

(1993) 09 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10006 of 1992

Trident Tubes Ltd.

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

Date of Decision : 21-09-1993

Acts Referred:

Electricity (Supply) Act, 1948 — Section 46, 49

Citation : AIR 1995 Patna 104

Hon'ble Judges : S.B. Sinha, J; R.N. Prasad, J

Bench : Division Bench

Advocate : L.K. Bajla and Raj Kumar Sahay, for the Appellant; R.N.P. Yadav, for the Respondent

Final Decision : Allowed

Judgement

S. B. Sinha, J.—In this application the petitioner has sought for issuance of a writ in the nature of mandamus directing the respondents to implement the order of the Senior Electrical Inspector in the dispute raised by the petitioner in respect of a bill issued by the respondent Bihar State Electricity Board treating the Low Tension Connection as a High Tension one and raising bill on the basis of the tariff applicable to High Tension Supply of electrical energy from 23- 12-1983.

2. The petitioner runs a small scale industry for manufacturing H.D.P.E and P.V.C. pipes. The petitioner has applied for supply of 79 H.P. electrical energy which was sanctioned. The supply of electrical energy to the petitioners units commenced from 24-12- 1983.

3. According to the petitioner, the installation in its factory have regularly been checked up by various officers of the Bihar State Electricity Board including the Executive Engineer and on all such occasions it was found that the petitioner has been using 79 H.P. electrical energy.

4. The petitioner has, however, filed an application on 11-10-1984 for supply of High Tension electrical energy and for that purpose the petitioner was asked to

install a transformer of 300 KVA. The petitioner also sent various reminders.

On 5-4-1988 the petitioner's factory was inspected by an inspection team of Special Cell of the Board and it was found that the petitioner had been using the electrical energy at 88 H.P. The team also found that some extra machines which had not been installed earlier were also found to have been installed in the petitioner's factory. The petitioner has also admitted that on 8-7-1988 the Superintending Engineer Sanctioned the conversion of the petitioner's electrical connection from low Tension 79 H.P, to High tension, and also granted permission for installation of transformer of 315 KVA, subject to the conditions mentioned therein. A copy of the said letter dated 8-7-1988 is at Annexure 5/1 to the writ petition.

5. The petitioner has disputed the contents of the said report in this application with regard to the capacity of the motors installed therein. The petitioner has contended that despite the aforesaid inspection report dated 5-4-1988, bills were used to be raised on the basis of 79 H.P. on Low Tension tariff, but in March, 1989 the respondents stopped the raising of the bills. The petitioner had, however, been offering lump sum payments towards the dues, but such payments were not being accepted by the respondents. The petitioner then was informed by a letter dated 7-7-1989 which is contained in Annexure "7" to the writ application that the petitioner would be billed as per the High Tension tariff.

6. The petitioner has further contended that as the meter has become defective on 11-6-1989 and the same was brought to the notice of the Assistant Electrical Engineer by a letter dated 13-6-1989, on which date the Assistant Engineer came to the factory premises and upon breaking open the seal found that the complaint of the petitioner was correct. A new meter was replaced in June, 1989 and in September, 1989 the petitioner had been billed on High Court tension tariff. The petitioner by a letter dated 16-9-1989 protested against the said bill and thereafter the dispute was referred to the Senior Electrical Inspector by the petitioner by its letter dated 27-11-1989. The dispute between the parties was allegedly decided by the Senior Electrical Inspector on 12-4-1991 and, inter alia, it was held that the petitioner had not used electricity on High tension side and directed the officers of the Board that the petitioner should be allowed to install transformer for obtaining High tension electrical energy. A copy of the said report is contained in Annexure "14" to the writ application.

7. Mr. L. K. Bajla, learned counsel appearing for the petitioner, has raised a short question in support of the application. Learned counsel submitted that in view of the fact that the dispute had been referred to the Senior Electrical Inspector, who is the statutory authority under the Act, the only remedy of the Bihar State Electricity Board against the order was to prefer an appeal in terms Section 36 of the Indian Electricity Act. It has further been stated that a writ petition being C.W.J.C. No. 1072 of 1991 is already pending before this Court. It was further submitted that in any event unless all arrangements are done for supply of electrical energy on high tension side, no bill could be raised on that basis.

