

(2009) 05 PAT CK 0039

In the Patna High Court

Case No : Letters Patent Appeal No. 377 of 2007

The Bihar State Electricity Board

APPELLANT

Vs

Shew Vijay Udyog Forbesganj

RESPONDENT

Date of Decision : 13-05-2009

Acts Referred:

Citation : (2009) 05 PAT CK 0039

Hon'ble Judges : Vijayeshwar Narayan Sinha, J;Chandra Mohan Prasad, J

Bench : Division Bench

Advocate : Vinay Kirti Singh, for the Appellant; Ratan Kumar Sinha and Vijay Kumar Verma, for the Respondent

Final Decision : Allowed

Judgement

Chandra Mohan Prasad and Vijayeshwar Narayan Sinha, JJ.—The appellant, Bihar State Electricity Board (hereinafter, in short, referred to as "the Board") is supplier of electricity and the Respondent M/s Shew Vijay Udyog Ltd. is an Industrial Unit of High Tension Electricity Consumer under the appellant Board.

2. The respondent paid electricity bill to the appellant Board till April 1999 on the basis of the consumption recorded in the Meter in the respondent's premises. The respondent's case was that on 26th May 1999, the Electric Meter went out of order and stopped recording consumption and the said fact was brought to the notice of the Electrical Executive Engineer. The respondent also requested the Electrical Assistant Engineer to replace the defective Meter. However, the meter was not replaced, but the petitioner was served with a bill dated 8th June 1999 for the month of May 1999 calculated on the basis of consumption of 13961 units. The petitioner was subsequently also served with the bill for the month of June and July 1999 on the basis of the consumption of the same units under respective bills dated 8th July 1999 and 7th August 1999. The respondent's case was further that the bills for the three months i.e. May, June and July 1999 were raised on the basis of Minimum Monthly Guarantee charges and that on the basis of that consumption under bills fuel surcharge had also been raised.

3. The respondent also asserted that he, being a High Tension Electric consumer was subject to Annual Minimum Guarantee under the agreement and the provisions of Monthly Minimum Guarantee charge was not applicable to him and, therefore, in view of Clause 16.8 of the Tariff the consumption for the three months i.e. May, June and July 1999 could not be raised on the basis of Monthly Minimum Guarantee charge, but the same had to be assessed on the basis of average consumption for the previous three months from the date on which the meter had become out of order or the average consumption for the corresponding three months of the previous year.

4. It was not in dispute that in case the meter goes defective the energy bills had to be raised according to Clause 16.8 of the tariff which reads as follows:

16.8: Bill when meter has gone either defective or Burnt or stopped:

In the event of the meter being out of order, i.e. burnt, stopped or having ceased to function for any reason during any month/months, the consumption for that month/months shall be assessed on the average consumption of previous three months from the date of meter being out of order or the average consumption for corresponding three months of the previous year's consumption or the minimum monthly guarantee, whichever is the highest such consumption will be treated as actual consumption for all practical purposes. Until the meter is replaced/rectified, operational surcharge, power factor surcharge and electricity duty shall be levied on consumption so calculated."

While deciding the claim of the respondents, the learned single Judge came to find that under Clause 16.8 of the Tariff, the respondent, being a High Tension Consumer was liable for Annual Minimum Guarantee and he could not be served with a bill on the basis of monthly minimum guarantee even for the period during which the meter had gone out of order. The learned single Judge while giving such finding found supported with a decision of this Court in case of Mahabir Petro Products Private Ltd. Vs. Bihar State Electricity Board and Others . While taking support for his Lordships, Para-17 and 18 of the decision in Mahabir Petro Products Pvt. Ltd. (supra) were quoted as follows:

Para-17: In my considered opinion, the Board would be justified in raising the bill on the basis of Minimum Monthly Guarantee charges, if the said charges are applicable to the consumer or the tariff applies to the consumer. In a case where the Minimum Monthly Guarantee charges are not applicable, then the Electricity Board is obliged to raise the bill on the basis of actual consumption either recorded in the meter or on the basis of consumption of previous three months or the average consumption for the corresponding three months of the previous year's consumption.

