steel Manufacturers Association. Learned Senior Counsel for the petitioners submits by reference to annexure-5 dated 24th September 1999 that the Secretary, BSEB by the said letter communicated to all its concerned General Managers-cum-Chief Engineers of different areas Electricity Board and other functionaries, the introduction of new tariff schedule for HT consumers having Induction Furnaces. It is submitted that on perusal of the said letter, it would appear that it has been issued on the basis of consensus arrived at between the Board and the Bihar Steel Manufacturers' Association regarding tariff for consumers having Induction Furnaces to be levied with effect from 01st of September 1999, as per the details given thereunder. Learned counsel for the petitioners has relied upon the relevant portion of the said letter relating to the applicability of the said tariff as also the character of service to be provided thereunder to consumers having Induction Furnaces which is quoted herein-below:

2. Character of Service:

The supply to Induction Furnace shall be made available only after ensuring that the loads sanctioned are corresponding to the load requirement of tonnage of furnaces. The minimum load of one tonne Furnace is no case be less than 600 KVA and all loads will be determined on this basis. No supply will be given on loads below this norm.

3. Learned Senior Counsel further submits that consequent thereupon, tariff notification dated 15th March 2000 which is annexed as annexure-C to the counter affidavit in the writ application, was issued which contains exactly the similar terms relating to the applicability of the tariff and the character of its service. By referring to the aforesaid quoted tariff, learned Senior Counsel submitted that the minimum load of 1.00 tonne Furnace in no case, should be less than 600 KVA and all loads will be determined on this basis. No supply will be given on loads below this norm.

4. Learned Senior Counsel for the petitioners submits that the instant tariff notification was made on the basis of consensus arrived at between the Steel Manufacturers Association who are generally engaged in use of Induction Furnaces for manufacture of Rolls. Use of Induction Furnaces for infrastructure purposes are quite distinct from manufacture of Rolls which the petitioners are engaged in. It is his contention that in order to obviate the loss of theft of energy in supply to such Induction Furnaces for various reasons, the Board came out with the instant tariff. The instant tariff was framed by the respondent Board in respect of Induction Furnaces relying upon the manual published by Siemens which manufactures different kinds of Induction Furnaces.

5. Here onwards, the submission of the learned Senior Counsel for the petitioners is focused on the very question whether the instant tariff would apply to the kind of Induction Furnace which the petitioner has been using. Learned Senior Counsel has taken this court to the Siemens Booklet contained at annexure-A to the counter affidavit of the Board. Reference has been made to paragraph-11.2 about the process of heating of Induction Furnace. The manual describes kinds of electrical equipment of varying frequency which are used for Induction heating depending upon the size and material of the work piece and the required heating programme. Though, three kinds of Induction Furnaces are described in the said manual being (a) Mains Frequency Installation, (b) Medium Frequency Installation and (C) High Frequency Installation, learned Senior Counsel has emphasized distinction between the Mains frequency installation which according to him, is used by the petitioners and the medium frequency installation which are used by the general Induction Furnaces consumers for manufacture of infrastructural materials like rods. According to him, for deciding the question posed before this court, it is not necessary to discuss the high frequency installation. However, for appreciating the nuances of the three kinds of installations of Induction heating, the description contained in the Siemens Manual has been explained on his part.

6. By referring to the fields of application, in the aforesaid Manual, learned Senior Counsel submits that the Mains frequency installation are used for heating of metals, large steel work pieces and Induction melting, while medium frequency installation are used for heating of ingots for forging, pressing, drawing, normalizing, etc functions. While the Mains frequency installation do not require high voltage currents, the medium frequency installation use high voltage

for instant heating and melting of the iron for its conversion to the products like ingots, for forging, rods, etc. In the mains frequency Induction furnace, steady current at optimum voltage is required for the purposes of heating of metals for manufacturing of rolls. Induction Furnaces which are used for manufacture of Rolls by the petitioners are of much higher capacity than those used by medium frequency installation. According to the petitioners, the capacity of the petitioners' Induction Furnace is 16.116 tonne and 8.00 tonne respectively whereas for the purpose of medium frequency installation which are used by Steel Manufacturers Association for production of infrastructural materials like rods, etc, the capacity varies from one tonne to 4 to 5 tonne ordinarily.