8. Learned counsel, however, submitted that all along inspections had been made with regard to the load installed in the factory of the petitioner and on all such occasions, it was found that the petitioner had been utilising the load much less than 80 KVA. He further submitted that from a perusal of the order passed by the senior Electrical Inspector as contained in Annexure 14 to the writ application, it would appear that the respondents did not make necessary arrangement for conversion of low tension line to high tension line. Learned counsel further submitted that whereas in relation to low tension supply of energy, one tier tariff is applicable, in relation to high tension energy two tier tariff is Applicable. Learned counsel further drew our attention to Clause VI(3) of the First Schedule appended to the Indian Electricity Act and submitted that even in terms thereof, the matter can be referred to the electrical Inspector. The said clause reads as follows:-

"VI (3) - Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service line or as to the sufficiency of the security offered by any owner or occupier, (or as to the position of the meter board), or as to the improper use of energy, or as to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third proviso to Sub-clause (1), the matter shall be referred to an Electrical Inspector and decided by him."

9. Learned counsel further submitted that the petitioner is ready and willing for conversion of the electrical connection provided the Bihar State Electricity Board raises bill on that basis on and from the date of conversion.

10. So far as the first relief prayed for by the petitioner is concerned, the same cannot be granted by this Court. The Electrical Inspector is the statutory authority under the Indian Electricity Act. He has been made statutory arbitrator only in relation to the disputes specifically mentioned in the Indian Electricity Act. This aspect of the matter has been considered by a Division Bench of this Court in *The Bihar State Electricity Board v. State of Bihar* 1993 (1) BLJR 344. It was held therein that the question of reduction in contract demand of electricity is essentially a matter of contract and thus the Electrical Inspector had no jurisdiction in relation thereto. Similarly. The question of increase of load and the question as to from which date the petitioner had been consuming electrical energy as a load more than the sanctioned load, namely, High Tension, is essentially a matter of contract as also relates to investigation of facts, and, thus no dispute within the meaning of the provision of the Electricity Act and the Electricity (Supply) Act, 1948 arose which could be referred to the Electrical Inspector. From a plain reading of Clause VI (3) of the First Schedule of the Act, it would be evident that the dispute purported to have been referred to the Electrical Inspector does not come within the purview thereof.

11. In my opinion, sub-clause (3) of Clause VI of the First Schedule appended to the Indian Electricity Act cannot be said to have any application in the facts and circumstances of the case. Clause VI of the Schedule appended to the Indian

Electricity Act deals with requisitioning of supply to owners or occupiers in vicinity which necessarily implies that the said clause would apply with regard to supply of electrical energy to the persons requisitioning the same for the first time. The said clause therefore cannot have any application in relation to the matter which is covered by the tariff. Further Clause VI of the Schedule to the Act has to be read as a whole and Sub-clause (3) thereof is required to be construed in the light of other provisions contained therein. Sub-clause (3) of Clause VI of the Act applies only in respect of requisition made for the first time by the consumer would also be apparent from a conjoint reading of Clauses 4 and 5 thereof.

12. Further from a plain reading of sub-clause (3) of Clause VI of the First Schedule to the Act, it would appear that the same provides for arbitration in the following disputes and differences between licensee and the owner or occupier (a requisitioner) regarding:

- (a) amount of energy to be taken or guaranteed under clause (a) of the first proviso to Sub-section (1) of this clause,
- (b) cost of any service line as may be necessary for the purpose of supplying energy to a requisitioner under clause (b) of the proviso to sub-clause (1) of this clause,
- (c) sufficiency of security offered by the requisitioner under Clause (a) of the first proviso to Sub-clause (i) of this clause,
- (d) position of any meter board to be installed in the premises of any requisitioner,
- (e) improper use of energy, defect in any wires, fittings, works or apparatus,
- (f) expenses incurred by the licensee for changes made by him in the service line or any apparatus provided on the electrified premises as result of increased supply load."

It is, therefore, evident that the dispute referred to the Electrical Inspector was not covered by the aforesaid provisions.

