

(2013) 10 PAT CK 0015
In the Patna High Court
Case No : CWJC No. 11108 of 2013

The Braithwaite Burn and Jessop Construction Company
Limited

APPELLANT

Vs

The Bihar State Electricity Board

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 7
Companies Act, 1956 — Section 617
Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 5

Citation : (2014) 1 PLJR 185 : (2014) 2 RCR(Civil) 580

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Y.V. Giri, Umesh Pathak, Nilotpal Ganguli, Sanjay Kumar Mishra and Nikhil Kumar Agrawal, for the Appellant; Vinay Kirti Singh, for the Respondent

Judgement

J.N. Singh, J.—After having heard learned counsel for the parties and after going through their pleadings, this Court wonders why this dispute has travelled to this Court. Respondent Board is a body constituted by the State Government in terms of Section 5 of the Electricity (Supply) Act, 1948, involved in, inter alia, supply of electricity to a consumer requiring such supply within the State. Petitioner is a consumer and it had applied for and was initially sanctioned a 200 KVA electric connection. Its electric connection was finally charged on 19.2.2011. However it was soon disconnected on 30.6.2011, due to non-payment of monthly bills. Petitioner's stand was that, even during this short period, the supply of electricity by the Board [now "the Bihar State Power (Holding) Company Limited] was for 6 hrs. a day, on an average, and that too with frequent interruptions and in installments. Hence it had applied for revision of the bills on the basis of actual consumption, which were issued on the basis of "maximum guarantee" and had requested for correction of the bills in terms of clause 13 of the Agreement (Annexure-1), which has remained pending consideration till now. Respondents

in the counter affidavit do not deny the right of the petitioner to apply for remission, in view of the interrupted supply, in terms of said clause 13. For them the only hitch in such consideration is that the petitioner should pay the bills first. The dispute remained pending, in the meanwhile the dues against the petitioner, which, soon after the disconnection, was roughly to the tune of eight lakhs thirty five thousand and odd, has swelled to over fifty eight lakhs, vide the demand notice dated 13.5.2013, on the ground that, till the agreement is determined, the minimum guarantee charges etc. has to be added to the arrears, notwithstanding the fact that the line was disconnected almost two years back. Now the respondents have sent a requisition in terms of Bihar and Orissa Public Demand Recovery Act, 1914, which has been registered with the Certificate Officer, Munger as Electric Certificate Case No. 1/2013-14. Had the petitioner been a private entrepreneur executing a private project, for the purposes of which, it would have entered into the dealings with the respondents, the matter would have been different. But it is a Government of India undertaking, incorporated as a Government Company u/s. 617 of the Companies Act. It has been engaged in the execution of an ambitious joint venture project of the Government of India in the Ministry of Railways and the State Government of construction of a Rail-cum-Road Bridge over the river Ganges at Munger and other related civil work. For Ministry of Railways it may be an another normal project, but for the State Government it is surely an achievement and its completion in the scheduled time will clearly add a feather in its cap. This, the State Government was expected to be conscious of, when the work was awarded to the petitioner. While starting the work, if the petitioner expected that, since this was a prestigious project for the State Government, it will get all support and protection from all the machinery of State Government, nothing wrong could be found in such an expectation. But obviously it did not get any such support from the respondent Board, at least. The application of the petitioner for a 200 KVA electric connection, submitted on 16.6.2009, finally resulted into an agreement only on 31.8.2010, i.e. more than a year after. There may be some laches on the part of petitioner also, but the reason for delay is not an issue before this Court. This much is to be noticed that, even after agreement was entered into on 31.8.2010, the line was energized by the Board on 19.2.2011, i.e. more than five and half months after. It is not disputed that during this short spell of a little over four months, till the line was disconnected, petitioner did not get uninterrupted constant supply. It was not a case of "tripping power-cut" or "load-shedding". It is not disputed that it was a case of non-supply for the major part of the 24 hours of a day, and, during the few hours of the day supply was made by the respondent Board, it was in installments and erratic, that is to say in bits and pieces. For this prestigious project, what was proper for the State Government to ensure was that the petitioner is guaranteed dedicated electric supply without any interruptions at all, for any reasons, with appropriate terms and conditions. Instead of this, petitioner was left in the hands of the officials of the respondent Board, who, with their typical bureaucratic approach, and with scant interest in the smooth completion of the project at the earliest in the

interest of the State, treated the petitioner as any other ordinary HTSI category consumer. This Court in its order dated 10.7.2013 in C.W.J.C. No. 3999/2013 has noticed how the bureaucracy of the State at lower level is putting spanner in the efforts of the State Government in introducing rule of law and good governance in the State. The picture at the horizon may appear to be bright, but at the ground level the state of affairs remains the same. In spite of all good wishes, high hopes and promises, the mindset of the officials, who are actually responsible to make the dreams a reality, has not changed at all. It is really unfortunate for the State.