7. Learned Senior Counsel has also drawn attention to the table no. 299 in the said Siemens Manual where the capacity and use of terminal power for the two kinds of Induction Furnaces i.e. medium frequency and mains frequency are furnished in a chart. It is submitted by referring to the said chart that for medium frequency 1.00 tonne capacity Induction Furnace for steel, 800 KW current is the standard consumption of electricity shown while for Mains frequency Induction Furnace for steel, for 1.00 tonne capacity, 200 KVA of the power consumption is the standard described in the said table itself. Learned Senior Counsel submits that tariff schedule and the letter dated 24th September 1999 (Annexure-5) both prescribe that the minimum load of one tonne furnace, in no case, would be taken to be less than 600 KVA. It is submitted that therefore, the instant tariff based upon the Siemens Manual relied upon by the Board is applicable to the medium frequency Induction Furnace which admittedly consume a minimum of 800 KW/900 KVA of power for one tonne capacity Furnace which obviously is more than 600 KVA, whereas the petitioners' Induction Furnace being of Mains frequency type as per the Siemens Manual itself, would consume power of 200 KVA for one tonne capacity Furnace. In such circumstances, as per the Board's own letter dated 24th September 1999 and the tariff schedule contained at Annexure-C dated 15th March 2000, the Board should not supply electricity for loads below this norm to the Induction Furnace. As per the petitioners, it has been consuming electricity on the basis of the tariff notification issued from time to time by the respondent Board for HTS-II Category and lastly, the tariff notification of 1993 which provides for tariff applicable to the kind of Induction Furnace which the petitioner uses.

8. Learned Senior Counsel next proceeded to rely upon the manufacturers Manual of the petitioners Induction Furnace which is contained at annexure-19/1. Annexure-19 is the Instrument Manual of Asea Brown Boveri Limited (ABB) for installation and operation of Mains Frequency Induction Furnace Plants. As per the said manual, crucible capacity of one of the Induction Furnaces of the petitioners is 16,116 Kg i.e. 16.116 tonne. The transformer capacity is 2750 KVA. By applying the formula for calculation of KVA capacity of the Induction Furnace of the petitioners, it would come to 170.63 KVA per hour. Similarly, the capacity of the second Induction Furnace Mains frequency Coreless Induction Furnace is 8000 Kgs. or 8.00 tonne; transformer capacity 2000 KVA which comes to 200

KW per tonne as per the aforesaid formula.

9. By referring to the annexure-20/1 dated 12th April 2000, it is submitted that their manufacturer ABB also confirmed specifications of the two 16/8 tonne Mains frequency Induction Furnace of the petitioner and clarified that the 16 tonne Mains frequency Induction Furnace has a range of 171 KVA per tonne to 268 KVA per tonne and the 8.00 tonne Mains frequency Induction Furnace has a range from 125 KVA per tonne to 250 KVA per tonne.

10. At this stage, learned Senior Counsel submits that the very question as to how the capacity of a Induction Furnace is to be calculated, has been the subject of deliberation by the Jharkhand State Electricity Regulatory Commission which is a statutory Body to frame tariff for licensee like the respondent Board. Relying upon the tariff notification of the financial year 2012-13 which is a public document notified by the Commission, learned Senior Counsel submitted that after hearing such objections including that of the JSEB, Commission has expressed its categorical view at para-4.7 i.e. For assessing the capacity of the Induction furnaces, the licensee has to rely upon the manufacturer's manual for such assessment. It is submitted that the aforesaid necessity arises also for the reason that Induction Furnace is used to melt metals like iron for manufacture of different products like rolls, ingots, etc. at a very heated stage, its physical capacity can only be measured by stopping the operations to allow the Furnace to cool down which naturally entails stoppage of manufacturing activity for considerable period of time also and is impracticable.

11. Learned Senior Counsel further submits that in order to put the very question relating to the capacity of the petitioner's Induction Furnaces beyond of any iota of doubts, the petitioners" have got the same assessed by an independent competent laboratory of the Government of India i.e. National Metallurgical Laboratory, Jamshedpur. Learned Senior Counsel submits further that the experts from the National Metallurgical Laboratory have collected data from the 2 Induction Furnaces, analyzed it and independently come to a conclusion relating to the capacity of the two Induction Furnaces of 8.00 tonne and 16.116 tonne capacity of the petitioners". According to the report of the National Metallurgical Laboratory, Jamshedpur contained at annexure-33 also, they have assessed the KVA capacity of the two Induction Furnaces of 8.00 tonne and 16.116 tonne capacity as 250 and 171 KVA.

12. Learned Senior Counsel therefore submits that even as per the Siemens Manual which is the basis for framing of tariff in question of 16th March 2000 by the respondent BSEB, the manufacturing manual of the ABB Limited which has supplied the two Induction Furnaces to the petitioners as also the independent assessment of the National metallurgical Laboratory, Jamshedpur, a Government of India Undertaking, the KVA capacity of the petitioners Induction Furnaces is much less than what has been notified by the BSEB vide its letter dated 24th September 1999 (Annexure-5) as also the tariff notification dated 15th March 2000 (Annexure-C) which stipulate that the minimum load for one tonne capacity

Induction Furnace would be not less than 600 KVA. Learned Senior Counsel therefore submits that the said tariff notification which has admittedly been framed by arriving at a consensus with the Steel Manufacturer's Association which use the specific type of medium frequency installation / Induction Furnaces for a different KVA capacity, as already discussed herein above have not been framed in respect of such Induction Furnace of Mains frequency category and are therefore not applicable to the petitioners' Unit.

