

**(2015) 03 PAT CK 0119**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No. 174 of 2015 In Civil Writ Jurisdiction Case No. 15944 of 2013 with Interlocutory Application No. 799 of 2015 and Interlocutory Application No. 800 of 2015 in Letters Patent Appeal No. 174 of 2015

Union of India

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision :** 04-03-2015

**Acts Referred:**

**Citation :** (2015) 2 BBCJ 381

**Hon'ble Judges :** L. Narasimha Reddy, CJ. and Vikash Jain, J.

**Bench :** Division Bench

**Advocate :** Mr. Anil Kumar Sinha, Advocate, for the Appellants; Mr. Vinay Kirti Singh, Advocate, for the Respondents

**Final Decision :** Disposed Off

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## **Judgement**

L. Narasimha Reddy, C.J. (CAV) - The subject matter of this Letters Patent Appeal is a dispute between the East Central Railway, on the one hand, and the erstwhile Bihar State Electricity Board, (for short, "the respondent") on the other hand.

2. The facts, in brief, are that the appellant was extended power supply at its Khagaria Railway Station by the respondent through L. T. connection. In the year 1990, an application was made by the appellant to the respondent for extension of H.T. connection. An agreement, in relation thereto was entered into on 05.03.1998. The L.T. power supplies were snapped and the bills were being raised only for H. T. power supply.

3. Through a bill dated 23.10.2002, the respondent demanded a sum of Rs. 57,74,397/- from the appellant. This included a sum of Rs. 26,79,572/- for H.T. consumption charges from December 1991 to February, 1998. The remaining amount represented the consumption charges which were already paid.

4. The appellant objected to the raising of bill of Rs. 26,79,572/-. According to it, when the H.T. power supply was given for the first time in February, 1998, there was absolutely no basis for raising any bill for any period earlier thereto. Since the respondents did not change their stand, the appellant filed CWJC No.1370 of 2004 challenging the demand of Rs. 26,79,572/-. An interim order of stay of further proceeding was passed on 30.01.2004 on condition that the appellant shall deposit a sum of Rs. 13,00,000/-; and the same was paid. The writ petition was disposed of on 21.3.2013 observing that the dispute be referred to the Chief Secretary, Government of Bihar, for amicable settlement. On 07.05.2013, the Chief Secretary passed an order, not only upholding the demand of Rs. 26,79,572/-, but also observing that the appellant is liable to pay delayed payment surcharge as per the Rules. Based upon it, Electrical Superintending Engineer, Electric Circle, Sahasra,- the 8th respondent issued notice dated 14.05.2013 demanding a sum of Rs. 1,77,49,828/- from the appellant.

5. The appellant filed CWJC No.15944 of 2013 challenging the order passed by the Chief Secretary, Government of Bihar as well as the notice dated 14.05.2013 issued by the 8th respondent. The learned Single Judge dismissed the writ petition through order dated 15.09.2014. Hence, this Letters Patent Appeal.

6. Sri Anil Kumar Sinha, learned counsel for the appellant submits that the power supply of any category is extended by the respondent only on the basis of an agreement and such an agreement for H.T. supply in favour of the appellant was executed on 05.03.1998. He contends that the question of demanding H.T power supply consumption charges before extending the connection does not arise. Learned counsel further submits that if the respondent was of the view that the H.T. power was drawn even before the formal connection was given and agreement was executed, the same would have been mentioned or reflected when the agreement was executed on 05.03.1998 and the very fact that the bill for Rs. 26,79,572/-was issued only in the year 2004, i.e. six years after the execution of the agreement, discloses lack of bonafides in the matter. He further submits that demand for H.T. power supply is based upon the consumption charges as well as maximum demand which, in turn, is to be measured through a meter and ignoring the fact that the meter was installed for the first time in the year 1998, the respondent demanded fabulous amount. He contends that the Chief Secretary did nothing more than put a seal of approval on the illegal demand made by the respondents.

7. Sri Vinay Kirti Singh, learned counsel for the respondent, on the other hand, submits that though the agreement for H.T. supply was entered into on 05.03.1998, the appellant was drawing H.T. power from 1991 itself. He submits that the bills were not raised prior to 2004 since the correspondence was going on, in this behalf and there was also hesitation, on account of the fact that the appellant is a Central Government organization. He submits that the appellant has installed a transformer for conversion of L.T. power into H.T. power, long prior to 1998 and it cannot escape from the liability to pay the charges.

