
(2018) 02 PAT CK 0018

In the Patna High Court

Case No : 12276 of 2016

The South Bihar Power Distribution Company Limited & Ors

APPELLANT

Vs

M/s. Dina Metals Limited

RESPONDENT

Date of Decision : 19-02-2018

Acts Referred:

[Electricity Act, 2003](#), [Section 126](#) -
Assessment

Citation : (2018) 02 PAT CK 0018

Hon'ble Judges : Rajeev Ranjan Prasad

Bench : Single Bench

Advocate : Vinay Kirti Singh, Vijay Kumar Verma, Akhileshwar Singh, Suraj Samdarshi, Vishal V. Rana

Judgement

1. Being aggrieved by the judgment dated 12.01.2017 passed by the learned Writ Court in CWJC No. 12276 of 2016, the South Bihar Power Distribution Company Limited and its authorities are in appeal before us.

2. By the impugned judgment the learned Writ Court has been pleased to quash and cancel the provisional assessment order dated 20.07.2016 passed by the Electrical Executive Engineer, Electric Supply Division, Patna City (Annexure-3 to the Writ Application) together with the final assessment order dated 16.08.2016 (Annexure-1 to I.A. No. 6726 of 2016). Having quashed the impugned orders in the Writ Application, the learned Writ Court has observed that the judgment of the Court would not preclude the authorities to proceed against the petitioner in accordance with law.

3. Learned Senior Counsel representing the appellants has basically argued that the writ petitioner being a consumer had a sanctioned contract demand / connected load of 9600 KVA but, contrary to the said sanctioned contract demand, he connected the total load of 13222.23 KVA. In course of inspection of the premises, the inspecting team found that no prior information was given by the consumer to the licensee before charging of all 5 numbers of transformers. It

is the case of the appellants that the inspection was carried out on the order / direction of the Chief Engineer (Commercial), South Bihar Power Distribution Company Limited when the writ petitioner submitted an application on 16.12.2015 for grant of exemption from electricity duty under the Industrial Policy, 2011. The writ petitioner had disclosed that they have set up two units having new furnaces at their existing premises having same existing Consumer No. 148264. One furnace started operation on 01.08.2013 and the other one from 01.04.2014 and both furnaces having the capacity of 28000 MT/Annum each, totaling to 57600 MT/Annum. In view of the inspection report, the Electrical Executive Engineer issued a provisional assessment order in reference to his inspection report dated 02.07.2016, an objection was called for and finally concluded that in terms of sub-clause 8 of clause 7.12 of 2007 Supply Code, in case of consumers of induction furnaces their contracted demand shall be based on total capacity of the furnaces and equipment as per manufacturer's technical specification and the rating shown in the name plate. This provisional assessment order is Annexure-3 to the Writ Application.

4. It is the case of the learned Senior Counsel that the writ petitioner was obliged to give information to the Distribution Company seeking permission for replacement of new furnaces and change of transformers but the provision in this regard, as contained in clause 7.4(j) of the Bihar Electricity Supply Code, was not followed and no information was given to the Distribution Company in this regard.

5. It is submitted by the learned Senior Counsel that the learned Writ Court could not appreciate that the writ petitioner belongs to H.T.S.S. Tariff of the company and his contracted demand cannot be less than the total capacity of the furnaces found connected with the mains of the company. According to him, the learned Single Judge could not consider that under Clause 7.5 of the H.T.S.S. Tariff under 33 KV supply, billing demand shall be to maximum demand recorded during the month or the contracted demand, whichever is higher. Thus, an H.T.S.S. comes under connected load based tariff and it cannot be allowed to such consumer to run his factory on less than the connected load found during the inspection.

6. According to the learned Senior Counsel representing the appellants, the writ petitioner had himself requested appellant no. 4 to issue a notice in terms of clause 7.4(j) for revision of the contracted demand by executing a fresh agreement for enhancement of load or limit the drawl as per the sanctioned contract load. On this ground, learned Senior Counsel submits that the provisional assessment as well as the final assessment done by the appellants were correct and no interference was required with the impugned orders by the learned Single Judge.

7. On the other hand, learned counsel representing the writ petitioner ? respondent submits that the Assessing Officer wrongly treated the petitioner as a consumer, based on connected load tariff, and further charged him for unauthorized use of 3622.23 KVA in excess of his sanctioned load of 9600 KVA. The inspecting team found the total installed load at the premises at 13222.23

KVA and the bills on record would show that the writ petitioner had never exceeded consumption over 8270 KVA which is within the sanctioned load and, thus, even if the installations were reflecting a higher load but, the total consumption never exceeded the contracted demand.

