
(2004) 02 JH CK 0020
In the Jharkhand High Court
Case No : Writ Petition (C) No. 37 of 2004

Vijay Shree Industries Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 25-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Amendment) Act, 2003 — Section 185(2), 53
Electricity Act, 1910 — Section 26(6), 26(7)

Citation : (2004) 3 JCR 224

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : V.P. Singh and S.L. Agarwal, for the Appellant; Dilip Jerath, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Petitioner's contention is that the meter testing report dated 7.11.2003, (Annexure-4) and the demands raised on the basis thereof are illegal and arbitrary.

2. Petitioner's meter was checked by the respondents on 7.11.2003, when it was found slow (Annexure-4). On the said check report, petitioner noted its objection as follows :

"Consumer Remark.--(1) We are not sure about accuracy of the meter with which the testing was done and as such we cannot agree with the result.

(2) We have paid for the unconsumed unit as per AMG bills and the amount paid by us for the last 3 years comes to Rs. 13.5 lacs i.e. for the years 2000-01, 2001-02, 2002-03. The meter , is the property of JSEB and may replace if found defective by you."

3. A supplementary demand was raised on the basis of the said check report revising the bills for the preceding six months (Annexures-2 and 3).

4. The respondent's contention is that it is a case of tampering with the meter by slowing it down and not a case of defective meter covered by Clause 16.8 of the Tariff. The case reported in J.M.D. Alloys Ltd. Vs. Bihar State Electricity Board and Others, was relied on.

5. Therefore the question is whether this case is covered by Clause 16.8 of the 1993 Tariff or not.

6. In my opinion, when a meter, ceases to record the consumption correctly it will be called a defective meter. The meter may be found slow/fast/stopped/burnt. All such cases, where meter ceases to function and record consumption properly, it will be deemed to be out of order and will fall under Clause 16.8 of the 1993 Tariff, provided there is nothing to show that the meter has been tampered with. Clause 16.8 cannot be restricted to those meters only which have stopped/burnt or ceased to function absolutely. The words "Meter being out of order i.e. burnt/stopped or having ceased to function for any reason" used in Clause 16.8 of the Tariff cannot be given such a restrictive meaning, that only when a meter has ceased to function absolutely then only Clause 16.8 will apply. Meter is a delicate instrument to measure electrical energy passing through it. If such restrictive meaning is given to Clause 16.8 then in case, a meter is found fast, the Board will be liable to refund the excess charges to the extent the meter is found fast.

"Tamper" has been defined in the Webster's Comprehensive Encyclopedic Dictionary is as follows :

"To tamper-To Meddle, interfere, to make changes especially as to damage...."

7. There is nothing in the said check report that petitioner has tampered with the meter. The respondents cannot be allowed to make out a different case in the counter affidavit, which is not borne out front the records. Only because the meter was running slow, it cannot be said that the petitioner has tampered with the meter without there being anything further to show that the petitioner has actually tampered with the meter, by meddling or interfering with or making changes in the meter for slowing it down. The case relied upon by the respondents JMD Alloys Ltd. is not applicable in this case as in that case seal fixed on CT/PT box was found tampered.

8. There is yet another aspect. It is admitted by the parties that the Indian Electricity Act, 2003 (the New Act for short) will apply in this case. The parties could not show that provisions similar to Sections 26 and (7) of the Indian Electricity Act, 1910 are there in the new Act. However, in view of Section 185(2) (c) of the New Act, Indian Electricity Rules, 1956 have been continued to be in force till the regulations u/s 53 of the new Act are made.

There is nothing to show that accucheck meter, by which petitioner's meter a checked, was approved regarding its accuracy by the Electrical Inspector, as provided in Sub-rules (3), (4), (5) and (6) of Rule, 57 of the Indian Electricity

Rules, 1956. Petitioner has rightly endorsed it's objection on the test report.

9. In the result, I have no hesitation, in holding that this is a case covered by Clause 16.8 of 1993 Tariff. Consequently the bills raised on the basis of the said cheek report dated 7.11.2003, are quashed.

Regarding High Tension consumers, the said Clause 16.8 has been clarified in the case reported in Maa Cement Company Vs. Jharkhand State Electricity Board and Others,

Respondents are accordingly directed to revise the bills for the month (s) the meter remained defective i.e. from November 2003 till the alleged defective meter was replaced, on the basis of Clause 16.8 of 1993 Tariff read with the said judgment of Maa Cement Company (supra), i.e. on the basis of average of previous three months or corresponding three months in the previous year, whichever is higher. It goes without saying that the amounts paid by the petitioner from time to time shall be adjusted and a details of calculation will be supplied to the petitioner. This exercise should be completed as early as possible and preferably within a period of two months from the date of receipt/production of a copy of this order. If any amount is found due against the petitioner after revision of bills, petitioner will pay the-same and if any amount is found paid by the petitioner in excess, the same shall be adjusted in the future bills.

With these observations and directions, this writ petition is allowed. No casts.