It is rather unfortunate that a dispute of such a serious nature has arisen between an agency of the Central Government and another of the State Government. Dispassionate verification of records and relevant facts would have obviated the long drawn litigation. It is a matter of record that the appellant was extended two L.T. connections for the Railway Station at Khagaria and they remained operational till the year 1998. It is also not disputed that the appellant submitted an application for H.T. supply in the year 1990. The agreement for H.T. supply was executed only on 05.03.1998.

8. It is important to note that sanction for extending H.T. power supply was accorded only on 03.03.1997. The letter addressed by the Electrical Superintending Engineer, Electric Supply Circle, Saharsa to the Divisional Railway Manager (Electrical), North East Railway, Sonpur (Annexure-3) reads as under:

Saharsa Electrical Circle Saharsa

No.232

From:

Er. F. Ahmad

Elec. Superintending Engineer,  
Electric Supply Circle, Saharsa.

To:

The D.R.M. (Electrical)

N. E. Railway, Sonpur.

Dated Saharsa the 3.3.1997

Sub: Sanction of load for H.T. connection of 200 K.V.A. Ref: E.E.E.(S) Khagaria letter no.8 dated 6.1.97 application no.247 dated 19.1.90/A.E.E.(s) Khagaria.

Dear Sir,

Sanction is hereby accorded for a load of two hundred KVA to be given under H.T. category of Boards Tariff subject to condition given below:

You will have to install your own Distribution transformer the capacity of which should not be more than 150% the contract demand.

You will have to execute an agreement in the office of the undersigned in the prescribed format of agreement for H.T. consumers along with two special adhesive stamps with Rs. 3.20 each to be affixed in two copies within 30 days after receipt of this letter.

As per report of A.E.E.(S) Khagaria at present Khagaria Rly. is getting power in commercial tariff having two nos. connections bearing con. no. M-6 and 136 line

both running connections are hereby dropped since the date of H.T. connections.

Sources of supply on 11 K.V. is hereby allowed.

Yours faithfully,

Sd/ 3.3.97

(F. Ahmad)

Electrical Superintending Engineer

9. From Annexure-3, it becomes clear that

(a) the appellant was kept under obligation to install distribution transformer of a particular description;

(b) it was required to execute agreement; and

(c) 2 L.T. power supply connections bearing M-6 and 136 were required to be dropped from the date of H.T. connection.

10. The ultimate agreement was executed on 05.03.1998, filed as Annexure-4 and it is in a printed format. Neither in Annexure-3, nor in Annexure-4, there is any reference to the factum of the appellant drawing H.T. power supply from any date earlier thereto, much less from 1990. Clause 1(a) of the agreement reads as under:

"1(a) The Board shall furnish to the consumer and the consumer shall accept at the point of supply mentioned in the schedule hereto, on and from the date on which the said premises shall be connected with the supply distributing mains and during the continuance of the agreement, a constant supply of electrical energy at the pressure of 11000 Volts, 50 cycles, 3 phases, 3 wires, alternating current system subject to standard variations as provided in Indian Electricity Rules, 1956 or any other statutory modification thereof as may be in force from time to time for the purpose and up to the maximum specified (hereinafter referred to as the contract demand) and under the conditions laid down in the Schedule."

11. The clause clearly mentions that the consumer shall be entitled to draw supply only from the date on which the premises shall be connected with the supply distributing mains and during the continuance of the agreement. In other words, the question of consumer drawing power, either earlier to the agreement or before the premises is connected with the supply distributing mains, of the specific description does not arise. If any consumer is found to be drawing power without there being any agreement, and in the absence of any supply distributing mains being provided by the Electric supplier, such acts amount to pilferage and illegal consumption of power. The person resorting to such acts is exposed not only to penal charges, but also to prosecution.

12. In the correspondences that ensued in this behalf, the noticing of installation

of transformer by the appellant seems to have been the basis for inference that H.T. power was being drawn before the formal connection was given. Assuming that the distribution transformer was installed by the appellant, it is referable to the condition of the agreement, namely that it is the obligation of the consumer to install the distribution transformer. The application for H.T. supply was made in the year 1990 and awaiting execution of agreement regarding extension of power supply, the appellant kept itself ready by making installation of transformer. The delay and laxity are on the part of the respondent. Nearly eight years after the application, H.T. supply was extended. Therefore, mere installation of transformer, ahead of the agreement cannot lead to an inference that H.T. power supply was being availed.

13. Nowhere in the correspondences, it was alleged that H.T. distributing supply mains were installed before 1998 to the place where the appellant erected transformer. Added to that, a settled practice and norm of the respondent is that wherever H.T. supply is extended the existing L.T. connections supplies are disconnected. The same is evident from Annexure-3, which has been extracted above.