13. Learned Senior Counsel further submits that these facts have always been in deliberation through correspondences between the petitioners and the respondent Board officials, as would appear from the annexure-7 dated 6th October 1999 addressed to the Electrical Superintending Engineer. It is submitted that the deliberation between the Steel Manufacturers Association with the Bihar State Electricity Board as contained in annexure-6/1 dated 01st September 1999 would itself show that the consumers of the said Association had undertaken to file an affidavit before the respondent authorities of the Board in order to declare the capacity of their Induction Furnaces. However, it is submitted that the petitioners have never been a part of the said Association and party to the said deliberation and, therefore, the petitioners cannot be saddled with the obligation to file an affidavit to that effect which members of the Steel Manufacturers Association had undertaken on their own.

14. Based upon these submissions, learned Senior Counsel submits that it has been demonstrably shown that the tariff notification of 15th March 2000 preceded by letter of Secretary, BSEB dated 24th September 1999 laying down the criteria for application of such tariff i.e. a minimum load of 600 KVA for one tonne capacity Induction Furnace is not at all attracted and applicable to the petitioners' Unit which has the Induction Furnaces of 8.00 and 16.116 tonnes capacity with power consumption of 250 and 171 KVA of Mains frequency category. In such circumstances, learned Senior Counsel submits that this court should hold that the tariff notification issued vide letter 24th September 1999 and Gazette Notification dated 15th March 2000 made effective from 01st September 1999 framed for Induction Furnaces are inapplicable to the petitioner's case and the petitioner is not liable to pay the electricity Bills raised by the respondent Board under the said tariff schedule vide annexures-13.

15. Learned Senior Counsel appearing on behalf of the petitioner has drawn the attention of the court to the measurement of the Induction Furnaces taken by the official of the respondent Board, as contained in annexure-13. According to him, each Induction Furnace has been measured and its capacity has been calculated by excluding Ramming Mass and by including Ramming Mass in two different ways; case (1) when crucible is considered to be cylindrical; case (2) when the crucible is considered to be part cylindrical part tapering. These two different methods of measurement of capacity of two Induction Furnaces have given different results which shows significant difference in their capacity. The bottom notes after carrying out such calculation in respect of two Furnaces also

indicates that the concrete at bottom has not been excluded in the calculation of the volume. The respondent however have raised the impugned Bills by calculating the capacity of two Induction Furnaces including the Ramming mass and concrete at the bottom and assessed the load of two Induction Furnaces as 38.382 MT. The capacity of 08 MT Induction Furnace has been computed to be 13.352 and that of 16 MT has been taken to be 25.03 MT. These in itself shows non-application of mind as the Ramming mass and concrete at the bottom of the crucible cannot be included to compute the capacity of the individual crucible. Based upon such incorrect computation, the contract demand of the petitioner has been raised to 29.131 MVA which includes the contract demand of 23.09 MVA of 38.382 MT capacity of two Induction Furnaces as arrived by them and KVA demand of other loads in the petitioner Unit. It is submitted that the contract demand has been artificially raised without any allegation of theft or unauthorized use of electricity from the contracted demand as per the agreement (Annexure-1) i.e. 10,500 KVA, which is impermissible in law.

16. Learned Senior Counsel has, in course of argument, submitted that the averments made in the counter affidavit read with the table no. 298 contained in the Siemens Manual annexed to the counter affidavit, would show that the respondents have taken the figures applicable to the electric Arc Furnace and the Ring Shaped Induction Furnace to arrive at the arbitrary figure of 600 KVA and 0.7 power factor while laying down the tariff for Induction Furnaces. In such circumstances, learned Senior Counsel submits that the figure of 600 KVA arrived in the tariff suffers from non-application of mind and has been raised on imaginary basis and therefore, inapplicable to the petitioner Unit. However, learned Senior Counsel fairly submits that the petitioner is not challenging the vires of the impugned tariff, but only its applicability to the petitioner Unit.