13. The Bihar State Electricity Board has made a tariff in exercise of its power conferred upon it under Sections 46 and 49 of the Electricity (Supply) Act. The power of the Board to make such a tariff is indisputable. It is true, as has been contended by Mr. Bajla, that there exists a difference between the supply of high tension and low tension electrical energy. However, the tariff may provide for supply of a particular quality of electrical energy up to a particular load. Mr. Bajla does not dispute this jurisdiction in the Bihar State Electricity Board to make such a provision. He, however, submits that as, in fact, no transformer has yet been installed and other facilities have also not been provided, the question of raising any bill on the basis of high tension does not arise.

14. So far as the second question raised by Mr. Bajla is concerned, the matter is

no longer res integra in view of a Division Bench decision of this Court in Jaiswal Ceramics Ltd. v. Electricity Board reported in 1980 BBCJ 179, wherein it was held as follows:

"9. It is accepted that the petitioner is not a licensee as provided, for in the aforesaid provision. It is manifest, therefore, that it is for the Board, and Board alone to determine the terms and conditions for the supply of electric energy to the petitioner. The Board having taken over the Ranchi Electric Supply Company by virtue of the Ordinance mentioned above on 17th July, 1975, it was for the Board unilaterally to decide the terms and conditions on which electricity would be supplied to the petitioner. If the petitioner was not satisfied with those terms and conditions what the petitioner could do was not to take energy from the Board. But in any event, there was no question of any bargaining between the petitioner i.e. the consumer and the Board i.e. the supplier. It is also not the case of the petitioner that under Sub-section (3) of Section 49 any special contract was made between the petitioner and the Board. It follows, therefore, that in terms of Section 49(1) of the Supply Act it was for the Board alone to determine the terms and conditions, under which the supply of energy to the petitioner could be made subject to, the condition that it had to be on the basis of uniform tariff framed by the Board itself.

The Court thereafter took into consideration various provisions of the tariff, with regard to. the question as to tariff applicable to H. T. energy and held that the same applied only in the event the installed load exceeds 100 BHP under the old tariff (which is now 80 BHP under the new tariff).

In Jaiswal ceramic (supra), the Division Bench further held :-

"18..... While there might be some force in the submission of the learned counsel that if the installed load is more than 100 BHP, it is not low tension. I am unable to accept his submission that whatever is not low tension supply is high tension supply. There is nothing in the tariff rules, at least pointed out to us, which would show that every supply of an installed load above 100 BHP is high tension. In fact, on the contrary, it might be urged on behalf of the petitioner that energy supply which does not have the three phases at 33 KV, 11 KV, 6.6 KV of 3.3 KV is low tension supply, Even for the general high tension service the applicability states that these rates of tariff apply to installation with a minimum contract demand of 75 KVA for 3.3 KV, 6.6 KV and 11 KV supply and a minimum contract demand of 1500 KVA for 33 KV supply. There is no material before us to show that at present any of the applicabilities, as stated above, fit in with the supply to the petitioner.

19. It may further be pointed that it is indeed very strange that if the supply to the petitioner is in the nature of high tension how: a minimum guarantee charge was levied against it. There is no provision for minimum guarantee charge for high tension supply. However, this contradictory stand seems to have been taken by the Board in Annexure 1 itself where it is said that they, were being billed on

the basis of minimum guarantee, of 144 Horse Power but would subsequently be billed for high tension tariff. If the authorities were so certain that it was high tension supply there was no occasion for them to bill the petitioner under the provisions for low tension supply."

20. For all these reasons, I am inclined to take the view, that things, as they stand there: is nothing to show that the Board is entitled to bill the petitioner on the basis of high tension supply. In Annexure T it has been stated that the petitioner will be billed from 18th July, 1976 up to date according to, high tension, tariff. Having held that there is nothing to show that the respondents are entitled to bill under high tension tariff. Annexure T even to that extent has got to be quashed:"

15. In this view of the matter, there cannot be any doubt that the Bihar State Electricity Board can raise bills on H. T. basis only upon fulfilment of conditions precedent therefore namely installation of transformer, capacitor, etc. The Bihar State Electricity Board therefore may in terms of the application filed by the petitioner for conversion of energy from low tension to High Tension may take necessary steps for conversion from low Tension to High Tension of energy and raise bills in terms of High tension from the date of its conversion. It is, however, made clear that it is up to the Bihar State Electricity Board to raise fresh bill on the basis of supply of low tension energy to the petitioner in terms of, installed load in the factory premises of the, petitioner.

16. With the aforementioned directions, this; application is disposed of.