2. Learned senior counsel for the petitioner has forcefully placed his case for setting aside letter no. 1709 dated 14.5.2013 (Annexure-4D), putting forth a demand of Rs. 58 lakhs and odd; for setting aside the requisition dated 6.6.2013 (Annexure-7) and the notice u/s. 7 of the Bihar and Orissa Public Demand Recovery Act, 1914, issued by the Certificate Officer, Munger in Electric Certificate Case No. 1/2013-14; for quashing of the second notice of Recovery Officer contained in memo no. 748 dated 29.6.2013 (Annexure-8) directing the petitioner to appear (for which I.A. No. 4116/2013 and its two supplementary affidavits have been filed); to quash the disconnection notice dated 30.6.2013 and direct the respondents to decide the dispute under clause 13 of the Agreement first and then raise the bills on the basis of actual consumption (for which I.A. No. 4683/2013 has been filed). He has referred to many clauses of the Agreement, has pointed out anomalies in the bills and has referred to the correspondences between the parties to show that petitioner has been making a request from the respondents from the very beginning to revise and correct the bills and reissue them as per the actual consumption. He has referred to Annexure-13 dated 31.5.2011, to show that dispute was raised by the petitioner long back, in reference to clause 13 of the Agreement, which the respondents have not considered till now. He has also referred to long line of judgments of Apex Court and of this Court and has also furnished a list of the same.

3. Learned counsel for the respondents has vehemently contested the case of the petitioner and has justified the action of the respondents in reference to different clauses of the Agreement, provisions of the Supply Code, the 1.9.2008 Tariff, the 2010 Tariff, the 2011 Tariff. He submitted that the petitioner had to pay the energy charges and then only it could apply for remission in terms of clause 13 of the Agreement; being an H.T. consumer, it had to pay minimum guarantee charges on monthly basis irrespective of the duration and nature of supply, which stands waived only after May 2011; even after disconnection petitioner had to pay minimum guarantee charges for the waiting period as stipulated in the Agreement. In support of his stand, he also placed reliance on many judgments of the Apex Court, this Court and a judgment of the Jharkhand High Court.

4. When a dispute generates, and is brought to this Court, it has a constitutional duty under Article 226 to decide it. But a judgment of this Court under Article 226 is not, always, end of the matter, and a matter, like the present one, often

gets finally settled only after an authoritative pronouncement of the Apex Court, at times, after years. The time and money spent in the process notwithstanding, status quo ante is not, often, stand restored. Private individuals do feel the consequences of it. But here the parties are public companies and instrumentalities of the Central Government and the State Government. The time and money spent by them in litigating with each other is of public and not of their individual functionaries. Their functionaries may not bother for it. But this Court should try to get the dispute settled than just decide it and leaving the parties to go on litigating further, more so when the dispute is only whether the application of the petitioner for consideration of its case in terms of clause 13 of the Agreement should be considered by the respondents only after the petitioner clears all outstanding dues or it can be considered before it also.

5. In the circumstances, the two Interlocutory Applications, as mentioned above, are allowed. Writ application and its prayer portion shall stand modified accordingly. Respondent Bihar State Electricity Board shall stand substituted by the Bihar State Power (Holding) Company Limited through its Managing Director as respondent no. 1.

6. The competent authority of respondent no. 1 is directed to consider the representation of the petitioner dated 31.5.2011, as contained in Annexure-13, in the light of Clause 13 of the Agreement on merits without any insistence for payment of the bill amount.

7. Till the matter is finally disposed of, respondent no. 1 is restrained from taking any coercive action against the petitioner.

8. Writ application is disposed of with the aforesaid observations and directions. Let a copy of this order be made available to learned Principal Additional Advocate General for onward communication and knowledge of the appropriate higher authority of the State.