8. Learned counsel representing the respondent heavily relied upon the amendment incorporated in the "Supply Code" through the Gazette Notification dated 25.02.2016 vide Bihar Electricity Supply Code (5th Amendment, 2016). He has referred to the newly added Clause 7.4(i) and 7.4(j) and submits that the two clauses were brought in with respect to the consumers under demand based tariff and connected load based tariff respectively whose actual recorded demand exceeded the contracted demand. Learned counsel submits that in case of a consumer under connected load based tariff, the conclusion as to whether the demand exceeded the contracted demand would be drawn on the basis of inspection. In any case, his submission is that the Assessing Officer cannot take recourse to the proceedings under Section 126 of the Electricity Act, 2003 (hereinafter referred to as "the Act") since it was not a case of unauthorized use.

9. We have heard learned counsel for the parties and perused the records.

10. The learned Writ Court was of the view that the entire controversy and area of contest had boiled down to a limited issue which required a determination as to whether the circumstances existing in the premises of the petitioner as reported by the inspection team in their report where the load of the furnaces found connected apparently was 13222.23 KVA which was in excess of the contracted demand of 9600 KVA by 3622.23 KVA, is it a case of unauthorized use of electricity. The learned Writ Court extensively examined Section 126 of the Act read with the provisions of the Supply Code as well as Tariff Order framed in exercise of powers vested in the appropriate authority under the provisions of the Act which bear a statutory character.

11. Learned Single Judge has relied upon a judgment of the Hon"ble Apex Court in the case of Southern Electricity Supply Company Vs. Sri Seetaram Rice Mill, reported in (2012) 2 SCC 108, wherein the Hon"ble Supreme Court has discussed the circumstances which would lead to a proceeding under Section 126 of the Act or under Section 135 of the Act for theft of electricity.

12. We have gone through the discussions made by the learned Single Judge who has to say as under in the concluding part of the judgment:-

"The legal position settled by the Supreme Court in the case of Sri Seetaram Rice Mill (supra) practically settles the issue that the moment a consumer consumes electricity in excess of the sanctioned load, he would come under the category of unauthorized usage and if such unauthorized usage is backed by mens rea, then the default would be governed by Section 135 of "the Act" coming under the category of dishonest abstraction of electricity.

Insofar as the case in hand is concerned, no doubt the connected load found in

the premises of the petitioner was having an aggregate exceeding the contract load but then there is a three step exercise to be carried out before a consumer can be proceeded under Section 126 of "the Act", namely;-

(a) A physical inspection of the gadgets and equipments installed in the premises of a consumer together with verification of their respective ratings, to be carried out in the premises of the consumer;

(b) A finding to be recorded that the aggregate of the load found connected in the premises, exceeded the contract load; and

(c) A finding also to be recorded by the Assessing Officer who is a member of the inspection team that there is conclusive evidence that the load found connected in the premises of the consumer was actually being consumed by him and which exceeded the contract demand;"

13. Based on the aforesaid findings, the learned Single Judge, in our opinion, rightly came to a conclusion that in the case in hand there is absolutely no evidence regarding the actual consumption of the excess load by the petitioner in excess of the contracted load even though the connected load was found to be in excess of the contracted demand load. In course of argument the learned Senior Counsel has not been able to demonstrate from any materials on the record that the writ petitioner had exceeded the load fixed under the contract and had consumed in excess of the contracted demand. The learned Single Judge has found the petitioner lacking and at fault for not requesting the licensee / Distribution Company for executing a formal agreement as per clause 7.11 and 7.13 of the "Supply Code" and, for that reason, the petitioner, as held by the learned Single Judge, may be proceeded under the amended provision of clause 7.4(i) and clause 7.4(j) of the "Supply Code", as the case may be.

14. In the facts and circumstances and the findings recorded by the learned Single Judge, we do agree with the view taken by the learned Writ Court that it is not a case covered U/S 126 of the Act and, therefore, the provisional assessment order as well as the final assessment order have been rightly quashed by the Writ Court.

15. The contention of the learned Senior Counsel for the appellants that the writ petitioner is bound to be assessed U/S 126 of the Act does not get support from the judgment of the Hon"ble Supreme Court which has been relied upon by the learned Single Judge.

16. We do not find any illegality or infirmity in the impugned judgment. The Appeal is accordingly dismissed.