Para-18: In a case where the Annual Minimum Guarantee or Minimum Monthly Guarantee charges are not applicable in accordance with circular issued by the Board, then the tariff, in the opinion of this Court shall stand automatically amended and the Board would not be entitled to say that irrespective of

exemption guaranteed to or availed of by a consumer, the Board would raise the bill on the basis of the Minimum Guarantee charges. The bill could only be raised on actual average of the previous three months' consumption or on the basis of the last year's corresponding three months.

5. Thus the learned single judge came to his conclusion on finding support from the conclusion in the case of Mahabir Petro Products Pvt. Ltd. (Supra) on the ground that in that decision which was a single Bench judgment of this Court it was held that a High Tension Electric Consumer who is subject to Annual Minimum Guarantee, cannot be served with a bill on the basis of Monthly Minimum Guarantee even for the period the meter goes out of order, as provided in Clause 16.8 of the Tariff. But we feel it to clarify that the case of Mahabir Petro Product Pvt. Ltd. gave the aforesaid finding that bills on the Monthly Minimum Guarantee could not be raised, on the specific ground that the consumer in that case under the industrial policy was exempted from any kind of guarantee. Therefore, the Court held that when the consumer was exempted from guarantee, bills could not be raised on the basis of monthly Minimum Guarantee under Clause 16.8 of the Tariff even for the period for which the meter was out of order. But the court did not lay down as a principle of law that in no case a consumer, who is a High Tension Electricity consumer and who is subject to Annual minimum Guarantee can be served with a bill on the basis of Monthly Minimum Guarantee charges on average basis even for the period during which the meter had become out of order. The respondents being a High Tension Electricity consumer was subject to Annual Minimum Guarantee under the agreement with the appellant. Earlier vide Clause 15(2) of the Tariff, Monthly Minimum Guarantee charges had been provided to be applicable to the High Tension Electric consumer. Under Clause 16.8 of the Tariff, Monthly Minimum Guarantee charge has been made applicable for the period during which the meter goes out of order or stops recording consumption.

6. In the case of Bihar State Electricity Board and Others Vs. State of Bihar and Others, a Division Bench of this Court, before which the propriety and legality of the matter of levying Monthly Minimum Guarantee charges under Clause 15.2 and 16.8 of the Tariff was considered and decided by this Court. The matter of realization of Monthly Minimum Guarantee charges was decided by the Court in Para-31 of the judgment as follows:

Para-31. In our view, the learned Counsel for the petitioners is right in his submission that the basis for the calculation of the energy charge payable monthly instead of annual is irrational and unreasonable as well. The minimum base charges chargeable earlier were subject to a total adjustment at the end of the year of annual consumption of the units of the installed load irrespective of the fact whether the energy to that extent was supplied and/or consumed or not every month, whereas, now by the introduction of calculation on monthly basis will deprive them of the adjustment of the unconsumed units of electricity in particular month towards the end of the year. It is now bound to lead to great