17. The respondent Jharkhand State Electricity Board has, at the outset, questioned the very substratum of the argument of the petitioner based upon the distinction shown in the nature of different kinds of Induction Furnaces. Learned Senior Counsel Mr. Anil Kumar Sinha, appearing for the Board, submits that the vires of the tariff notification admittedly is not in question and it is also not in dispute that the petitioner is a consumer having Induction Furnaces. Learned Senior Counsel, by referring to annexure-5 communication dated 24th September 1999, submits that the said tariff schedule on the face of it, applies to all consumers who have a contracted demand of 300 KVA and more for Induction Furnaces. The petitioner undisputedly had a contract demand of 10,500 KVA. According to the learned Senior Counsel, the said tariff, applicability of which to the petitioner Unit, are in question, does not make any difference between different kinds of Induction Furnaces i.e. Main Frequency Installation, Medium Frequency Installation or High Frequency Installation and any other such category. It only indicates that it will not apply to the casting Unit having Induction Furnace of melting capacity of 500 Kg or below which is not the petitioner's case.

18. Learned Senior Counsel, by referring to the averments made in their counter affidavit, submits that the tariff framed for supply of electricity to Induction Furnaces is fair and reasonable. It had come to the knowledge of the respondent Board that large scale theft of electricity is committed by Induction Furnace consumers and the demand of their furnaces were also substantially suppressed. The Induction Furnaces are electricity intensive and the Board was suffering huge loss of revenue on account of several illegal methods adopted by the consumers by suppressing their actual contract demand and the Units of energy consumed. With this object, the respondent Board had framed conditions for supply of electricity by fixing a minimum level of contract demand and consumption of electricity in Induction Furnaces in accordance with the scientific study about the load pattern of induction Furnaces. The Board had taken into account such tariff framed by the U.P. Electricity Board and had also discussed the matter with the Bihar Steel Manufacturers Association, the only representative body of the Induction Furnaces, who had also agreed with the condition of supply framed by the Board relating to supply of electricity to the Induction Furnaces. The Board had undertaken a scientific study for calculating the Induction Furnaces load including the Siemens Electrical Handbook and then after scientific assessment, fixed the minimum power requirement of 01 tonne Induction Furnace as 600 KVA which is fair and reasonable. It was further submitted during the course of argument that apart from the petitioner, rest of such consumers of Induction Furnaces have accepted the tariff and entered into a fresh agreement after raising of contract demand and the tariff has not been disputed.

19. Learned Senior Counsel submits that in one such instance, the applicability of the instant tariff was questioned by the Induction Furnace consumer before this Court. It is submitted that the learned Single Judge of this Court had categorically upheld the applicability of the instant tariff to such consumers having Induction Furnaces and held that according to the new tariff, petitioner having Induction Furnace of capacity of 01 tonne, is liable to get the contract load of 600 KVA and pay charges according to the tariff. Judgment of the learned Single Judge in the case of Bholotia Auto Products and Sunrise Ingot Pvt. Ltd. Vs. Bihar State Electricity Board and Others, . The said decision of the learned Single Judge was upheld by the Division Bench of this Court reported in Sunrise Ingot Pvt. Ltd. Vs. Jharkhand State Electricity Board and Others, . It is submitted that the Letters Patent Court considered the submission of the respondent Board that the tariff in question has been framed with an object to protect the serious loss of revenue which the Board had been suffering on account of pilferage of electricity by consumers of Induction Furnaces and also taken into account that the Board had made a study and realized that 600 KVA of connected load is necessary for 01 MT Induction Furnace. It is submitted that the challenge to the said judgment was negated by the Hon'ble Supreme Court in Civil Appeal No. 525 of 2005 vide judgment dated 19th July 2007. Learned Senior Counsel therefore submits that the question of applicability of the said tariff has squarely been upheld up to the Hon'ble Supreme Court in relation to the Induction

Furnace consumers. The petitioner, therefore, cannot be allowed to re-agitate the same as it undisputedly falls within the scope of the said tariff being the Induction Furnace consumer having a contracted demand of 10,500 KVA. By referring to the agreement contained at annexure-1 entered with the respondent Board, learned Senior Counsel submits that electricity is being given by 33 KVA High Tension Service for manufacture of cast, rolls and ingots to the petitioner Unit. Therefore, the petitioner cannot escape the applicability of the said tariff to its Unit. Learned Senior Counsel, referring to notes to Annexure-5, further submits that the Board had categorically indicated that those consumers who are having rolling/re-rolling mills in the same premises, are required to take additional contract demand for rolling/ re-rolling mills over and above contract demand required for Induction Furnaces @600 KVA per tonne for melting capacity. A consumer will have to segregate the rolling / re-rolling mills and take a separate new connection after complying with prescribed formality with a separate transformer. This new connection, if taken by the consumer, will be allowed to be billed in proper tariff schedule. Such rolling / re-rolling mills will be allowed to take power of 33 KVA.

