

**(2003) 04 SC CK 0123**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 3026 of 2003 (Arising out of SLP (C) No. 20304 of 2001)

Vijay Kumar Agrawal

APPELLANT

Vs

Bihar State Electricity Board and Others

RESPONDENT

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**Date of Decision :** 07-04-2003

**Acts Referred:**

**Citation :** AIR 2004 SC 3285 : (2003) 2 PLJR 121 : (2003) 4 SCALE 371 : (2004) 13 SCC 104

**Hon'ble Judges :** S. B. Sinha, J; R. C. Lahoti, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

1. Leave granted.

2. On 19-5-1986 the appellant and the respondents entered into a contract whereby the respondent-Board agreed to supply electricity to the appellant's industrial unit. On 5-3-1993 the appellant sent a registered letter to the respondent, addressed to the Assistant Electrical Engineer, Electric Supply Sub-Division, Bihar State Electricity Board, Sitamarhi, Bihar, informing them that although the appellant was sanctioned 60 HP load, they have reduced their load from 60 HP to 39 HP on account of some technical problem and therefore the Board may charge the appellant accordingly only for 39 HP load. The appellant also offered his willingness to sign any fresh agreement or amendment as required. The respondent-Board gave no response. However, it is not denied that for the disputed period, i.e., July 1993 to August 1997 the bills raised were on the basis of 30 HP load and were paid. For the months of July and August 1997, the appellant was billed for 60 HP load. The bill raised a demand of Rs. 3,22,235.46 on account of energy charges calculated for July and August 1997 on 60 HP load and deficit charges for the period July 1993 to June 1997 for differential load of 21 HP not charged earlier. On the appellant's protest and several reminders, he was informed by letter dated 5-3-1998 that though the

installed load was 60 HP for the appellant, and the energy bills were accordingly issued upto March 1993, it was found that while opening the new ledger for the year 1993-1994, the Billing Clerk had by mistake carried forward and entered the load of appellant's plant at 39 HP, which was a clear error, and as there was a short billing the appellant was liable to satisfy the demand. Then followed an exchange of letters -- the appellant insisting on the withdrawal of the demand and the respondent-Board insisting on satisfying the demand and standing by its correctness. It seems that there were several rounds of litigation, in the last of which the appellant was allowed by the High Court the liberty of making a representation to the Board, which the appellant did but un-successfully. This time the Board held that the registered letter dated 5-3-1993 was not received at all in the office of the Board. The appellant filed a writ petition seeking quashing of the demand which has been dismissed by the High Court. The appellant has filed this appeal by special leave.

3. Having heard the learned Counsel for the parties we are satisfied that the appeal deserves to be allowed. The principal controversy centers around the communication from the appellant dated 5-3-1993. In this context, it is pertinent to note Clause 16 of the contract dated 19-5-1986 signed between the parties which reads as under:

16. Any notice required to be given to the consumer shall be given to Mr. Vijay Kumar Agarwala and an notice required to be given to the Board shall be given to the Assistant Electrical Engineer, Sitamarhi either by delivery or by post (under certificate of posting).

4. The appellant had sent communication dated 5-3-1993 through registered post. The postal receipt showing dispatch of the letter and the copy of the letter have been filed. The letter is addressed to as per Clause 16 of the contract and is with postal charges pre-paid. In almost all the letters written by the appellant to the respondent there is a reference to the letter dated 5-3-1993, but the Board has never disputed in its letters the receipt of the appellant's letter dated 5-3-1993. For a long period of more than 4 years the appellant has been billed for 39 HP consumption. During this time the appellant's industrial unit must have been inspected several times by the respondent's officers/inspectors. At least the Meter Reader has taken the periodical meter readings. We find it difficult to believe that although the appellant was consuming 50 HP load of electric supply, he was being billed for 39 HP erroneously. A communication sent through registered post, properly addressed, and postal charges pre-paid, raises a presumption of its having reached the addressee and such presumption cannot stand rebutted by a bare denial. Excepting bare denial the Board adduced no other evidence to show non-receipt of the communication.

5. It Is submitted by learned Counsel for the respondent-board that assuming that the communication was sent to the Board still the appellant is not entitled to any benefit because the appellant did not send the communication in the prescribed pro forma and did not deposit the requisite inspection fee for

sanctioning change in the load of appellant's supply. In the facts and circumstances of this case we are not inclined to agree with the respondent's submission. The least that was expected of the Board was to have responded to the appellant's communication dated 5-3-1993 telling him that he was supposed to make an application in a prescribed pro forma, if it was that necessary, and to deposit the inspection fee. So far as the appellant is concerned he cannot be found fault with inasmuch as having sent a communication, he was receiving bills for 39 HP load continuously for a period of more than 4 years. He was justified in acting on an assumption that his prayer has been allowed by the Board and the quantum of sanctioned load reduced for the purpose of billing.

6. In the totality of the facts and circumstances of the case we are of the opinion that the relief sought for by the appellant cannot be denied to him. The appeal is allowed. The impugned judgment of the High Court is set aside. The impugned additional demand raised by the respondent-Board for the period July 1993 to August 1997 treating the sanctioned load as 60 HP is set aside. The appellant shall remain liable to be charged for 39 HP load for the said period. No order as to the costs.