

(1978) 07 PAT CK 0003

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 149 of 1976 (R)

Usha Alloys and Steels Limited

APPELLANT

Vs

The Bihar State Electricity Board

RESPONDENT

Date of Decision : 13-07-1978

Acts Referred:

Constitution of India, 1950 — Article 166, 226
Electricity (Supply) Act, 1948 — Section 46, 49

Citation : (1978) 26 BLJR 568

Hon'ble Judges : Satyeshwar Roy, J; Hari Lal Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satyeshwar Roy, J.—This application under Article 226 of the Constitution of India has been filed by the petitioner for a writ of mandamus commanding the respondent to desist from demanding the sum of Rs. 2,87,812.50 paise in pursuance of annexure "1 to this application being notice and the supplementary bill and to refrain" from taking any step from realising the said amount or any other amount disallowing rebate in respect of maximum demand charge and fuel surcharge in the tariff applicable to the petitioner.

2. The admitted facts are that the petitioner carry on electro-metallurgical industry at Aditpur, Singhbhum and is classified as a medium scale industry. It started its production in or about June, 1974. In order to give incentive for setting up large and medium enterprises in Bihar, the State Government by Resolution No. 1687 dated 29-9-1973 provided for various incentives and reliefs including electricity concession to large and medium industries. Paragraph 2 Clause (x) of the said Resolution provides as follows:

(x) Electricity Tariff:

In the case of electro-chemical and electro-metallurgical industries where electric power is used as raw material power will be supplied on no-profit no-loss basis.

Concessions extended Vide Notification No. 220-F, dated the January 6, 1966 (Commercial Taxes Department) regarding exemption of electricity duty on electro-chemical or electro-metallurgical industries will continue. The consumers having the contracted load 132 KVA and above will be allowed a rebate of 5 per cent and units consuming electricity from 3.3 K.V., 6.6 K.V., 33 K.G. or 66 K.V. will be allowed rebate of 7 per cent. Rebate of 5 per cent or 7 per cent will be applicable on Tariff only. Electricity duty surcharge or meter rent will not be included for calculating the rebate. These facilities will be available to new industrial units from the date the unit goes into production.

3. The respondent by virtue of the power conferred under Sections 46 and 49 of the Electricity (Supply) Act, 1948, framed Tariff and laid down terms and conditions for the supply of electricity to its consumers. The supply of energy to the petitioner by the respondent was under the joint High Tension service under the symbol H.T.G. III (33 K. V. service) and the tariff provided charges in respect of the following :--

- (a) Maximum demand charges ;
- (b) Energy charge ; and
- (c) Meter rent.

Apart from these in the Tariff there is a charge known as Fuel Surcharge and Paragraph 27 of Tariff; in respect of Fuel Surcharge reads thus:

27. Fuel Surcharge as specified in the Notification is a part of the Tariff and shall be leviable in addition to the rates of Tariff given in the schedule to this Notification.

4. In terms of Clause (x) of Paragraph 2 of the said Resolution the petitioner was from the very beginning allowed rebate at the rate of 7 per cent including fuel surcharge, but excluding meter rent. The bills were drawn by the respondent accordingly and payments of the same were made by the petitioner. By annexure "I" to this writ application, the Respondent sent a supplementary bill for the year 1974-75 and 1975-76 amounting to Rs. 2,87,812.50 paise on the ground that the rebate of 7 per cent was admissible only in respect of energy charge and not in respect of maximum demand charge and fuel surcharge and as rebate has been given under those two heads also the supplementary bill was sent. Being aggrieved by this demand the petitioner has filed this application.

5. The respondent has filed counter-affidavit and contended that the State Government in the Industries Department by its letter No. 3190 dated 27-2-1975 has clarified that concession in terms of Paragraph 2, Clause (x) of the aforesaid Resolution dated 29-9-1973 was to be given in respect of energy charges only. In view of that clarification the supplementary bill was sent to petitioner. The said letter dated 27-2-1975 is annexure "A" to the counter-affidavit. It was also stated by the respondent that the State Government in the Department of Revenue informed the respondent that the rebate will be given only on monthly

demand charge and energy charge. Respondent further stated that in view of the clarification given by the State Government no rebate is allowed on maximum demand charge and fuel surcharge. It may be mentioned that in the Tariff published by the Board there is no charge as Monthly Demand Charge, Actual term used in the Tariff is maximum demands charge.