20. It is submitted that while raising the impugned Bill vide annexure-13, the Board has categorically asked the petitioner to segregate the loads of Induction Furnace from other loads and rearrange its system in such a way to facilitate separate connection preferably within a month for the total revised contract demand arrived at after measurement of the petitioner's load. 23.029 MVA is the load computed for the two Induction Furnaces while 6.102 MVA was the demand for other loads. It is submitted that the impugned Bills have been raised as per the tariff applicable to the petitioner Unit. However, such questions relating to the measurement of the capacity of the petitioner's Induction Furnaces can always be reconsidered by the authorities of the respondent Board if found sustainable on facts as well as law.

21. Learned Senior Counsel submits that the validity of separate tariff for Induction Furnaces was also one of the issues before the Hon''ble Supreme Court in the case of Ashok Soap Factory and Another Vs. Municipal Corporation of Delhi and Others, . Learned Senior Counsel has relied upon the judgment of the Hon''ble Supreme Court in the said case by referring to paragraphs-27 to 30 to advance his submission that in the said case also, the Hon''ble Supreme Court had taken into account the reasons which persuaded the Delhi Electric Supply Committee to justify and recommend the increase in the minimum consumption guarantee charges to Delhi Municipal Corporation to cover the loss suffered on account of pilferage of electricity by fraudulent means. In the said case relating to Arc/Induction Furnace also, it was submitted that the said stand taken by the Delhi Municipal Corporation was not found to be without any foundation. In such circumstances, it is submitted that the Hon''ble Supreme Court upheld the revision in the minimum guarantee charges to such consumers using Arc/ Induction Furnaces. It also held that the fixation of tariff is a legislative function and the only challenge to the fixation of such levy can be on the ground of

unreasonableness or arbitrariness and not on demonstrative grounds. Therefore, according to the learned Senior Counsel appearing for the Board, once the petitioner has abandoned its challenge to the tariff, the tariff is universally applicable to all Induction Furnaces as per the terms indicated therein and the petitioner cannot be allowed to make a distinction to wriggle out of it.

22. Learned Senior Counsel for the Board, by relying upon the provisions of section 49(3) of the Electricity Supply Act, 1948 which were then in vogue, submits that it enables the Board to notify the tariff for a separate class of consumers keeping into account the nature and purpose of supply. In support of the aforesaid contention, he has relied upon the judgment of the Hon''ble Supreme Court in the case of M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, , paragraphs-20 and 25 thereof as also in the case of Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, paragraphs-8 and 11 thereof.

23. Lastly, learned Senior counsel Mr. Sinha submits that the literal rule of interpretation are to be followed even in the construction of tariff document since it does not suffer from any ambiguity. Its fair and simple meaning can be given effect to give a purposive interpretation of the object and aim of the tariff. Learned Senior counsel relies upon a judgment of the Hon''ble Supreme Court in the case of Nathi Devi Vs. Radha Devi Gupta, , paragraphs- 13 to 15 and 17 thereof and in the case of Nasiruddin and Others Vs. Sita Ram Agarwal, , paragraph-37 in support of the aforesaid contention. It is submitted on his behalf that it is well settled that when there is conflict between the agreement and the tariff applicable, tariff notification would always prevail over the terms of the agreement. Learned Senior Counsel has relied upon the judgment of Division Bench of Patna High Court in the case of Dumraon Textiles Limited Vs. Bihar State Electricity Board and Others paragraph-9 thereof.

24. In response to the arguments advanced by the learned Senior Counsel for the petitioner with reference to Siemens Manual, it is submitted on behalf of the Board that the table referred to by the petitioner in the said Manual itself indicates that the Board after making scientific study has arrived at an uniform basis for all Induction Furnaces irrespective of the nature of the Furnaces. This has been widely accepted by all consumers of Induction Furnaces after deliberation with the Board and their Association i.e. Steel Manufacturers Association. In any case, the Board under its new tariff making power is fully entitled to lay down tariff schedule in terms of the provisions of section 49 of the Act of 1948 and the tariff in itself is no longer open to challenge in the instant case. It is further submitted that the same conditions were prevailing prior to 2010-11 and accepted by the Commission under its tariff making power under the Electricity Act, 2003. The petitioner would also be subjected to the same tariff notification till they have been replaced by the tariff notification made in the year 2011-12 and 2012-13. On the basis of the aforesaid facts and submissions, learned Senior Counsel appearing on behalf of the Board, submits that the Board

has been suffering loss on account of stay operating in favour of the petitioner and the petitioner has failed to make out any case in support of its contention that the tariff in question is inapplicable to the induction furnaces used by the consumer. It is submitted that the petitioner is therefore liable to be charged under the said tariff schedule fixed as per annexure-5 dated 24th September 1999 and notified with effect from 15th March 2000 in the Gazette on 15th March 2000 with effect from 01st September 1999. Accordingly, the writ petition should be dismissed with cost and the petitioner should be liable to pay all the outstanding dues under the impugned Bills and the bills to be raised thereafter based upon the said tariff along with the delayed payment surcharge as statutorily applicable. It is submitted that on account of the interim order of this court, petitioner has been paying its Bills on the basis of 1993 tariff applicable to HTS-II consumer.