harassment inasmuch as the consumers will have to bear the whims and mercy of the officers of the Board who in one month may supply adequate energy though not required by the consumers in that particular month, yet they will have to pay the minimum base charge of that particular month, whereas, in another month, the Board may not be able to supply adequate energy which would deprive the consumers who may be very much in need of utilizing the adequate energy. In other words, for the unconsumed energy supplied by the Board because of non-requirement in a particular month, the consumers will be deprived of getting adjustment of the same against the consumption by them in other months. We have already held that the Board appears to be not in a position to supply electricity for which they have already entered into agreement and, thus, in our opinion, it will not be proper to calculate the energy charge paid monthly instead of annually which will deprive the consumers of claiming adjustment of the unconsumed unit in a particular month as against the consumption of excess units in other months. This will rather put them in disadvantageous position especially when we declined to interfere with the increase of the power factor. In view of the above, the submission of the learned Counsel for the Board that this system is most logical and the consumers will be at a disadvantageous position if the old system is restored has no substance. For some industries which are seasonal industries and the consumption of the electricity is only for a few months in a year, the introduction of monthly system is bound to ruin them. For example, the Board may have sufficient energy during the off season for aforementioned seasonal industries when they may not require the energy but still they will have to pay, whereas, the Board may not have sufficient energy for supply to such industries when they require. In this way, the Board may also be looser because had the provision for annual calculation and adjustment would have continued, the consumer may not have claimed remission on the monthly basis. Thus, there is no scope but to hold that the system of calculation on monthly basis introduced under the new tariff is irrational and unreasonable as well.

7. Thus, in the case of Bihar Chamber of Commerce (*supra*), this Court has declared illegal realization of electric charges on the basis of Monthly Minimum Charges as was sought to be introduced under Clause 15.2 of the Tariff.

Due to the levying of electric consumption charge as on the basis of Monthly Minimum Guarantee as was sought to be levied under Clause 15.2 of the Tariff having not been sustained by this Court in the case of Bihar Chamber of Commerce (*supra*), the legality and propriety of the matter of realization of Monthly Minimum Guarantee charge vide Clause 16.8 of the Tariff was also challenged. This matter was also considered and decided by this Court in the said case, vide Para-41 of the judgment which is as follows:

Para-41. Mr. Pawan Kumar Rajgarhia learned Counsel appearing in C.W.J.C. No. 8214 of 1991, however, submitted that the provision for average charging in case of defective meter under Clause 16.8 of the new tariffs is also ultra vires and

wholly illegal. According to him, Clause 3(c) of the agreement provides for charging in case of defective meter on the basis of average charging of the present three months, whereas, under the new tariff in the event of meter being out of order, the consumption of that month/months is to be assessed on the average consumption of the previous three months from the date of meter being out of order or the average consumption for the corresponding three months of the previous year or the consumption of the minimum guarantee charge, whichever is highest and this shall continue until the meter is replaced/rectified and so far as the fuel surcharge, power factor surcharge and electricity duty are concerned, they shall be levied on consumption so calculated. This, according to the learned Counsel, is wholly irrational and unreasonable. In reply, the learned Counsel for the Board has rightly submitted that the provision for charging on the average etc. is only to ensure that the moment the meters are found nonfunctional, the authority is immediately given an information about the same so that the charging may be done on such a basis which is rational and, at the same time, it is to discourage deliberate breakage/tampering with the meters by rendering such acts unbeneficial and for that these alternatives have been provided as a mode of calculation in the case of defective meter and to see that no honest consumer suffers adversely. On a consideration of the relevant provisions and other facts and circumstances, we do not find any substance in the submission of Mr. Rajgarhia that the provision of average charging in case of defective meter under Clause 16.8 of the new tariff is ultra vires or illegal.

8. Thus, in the above case, a Division Bench of this Court has already declared the validity and legality of the provisions under Clause 16.8 of the Tariff which provides for levying of Monthly Minimum Guarantee charges for the period during which the meter goes out of order or stops recording consumption. We do not find any reason to take a different view.

9. In such view of the matters, the judgment of the learned single Judge that a High Tension Electric consumer who is subject to Annual Minimum Guarantee cannot be served with a bill on the basis of Monthly Minimum Guarantee even for the period the meter goes out of order, as provided in Clause 16.8 of the Tariff, cannot be sustained under law. Hence the same is hereby set aside.

10. The appeal is, accordingly, allowed. The bill/order dated 28th September 2007 passed by the financial controller, Revenue, B.S.E.B. under this Court's interim order dated 9th August 2007 shall stand modified in terms of the final order passed herein above.