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**(2003) 09 JH CK 0108**  
**In the Jharkhand High Court**  
**Case No : Writ Petition (C) No. 6426 of 2002**

Vikromatic Steel Pvt. Ltd.

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

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**Date of Decision :** 01-09-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2003) 3 BLJR 2011 : (2003) 4 JCR 247

**Hon'ble Judges :** M.Y. Eqbal, J

**Bench :** Single Bench

**Advocate :** Rajendra Prasad, for the Appellant; V.P. Singh and Rajesh Shanker, for the Respondent

**Final Decision :** Allowed

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## Judgement

M.Y. Eqbal, J.—Heard Mr. Rajendra Prasad learned counsel for the petitioner and Mr. V.P. Singh, learned counsel for the Jharkhand State Electricity Board,

2. Before admitting of this writ petition, a Bench of this Court by order dated 30.4.2003 while hearing the matter at the admission stage formulated two questions which arose consideration :

(i) Whether the State Electricity Board has jurisdiction to give retrospective effect to a tariff notification or not as given vide Notification gazetted on 6th April, 2000 (Annexure 10); and

(ii) Whether any clause of an agreement (Clause 13 of H.T. agreement herein) stands automatically deleted in pursuance of Board's decision or letter No. 150 dated 3rd April, 2000 or not in absence of a fresh agreement between the parties to delete such clause of the agreement."

3. Petitioner is aggrieved by the order dated 12.2.2002 passed by the General Manager-cum-Chief Engineer rejecting the claim of the petitioner made under Clause 13 of the H.T. Agreement on the sole ground that by virtue of the new

tariff notification in respect of Induction Furnace Clause 13 of the H.T. Agreement stood automatically deleted.

4. Petitioner-industry is engaged in manufacturing of M.S. Ingots and Tor Steels, in its industrial unit. In the year 1996 petitioner entered into an agreement with the Board for the supply of electricity and the contract demand fixed was 2400 KVA. In terms of Clause 13 of the Agreement, petitioner was entitled to claim remission in the event Board fails to make constant supply of electricity. Petitioner made a claim under Clause 13 of the Agreement after depositing 50% of the bill amount which was required to be deposited pursuant to notification dated 20.7.1994. When claim of the petitioner was not decided, petitioner moved this Court by filing WP(C) No. 5259/2001. The writ petition was disposed of on 12.10.2001 with a direction to the General Manager-cum-Chief Engineer Area Electricity Board, Dumka to dispose of the claim within the specified time. Pursuant to that direction the claim of the petitioner has been disposed of by the impugned order referred to hereinabove.

5. As noticed above, the only question that falls for consideration is whether because of new tariff notification issued by the Board in respect of the consumers having Induction Furnace, Clause 13 of the agreement stood automatically deleted. Admittedly, for the first time, respondent Board came with a new tariff on 24.9.1989 making it effective from 1.9.1999. The said tariff was notified on 6.4.2000. Before notification of the tariff in the gazette respondent Board enforced the said tariff against various industrial consumers having induction Furnace, which gave rise to filing of several writ petitions. One of those petitioners is M/s. Spriha Steel Private Ltd. The question that arose for consideration by this Court in the aforementioned writ petition was as to what should be effective date when tariff can be enforced against the consumer? In the said case (CWJC No. 3078/99(R)) respondent Board very fairly stated in the counter affidavit that new tariff shall not be given effect to, so far petitioner is concerned, till it was finally notified in the official gazette. On principle it was not disputed that any tariff could be made enforceable only after its publication in the gazette, which is statutory requirement of law.

6. Mr. V.P. Singh, learned counsel for the Board drawn my attention to schedule appended to the H.T. Agreement (Annexure 1) and submitted that the new tariff issued by the Board on 25.9.1999 was referred against the maximum guarantee clause and it was also mentioned that the tariff would be H.T.S.S.I. (Induction Furnace). If the contention of Mr. Singh is accepted then Clause 13 which still exists in the Agreement would not be deleted. Mr. Singh submitted that, may be, by mistake Clause 13 has not been deleted but impliedly it stands deleted because insertion of tariff induction furnace is In the schedule of the agreement. I am not agreeable with the contention the learned counsel as stated above. The new tariff agreement came into force only with effect from 6.4.2000 when it was notified and published in the gazette.

7. Besides the above, in the earlier writ petition the Court had directed the

General Manager-cum-Chief Engineer to dispose of the claim of the petitioner under Clause 13 of the Agreement on merit but instead of doing that he has rejected the application on the assumption that Clause 13 stood deleted because of the notification which was admittedly published only on 6.4.2000.

8. For the reasons aforesaid this writ application is allowed and the impugned order rejecting the claim under Clause 13 of the Agreement is set aside. The matter is remitted back to the General Manager-cum- Chief Engineer, Area Electricity Board, Dumka to reconsider the claim of the petitioner to pass a reasoned order after giving opportunity of hearing to the petitioner. The claim must be disposed of within two months from the date of receipt/production of copy of this order.