25. Learned Senior Counsel, appearing on behalf of the petitioner, in rebuttal, reiterates the contention made on his behalf earlier and as has been recorded in the earlier part of the judgment. According to him, the petitioner does not challenge the said tariff, but the tariff in question is inapplicable to the petitioner as condition precedent for applicability of such tariff is not satisfied by the petitioner. Learned Senior counsel distinguished the judgments relied upon by the respondent Board in relation to the applicability of the tariff to the Induction Furnaces in the case of M/s. Bholotia Auto Products (Supra). It is submitted that in the said case, the petitioner had under declared the load in order to avail the benefits of industrial policy of the State and on such admitted facts, the Court held that it cannot escape the applicability of the tariff under which it was required to raise the contract demand load at par with the requirement of the tariff. It is submitted that these questions were neither raised nor decided in the judgments relied upon by the learned counsel for the Board. In any case, the respondent had during exercise of measurement which were itself flawed, had only measured the dimension and not KVA capacity of the Induction Furnace of the petitioner.

26. Learned Senior counsel for the petitioner has also sought to distinguish the judgment of the Hon"ble Supreme Court in the case of M/s. Ashok Soap Factory and another (Supra), by submitting that in the said case, the minimum demand charges were revised from 40 to 340 per KVA and the question which are raised in the present writ application, did not fall for consideration before the Hon"ble Supreme Court relating to the applicability of the tariff to the Induction Furnace Consumer. Learned Senior counsel submits that in any case, the petitioner does not dispute the power of the Board u/s 49 of the Act of 1948 to lay down the tariff, but on interpretation of the tariff itself, the petitioner is not subjected to the applicability of the said tariff as it does not consume 600 KVA of power per tonne of Induction Furnace. According to the petitioner, it is liable to pay for its contracted demand of 10,500 KVA as per earlier tariff schedule under HTS-II category under the 1993 tariff notification and it is uninterruptedly applied to the petitioner earlier also and the petitioner have been paying its electricity Bills

thereunder without any complaint. Pursuant to the direction of this court, the petitioner had deposited a sum of Rs. 15.00 lakhs as lump-sum towards the demand raised by the Board and it is entitled to refund of the same along with interest once the writ petition is allowed in its favour. As per the petitioner, since April 2013, it is no longer a consumer of the respondent Board but it is drawing electricity from another licensee operating in the area where the petitioner Unit falls.

27. I have heard learned counsel for the parties at length and gone through the relevant materials on record including the judgments relied upon by them. As has been noticed in the opening paragraph of the judgment itself, the petitioner has abandoned its challenge to the validity of the tariff notification vide annexure-5 dated 24th September 1999 to the writ application. In order to appreciate the sole question which needs to be decided in the present writ application, whether the said tariff schedule is applicable to the petitioner or not, it is necessary to once again refer to the relevant extracts of the said communication dated 24th September 1999 which have also been incorporated in the Gazette Notification dated 15th March 2000 (Annexure-C to the counter affidavit).

Tariff Schedule

High Tension Specified Services (HTSS)

1. Applicability

This tariff schedule shall apply to all consumers who have a contracted demand of 300 KVA and more for induction furnace. This tariff schedule will not apply to Casting Unit having induction furnace of melting capacity of 500 kg or below.

2. Character of Service:

The supply to Induction Furnace shall be made available only after ensuring that the loads sanctioned are corresponding to the load requirement of tonnage of furnaces. The minimum load of one tonne Furnace is no case be less than 600 KVA and all loads will be determined on this basis. No supply will be given on loads below this norm.

28. Reading of the aforesaid tariff schedule indicates that the tariff schedule applies to all consumers which have a contract demand of 300 KVA or more for induction furnace. In the present case, admittedly, as per annexure-1, agreement entered into between the petitioner and the Board, the contract demand of the petitioner is 10,500 KVA. The tariff has been framed by the Board in exercise of its powers given u/s 49 of the Electricity Supply Act, 1948. Sub-section 3 thereof empowers the Board to frame tariff for separate class of consumers keeping into account the nature and supply of energy. Power of the Board to frame tariff is admittedly not in question. The induction furnace consumers form a separate class is also not in question. The object of framing the instant tariff by the respondent Board has been to lay down an uniform basis

