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Court : Patna

Decided On : Jul-02-1997

Judge : B.P. Singh and M.Y. Eqbal, JJ.

Appeal No. : C.W.J.C. No. 4001 of 1993 (R)

Appellant : India Firebricks and Insulation Company Ltd.

Respondent : The Bihar State Electricity Board and ors.

Prior history : M.Y. Eqbal, J. 1. In this writ petition, the petitioner has prayed for a declaration that the petitioner is not liable to pay additional 1/3rd charges and 3% transformer loss since 1975 as demanded by the Respondent-Board vide electricity Bill dated 13.12.1993. A further prayer has also been made that the Respondent-Board is not entitled to disconnected the electric line of the petitioner on the ground of non-payment of the additional demand made by it. 2. The petitioner, a subsidiary Company

Judgement :

M.Y. Eqbal, J.

1. In this writ petition, the petitioner has prayed for a declaration that the petitioner is not liable to pay additional 1/3rd charges and 3% transformer loss since 1975 as demanded by the Respondent-Board vide electricity Bill dated 13.12.1993. A further prayer has also been made that the Respondent-Board is not entitled to

disconnected the electric line of the petitioner on the ground of non-payment of the additional demand made by it.

2. The petitioner, a subsidiary Company of M/s. Bharat Refractory, a Government of India Undertaking, is engaged in manufacturing of various types of refractories having its registered office at Bokaro Steel City. The petitioner's case is that it has paid to the Respondent-Bihar State Electricity Board the electric charges with regard to the actual consumption of electrical energy regularly and up to date payment has been made. But all of a sudden the petitioners had received the Bill dated 15.12.1992 for a sum of Rs. 27,68,835.43 paise. In the said Bill it was mentioned that as per the test report of M.R.T. Dhanbad and communicated by the Electrical Executive Engineer, Ramgarh, the meter recorded only 2/3rd consumption and less charge for six months back after adding 3% transformer loss as the meter is in L. T. side and in the said Bill arrears were shown as Rs. 17,30,599.90 paise, being the 1/3rd additional charge for the electricity consumed. The petitioner after receiving the said Bill challenged the same by filing WJC No. 1100 of 1993 (R). The said writ petition was disposed of on 21.5.1993 with a direction giving liberty to the Respondent-Board to inspect the meter installed in the premises of the petitioner after giving the notice to it and thereafter a fresh Bill shall be raised in accordance with law.

3. It is stated by the petitioner that the petitioner has paid the additional 1/3rd of the energy consumed from November, 1992, but demand is being made from May, 1992. According to the petitioner, the demand of the additional 1/3rd charge for the period May, 1992 to November, 1992, amounts to Rs. 17.30 Lakhs. The petitioner has challenged the said demand as being illegal and wholly without jurisdiction. By filing a Supplementary Affidavit, it is stated by the petitioner that after the aforesaid order was passed by this Court in CWJC No. 1100 of 1993 (R) a fresh inspection was made on 28.8.1993 and a report was submitted stating that the meter was recording 1/3rd of the consumption. The said inspection report has been filed and annexed as Annexure 3/B and 3/C. The petitioner's contention, therefore, is that since to demand was made in between 1975 to November, 1993, regarding payment of 3% as transformer loss, the same is not entertainable.

4. The Respondent-Board in the counter affidavit stated, inter alia, that the petitioner has not paid the electric charges with regard to the actual consumption of electrical energy. It has been further stated that the supply of energy at 33 KV was given to the transformer of the petitioner and from the transformer the petitioner supplied to the factory premises through Triovector Meter in which the actual consumption was recorded.

5. According to the respondent, the petitioner had been paying regularly 3% of the transformer loss of the consumption since 1964 to 1975, but all of a sudden the petitioner stopped payment of the transformer loss.

6. This case was heard at length on 10.3.1997 and the hearing was concluded. From the side of the parties, it was submitted that there was possibility of some settlement on the question of payment of 3% transformer loss and on that ground the case was adjourned to 21.3.1997, On 21.3.1997, learned Counsel for the Respondent Board on instruction stated that the Respondent-Board is prepared to grant instalments for payment of 3% transformer loss, but is not willing to give up that claim. This case was, therefore, reserved for pronouncing judgment.

7. From the aforesaid facts, the only question falls for consideration is as to whether the petitioner is liable to pay 3% transformer loss in the facts and circumstances of this case.

8. Admittedly, the petitioner is the consumer of the Respondent-Board since 1964, having the contract demand of 1500 K.V.A. and has been paying the energy charges and other charges according to the tariff of the Board. It has been very categorically and specifically stated in the counter affidavit that the meter was recording only 2/3rd consumption of electrical energy and was not recording 1/3rd consumption. The Respondent-Board has raised the Bill for the pilferage of 180 days back from the date of detection as per the tariff. The petitioner thereafter started paying 1/3rd less consumption from November, 1992 onwards regularly. It is also the specific case of the Respondent-Board that from 1976 to April, 1992 due to inadvertence 3% transformer loss was not charged in the Bill and it was detected by the internal audit in the year 1992. According to the Respondent Board in the event of detection of any short or wrong charge in the Bill, the

Respondent-Board has right under Clause 15.4 (b) of the tariff to raise a supplementary Bill.

Clause 15.4 (b) of the tariff runs as under:

15.4 (b) In event of detection of any short or/and wrong charging in any Bill of the consumer in respect of the various charges, leviable under this tariff including State Electricity Duty etc. the Board reserves the right to serve a supplementary Bill.

9. As stated above, the stand of the respondents was that the petitioner was regularly paying 3% of the transformer loss since 1964 till 1975, but all on a sudden, the petitioner stopped payment of transformer loss. This fact was not disputed by the petitioner. In view of the admitting position that the petitioner was earlier paying transformer loss and payment of which was subsequently stopped by the petitioner without any plausible reason, I do not find any reason as to why the petitioner shall not be liable for payment of transformer loss so claimed by the respondent Board. However, in the peculiar facts and circumstances of the case, it would be too harsh for the petitioner to satisfy the demand of the Board by making payment of the transformer loss in one lump-sum. As agreed by the respondent Board to defer payment of transformer loss by allowing suitable instalments, the petitioner may be directed to make payment of that amount in easy instalments.

10. Having regard to the facts and circumstances of the case and the discussion made above, this writ application is disposed of with the direction that the petitioner shall make a representation to the respondent Board for payment of the transformer loss in easy instalments and no such representation, being filed by the petitioner, the respondent-Board shall consider it sympathetically and shall allow reasonable and easy instalments to the petitioner for payment of the amount lying the dues against the transformer loss.