6. The only point for determination in this application is, therefore, whether Clause (x) of Paragraph 2 of the said Resolution dated 29-9-1973 which has been quoted above shall be deemed to have been modified by the letters and circulars issued by the Industry department from time to time and whether in view of the said letters and circulars no rebate, is allowable on maximum demand charge and fuel surcharge.

7. Mr. R.N. Sahai Sinha, learned Counsel appearing for the respondent has submitted that the rebate given by the Board is subsidised by the State Government and the Board really does not give any rebate. The rebate on maximum demand charge and fuel surcharge was withdrawn on the clarification made by the State Government as the rebate on maximum demand charge and fuel surcharge was given on the interpretation of the said resolution of the State Government and as the same was clarified by subsequent letters and circulars by the State Government, the Board withdrew the rebate. Since the petitioner claims rebate on the basis of the Resolution of the State Government which has been clarified by the State Government, Mr. Sinha contended that the State Government was a necessary party. In my opinion, the consumers, as the petitioner is, are not concerned with the internal arrangement between the Board and the State Government. The petitioner relies on the Resolution of the State Government as accepted by both the parties, i.e. the Board and the petitioner. In my opinion, therefore, the State Government is not a necessary party to this writ application.

8. Mr. Sinha then submitted that in view of a Bench decision of this Court in C.W.J.C. No. 328 of 1977 M/s. Casting India Incorporated and Ors. v. State of Bihar and Ors. 1978 (2) B.L.J.R. 513. and other batch cases which were disposed of by a common judgment on 3-3-1978, this case must be dismissed. In my opinion, the decision of that case has no application to the present case as the relief prayed for by the petitioners of those cases was to issue writ of mandamus directing the Board to desist from demanding and realising the maximum guarantee charge by way of short fall and increased fuel surcharges.

9. It was submitted by Mr. Chatterjee that while adopting the Resolution dated 29-9-1973 the State Government also ordered that a copy of the Resolution be published in the Bihar Gazette, in all reputed journals, circulate to all Departments of Government, Head of the Departments and Subordinate Offices. This Resolution was acted upon by the petitioner and the respondent. It was further submitted by him that the Resolution dated 29-9-1973 could not have been modified by letters and circulars of the different departments of the Government. The Government has a right to modify the Resolution but the same

must be done by another Resolution or something akin to it and not by mere letters and instructions. He also contended that the said letters and circulars were all inter-departmental and no publicity of the same was given as done in the case of the said Resolution dated 29-9-1973. There is much force in the contention of Mr. Chatterjee. In my opinion the Resolution is an executive action as envisaged under Article 166 of the Constitution of India and by mere letters and instructions the same cannot be modified. Therefore, letters and circulars issued by the State Government from time to time by way of executive orders cannot be held to modify Clause (x) of paragraph 2 of the said Resolution dated 29-9-1973.

10, Mr. Chatterjee has further contended that the respondent-Board is estopped from withdrawing the rebate of maximum demand charge and fuel surcharge as public bodies, which the Board is, are as much bound as a private individual and carry out representation of facts and promises made by them, relying on which it had acted. In support of his contention he relied on the Supreme Court case of Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, . In that case the Industrial Area was excluded from the Municipal jurisdiction of Ulhasnagar. The District Municipality made a representation to the Government of Maharashtra that the proclamation excluding the Industrial Area from the Municipality be withdrawn and the Municipality agreed to exempt the existing factories, namely, the petitioner and the other manufacturers whose factories were then existing in the Industrial Area from payment of octroi for a period of seven years from the date of levy of the octroi and for exempting new Industrial units from payment of octroi for a similar period from the date of establishment. The Government of Maharashtra acceded to the request of the Municipality to retain the Industrial Area within the local limits of the Municipality. While the said exemption was being enjoyed by the petitioner of that case and the others, Ulhasnagar Municipality as successor of Ulhasnagar District Municipality withdrew that exemption by another Resolution. Under those facts it was held in that case:

Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representations amounting to a promise may be enforced ex contracts by a person who acts upon the promises. xxx xxx xxx xxx A public body is in our judgment not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.

In my opinion the fact of that case is not similar to that of this case. Therefore, the principle laid down in that case has no application in this case.

11. In the result, the application is allowed. Let a writ of mandamus be issued commanding the respondents not to demand Rs. 2,87,812.50 paise in pursuance of annexure "1" and to refrain from taking any step or realisation of the said

amount or any other amount of rebate for the years 1974-75, 1975-76 in respect of maximum demand charge and fuel surcharge in the Tariff. In the circumstances, there will be no order as to costs.

Hari Lal Agarwal, J.

12. I agree.