for all categories of induction furnaces in order to prevent serious loss of revenue on account of pilferage / theft of electricity by the consumers of the induction furnaces. The aforesaid reasons of pilferage / theft of electricity for laying down such a tariff applicable to Arc/induction furnaces by Delhi Municipal Corporation were the subject matter of consideration before the Hon''ble Supreme Court in the case of M/s. Ashok Soap Factory (Supra). The Hon''ble Supreme Court in paragraph-27 of the said judgment after noticing justification for revision in the minimum guarantee charges of the consumers using Arc/induction furnaces, found the approach of the Corporation justified to revise the rate of minimum consumption of guarantee charges to reasonable level so that consumers are not tempted to adopt such unfair means and the rates are commensurate with the fixed expenditure being measured by the Undertaking. The Hon''ble Supreme Court in the circumstances held that the fixation of tariff is the legislative function and the only challenge to the fixation of such levy can be on the ground of unreasonableness or arbitrariness and not on demonstrative grounds.

29. Therefore, the Board had justification for laying down an uniform tariff for consumers using induction furnaces. The yardstick laid down by the Board was that the minimum load for 01 tonne induction furnace will be not less than 600 KVA and all loads will be determined on this basis. This tariff did not make any distinction between Mains Frequency Installation as the petitioner claims itself to be and Medium Frequency Installation or High Frequency Installation. It provided an uniform criteria and yardstick applicable to all sizes and types of induction furnace irrespective of its category. The heavy reliance of the petitioner contained in the Siemens Manual also reiterates the very point. According to the figure indicated in the said Manual, the Medium Frequency Installation which the petitioner was shown to have been using, would consume around 800 KW or 1000 KVA of electricity, as per standard yardstick. However, the tariff did not lay down different loads for different categories of induction furnaces as indicated in the said Manual, but chose to lay down a fair and reasonable uniform basis applicable to induction furnaces irrespective of their different categories. Therefore, the argument of the petitioner based upon fine distinction of different categories of induction furnaces on the question of applicability of the tariff to the petitioner Unit, appears to be fallacious. Once the tariff has been notified and the validity of the same are not under challenge, it applies uniformly to all categories of consumers using induction furnace having contracted demand above 300 KVA as has been indicated in the first para of the tariff schedule relating to the applicability of the tariff itself.

30. The rules of interpretation as are applicable to a statute, broadly apply to the construction of instrument as well. According to the literal rule of interpretation, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, the court must give such meaning to the words irrespective of consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no question of construction of statute arises, for the Act speaks for

itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. As such, literal interpretation should be given to the Statute if the same does not lead to an absurdity. It would be appropriate to quote the opinion of the Hon"ble Supreme Court on the question of interpretative function of the court to discover the true legislative intent. Paragraphs-13 to 15 and 17 of the Judgment of the Hon"ble Supreme Court rendered in the case of Nathi Devi (Supra) on this question of interpretative function of the Court is being quoted herein under.

13. The interpretative function of the Court is to discover the true legislative intent. It is true that in interpreting a statute the court must, if the words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of the consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no question of construction of statute arises, for the Act speaks for itself. Courts are not concerned with the policy involved or that the results are injurious or otherwise, which may follow from giving effect to the language used. If the words used are capable of one construction only then it would not be open to the court to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act. In considering whether there is ambiguity, the court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness which may render the statute unconditional.

14. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the legislature. The courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors.

15. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity.

17. Even if there exists some ambiguity in the language or the same is capable of two interpretations, it is trite that the interpretation which serves the object and purport of the Act must be given effect to. In such a case the doctrine or purposive construction should be adopted.

31. From a plain reading of the provisions of the tariff schedule, it would appear that it did not permit any other interpretation. It provides in plain and simple language that it shall apply to all consumers who have contract demand of 300 KVA or more for induction furnaces. This tariff have been framed after consultation with the Steel Manufacturers Association who are users of induction furnace and with an intent and object to prevent theft / pilferage of electricity causing serious loss to the Board. It matters little that the petitioner was the

party to the deliberation made with the Steel Manufacturers Association as the power of the Board to frame such a tariff is neither in question nor the tariff itself is under challenge. In such circumstances, the heavy reliance placed by the petitioner on the computation of the load of two induction furnaces by relying upon the ABB Manufacturer Manual i.e. the petitioner's manufacturer or the independent report of National Metallurgical Laboratory, is of no consequence or help to the petitioner's case. It is not a case of the Board that the tariff provides for different categories of load for different capacity of induction furnaces, rather an uniform Broad classification, applicable to all kinds of induction furnaces, have been laid down after making a scientific study and relying upon the Manufacturer's Manual and the tariff notification of the other Boards as well. The fairness or reasonableness of laying down of the tariff is not in question. Though, it may prove onerous in some cases and easy in other cases is also not a consideration to judge the applicability of the tariff to a consumer.