14. Had, the fact that the appellant was drawing H.T. power, been to the knowledge of the respondent, there would not have been any necessity or occasion to issue L.T. bills. Therefore, the absence of any H.T. bill and continued issuance of L.T. bills till 1998, falsifies the claim of the respondent that the appellant was drawing H.T. power before 1998. Further the bill for H.T. supply is based upon Maximum Demand, which is recorded in a specially install meter. Such a meter was installed only in 1998.

15. There is another way of examining the issue. If, in fact, the appellant was drawing H.T. power even by the time the H.T. agreement was entered into on 05.03.1998 and the respondent did not initiate any punitive action out of sheer respect for the appellant, a Central Government Organisation, one would expect the demand in that regard to be made at the time of execution of H.T. supply agreement. As a matter of fact, if a consumer is facing the allegation of drawing power in the absence of any agreement, two consequences ensue. The first is that penal proceedings, on the allegation of pilferage of power, are initiated, and the second is that individual or agency is virtually black listed for being extended any formal supply. Neither when the agreement was executed on 05.03.1998; nor in the first bill of H.T. connection issued thereafter, any reference was made to the consumption charges of H.T. power, anterior to the date of agreement. It is six years thereafter that the demand of Rs. 26,79,572/- referable to the period between December, 1991 to February, 1998 was made. The only relevance for the period mentioned therein appears to be the date on which the application was made. There cannot be any factor, more absurd than this, for mulcting a consumer, that too of a stature of an Indian Railway with the obligation to pay the bill.

16. What started with an unfounded and fabulous bill has grown in geometrical

proportions, over the period. The amount of Rs. 13,00,000/- which remained unpaid in the year 2004 has turned to be Rs. 1,77,49,828/-. In fact, the respondent must be highly grateful to the High Court for keeping the matter pending for about a decade, which has transformed a small figure of Rs. 13,00,000/- to Rs. 1,77,49,828/-. Even Shylock would have felt humble that he did not have such a mechanism.

17. Since the parties to the proceedings are Government agencies, we have given our serious consideration to ensure that any step taken by them must strictly in accordance with the provisions of law. We are left no other alternative except to conclude that the initial demand of Rs. 26,79,572/- made through bill dated 23.10.2002 was absolutely without any factual or legal basis. When there is no basis for making initial demand, the question of such amount earning any delayed payment surcharge does not arise.

18. Strictly speaking the bill dated 23.10.2002 for a sum of Rs. 26,79,572/- and subsequent demand notice dated 09.01.2004 issued by the Engineer-in-Chief as well as the order dated 07.05.2013 passed by the Chief Secretary, Govt. of Bihar and the notice dated 14.05.2013 issued by the Electrical Superintending Engineer, Electric Supply Circle, Saharsa, demanding Rs. 1,77,49,828/- deserve to be set aside and the matter must be left at that. However even while setting aside the order and notice we direct certain measures, with the sole objective of bringing about a congenial atmosphere between both the parties.

19. In this behalf we intend to permit the respondent to retain a sum of Rs. 13,00,000/- that was paid in compliance of the interim order dated 30.1.2004 passed by the learned Single Judge and a further sum of Rs. 10,00,000/- out of Rs. 1,77,49,828/- recovered by it from the appellant under the threat of disconnection.

20. We, therefore, allow the Letters Patent Appeal a) setting aside the demand notice dated 09.01.2004; the order dated 07.05.2013 passed by the Chief Secretary, Government of Bihar and consequential demand notice dated 14.05.2013. b) directing that the respondent, i.e. the concerned agency, which succeeded to the Bihar State Electricity Board, shall be entitled to adjust against the future consumption bills, to the extent of 50% the entire amount recovered from the appellant through the bills and demand notices hereby set aside, instead of being under obligation refund, except a sum of Rs. 13,00,000/- (Rupees thirteen lacs) paid by the appellant in compliance of the interim order passed by this Court and a sum of Rs. 10,00,000/- (Rupees ten lacs) ordered by us in this appeal. c) The adjustment shall be against the amount collected towards the disputed bills and the delayed payment surcharge, as reflected in the concerned bills. d) It is made clear that the amount of Rs. 23,00,000/- (Rupees twenty three lacs) which we enabled the respondent to retain is not on account of any consumption charges, but as a measure to put an end to the unnecessary and prolonged litigation, and in public interest.

21. Interlocutory applications, if any, shall stand disposed of. There shall be no order as to costs.