32. However, the Board appears to have undertaken an exercise to compute the capacity of induction furnace of the petitioner by undertaking measurement applying two methods; (A) Including Ramming Mass (B) Excluding Ramming Mass. The Ramming Mass is part of the body of the induction furnace but it is outer shell of the induction furnace. The concrete bottom of the induction furnace also does not form the internal volume and the same cannot be taken to calculate the internal volume of the induction furnace. The computation arrived at by the respondent Board after making such measurement including Ramming Mass and concrete bottom therefore cannot be said to be a scientific and correct computation of the volume of the induction furnace. The capacity of the induction furnace is computed for its use in melting purpose. Therefore, computation of the Bills contained in Annexure-13 based upon such an erroneous computation of the capacity of the petitioner's induction furnace, cannot be said to be correct. The petitioner also has a case that its induction furnaces are not cylindrical but are slightly tapered and cylindrical. Unique design of the petitioner's induction furnaces also have to be factored, in order to arrive at a correct computation of the capacity of the induction furnace of the petitioner for raising the Bill on the basis of the tariff notification dated 24th September 1999 / 15th March 2000.

33. As already observed herein-above, the tariff does not make any distinction between the different categories of induction furnaces nor the individual capacity in terms of the loads and lays down an uniform criteria and yardstick applicable to all consumers having induction furnace with contracted demand of 300 KVA or more. As already observed earlier also, the fairness and reasonableness of the criteria of laying down the minimum load of 01 tonne induction furnace to be 600 KVA under the said tariff is also not in question. Learned Senior Counsel for the petitioner has laid much emphasis on the expression used in the tariff "no supply will be given on loads below this norms". This sentence in isolation cannot be read out of context to mean that if the petitioner's induction furnace has a lesser load, the Board is not required to give supply to the petitioner Unit on the basis of this tariff and some other tariff would be applicable to it. In considering the

aforesaid question, when there is any ambiguity, the court must look at the statute or the instrument as a whole and consider the appropriateness of the meaning in broad context avoiding absurdity and inconsistency or unreasonableness which may render the statute unconstitutional. While reading the tariff as a whole, the aforesaid expression can only be held to mean that no consumer of induction furnace will be entitled to claim supply of loads below the norms of 600 KVA for 01 tonne induction furnace. The petitioner's contention on the meaning of the above quoted expression is unacceptable.

If such an interpretation is advanced, then the whole object of fixation of the tariff would stand defeated as no consumer would subject itself to the uniform criteria of the load of 600 KVA. However, since the petitioner had alone raised the question relating to the capacity of its induction furnace as others admittedly had filed affidavit on their own in respect of individual capacity of such consumers, the Board also appears to have undertaken an exercise to carry out such computation by taking physical measurement of the dimension of the petitioner's two induction furnaces.

34. As has already been observed herein above, the computation of the capacity of the induction furnaces of the petitioner based upon the methods including Ramming Mass and concrete bottom, appears to be fallacious. The Board is required to undertake a fresh computation of the capacity of the petitioner's induction furnaces by excluding the Ramming Mass and concrete bottom and also factor into the unique design of the petitioner's induction furnaces, as claimed by them rectifying the impugned Bill and raising afresh Bill under the aforesaid tariff.

35. In these circumstances therefore and the reasons discussed herein-above, the sole question raised for determination in the instant writ application is answered against the petitioner. It is accordingly held that the tariff schedule notified by the Bihar State Electricity Board vide annexure-5 dated 24th September 1999 and the Gazette Notification dated 15th March 2000 is applicable to the petitioner Unit as well. Accordingly, the petitioner is liable to pay the electricity Bills raised on the basis of the said tariff.

36. For the reasons indicated herein-above, respondents would rectify the impugned Bills in question after carrying out necessary correction in the computation of the capacity of the induction furnaces of the petitioner based upon the measurement undertaken by it during physical inspection of the petitioner Unit within a period of six weeks. The petitioner would be liable to pay the outstanding Bills raised after rectification. It will also be liable to pay the delayed payment surcharge on the rectified Bill reckoned from 16th March 2000 (Annexure-13) after adjustment of any amount deposited by it pursuant to the interim orders passed earlier till the same are paid. The petitioner cannot be absolved of the liability to pay delayed payment surcharge on the rectified Bill which is due to the respondents after the challenge to the applicability of the tariff to their Unit has failed. In view of what has been held herein above, the respondent Board would be entitled to raise electricity Bills against the petitioner

for the remaining period thereafter on the basis of the instant tariff in question, till they are replaced by any subsequent tariff as notified by the Jharkhand State Electricity Regulatory Commission. Therefore, the challenge to the applicability of the tariff to the petitioner Unit raised in the present writ application fails. However, the writ petition is disposed of with the aforesaid observations and directions.