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Court : Patna

Decided On : Mar-15-1999

Judge : Aftab Alam, J.

Acts : Electricity (Supply) Act, 1948 - Sections 49

Appeal No. : C.W.J.C. No. 6929 of 1997

Appellant : Bihar Gases Ltd.

Respondent : Bihar State Electricity Board and ors.

Advocate for Def. : Ajay Kumar Thakur, Adv.

Advocate for Pet/Ap. : L.K. Bajla and P.K. Sinha, Adv.

Disposition : Petition allowed

Judgement :

Aftab Alam, J.

1. This writ petition relates to the petitioner's claim for remission in terms of clause 13 of the High Tension Agreement and this is the second time that the matter has come to this Court.

2. The petitioner is a consumer of electricity under high tension agreement. It made claim for remission in maximum demand charges and the guaranteed

energy charges for the years 1986-87 to 1992-93 in terms of Clause 13 of the agreement. The petitioner's claim for remission was earlier disposed of by the General Manager cum Chief Engineer by his order dated 19-4-1994. Aggrieved by that order the petitioner challenged it before this court in CWJC No. 5509/1994.

3. In the order dated 19-4-94 the General Manager found that the hours of non-supply of electricity for the period in question were as follows :

Year As verified by the Board

1986-86 559 hrs. 23 minutes

1987-88 603 hrs. 33 minutes

1988-89 441 hrs. 25 minutes

1989-90 554 hrs. 00 minutes

1990-91 2354 hrs. 56 minutes

1991-92 2119 hrs. 47 minutes

1992-93 1869 hrs. 50 minutes.'

4. The General Manager, however, did not allow remission in the guaranteed energy charges on the basis of the hours of non-supply as shown above. He held that there were managerial lapses also in the running of the unit and came to the conclusion that the shortfall in consumption was to a great extent on account of the consumer's own lapses. He, therefore, allowed only 10% relief in the guaranteed energy charges which was far less than the percentage of the hours of non-supply of electricity. This court held that the approach of the General Manager was quite incorrect and the ground on which the petitioner was denied remission in proportion to the hours of non-supply of electricity was quite foreign to the provision contained in clause 13 of the H.T. agreement. It was pointed out that Clause 13 simply provided that in case the Board was prevented from supplying energy, the consumer would be entitled to reduction in the guaranteed energy charges proportionate to the Board's inability to supply power. Further, that in such

a situation the question of the consumer's inability or ability to consume energy would be wholly immaterial and irrelevant. This Court accordingly allowed that writ petition, set aside the order passed by the General Manager dated 19-4-1994 and directed him to dispose of the petitioner's claim for remission afresh after affording it an opportunity of hearing. It may be noted here that though the petitioner had also assailed the order dated 19-4-1994 in respect of his claim for remission in the maximum demand charges, in the order passed by the High Court no separate mention was made of the petitioner's challenge in connection with maximum demand charges for the reason that the General Manager's order had been set aside on the ground of incorrect remission in the guaranteed energy charges and the entire matter was remitted for a fresh decision in accordance with law.

5. Following the direction given by this Court the General Manager cum Chief Engineer, Area Electricity Board, Bhagalpur, passed order dated 27-1-1997 which now comes under challenge in this writ petition. In this order he made certain observations and formulated an equation for calculating remission in the maximum demand charges. These are as follows :

'If the amount of shortfall charged to the consumer during a particular month on account of maximum demand is Rs. X and the hours of interruption of duration of 30 minutes and above during that month is A, then the consumer will be entitled for relief on this account amount to Rs. X.A during that month.'

6. The above equation, however, was not applied in determining the petitioner's claim for remission in maximum demand charges and it was held that in the case of the petitioner no remission would be admissible for the following reason:

'From the year 1986-87 to 1992-93 since the actual maximum demand charge has billed and no short fall has been charged during these years, as such no remission is admissible.'

7. The General Manager is quite wrong on all scores; in making the above quoted observations, in formulating the equation and in giving the reason for holding that no remission in maximum demand charges was admissible to the petitioner. Like many other cases, in this case too the General Manager seems to have

proceeded on the erroneous assumption that remission in maximum demand charges would be admissible only in case the recorded reading is less than 75% of the contract demand and the maximum demand charges are, therefore, levied on the basis of 75% contract demand. It is an erroneous assumption not warranted by the plain language of Clause 13 of the H. T. Agreement that no remission in maximum demand charges would be admissible in case the recorded reading in the meter is as per the contract demand or within 75% of the contract demand. This court has repeatedly held that remission in contract demand, on the basis of hours of non-supply of electricity as provided in Clause 13 of the agreement is to be allowed regardless of whether the recorded reading was as per the contract demand or within 75% or below 75% of the contract demand.

8. In *Balajee Wire Products v. Bihar State Electricity Board*, (1995) 2 Pat LJR 810, it was held as follows in paras 9, 10 and 11 of the judgment:

'9. Mr. Rekhi submitted that for the purpose of raising the demand charges the higher of the two figures (that being 75 per cent of the contract demand) was taken into account. So for the purpose of calculating remission of demand charges also the higher figure should have formed the basis of the calculation.

'10. Mr. Shiva Kriti Singh, learned counsel for the Board, accepts this position. He, however, points out one more mistake in the calculation of proportionate relief (serial No. 8 of the reproduced calculation). Mr. Singh pointed out that not only the higher of the two figures (being 776.25 at serial No. 3) should have been multiplied by the total admitted hours of non-supply but the product should have been divided not by the total hours of power supplied at serial No. 7 but by the higher figure of total hours of power to be supplied at serial No. 5.

'11. In my opinion, Mr. Shiva Kriti Singh, is quite right in his submission. The position that emerges, thus, is that the remission in the demand charges should be calculated in the following manner:

Total KVA charged X Total hours of non-supply / Total hours of power to be supplied.'

9. The General Manager was, therefore, obliged to allow to the petitioner's claim for remission in maximum demand charges as per the equation formulated in that judgment, as quoted above.

10. Coming now to the guaranteed energy charges, the General Manager made the following observation and formulated the following equation for determining the remission in guaranteed energy charges:

'Similarly, if the amount of shortfall charged to a consumer on account of guaranteed energy charge during a particular year is Rs. Y and the hours of interruption of duration 30 minutes and above during that year is B, then the consumer will be entitled for relief on this account amounting to Rs. $Y.B$ during that year.'

8760

11. For the years 1987-88 to 1989-90 the General Manager found that the petitioner having consumed the guaranteed energy units no bills were given to it for the annual minimum guaranteed charges. For rest of the years (1986-87 and 1990-91 to 1992-93) he applied the equation $Y.B. /8760$ to determine the remission in guaranteed energy units to the petitioner. Here also the General Manager has acted in a manner contrary to the provisions of Clause 13 of the Agreement. As per Clause 13 the remission in guaranteed energy units has to be calculated by multiplying the total number of the guaranteed energy units (and not the shortfall units) by the quotient obtained on dividing the hours of non-supply of electricity by the total hours in a year (i.e., 8760). The determination of remission in the guaranteed energy charges is also, therefore, incorrect and fit to be set aside.

12. It may further be noted that the General Manager has also reduced the number of hours of non-supply of electricity from the number of hours earlier admitted by the Board as per the General Manager's order dated 5-7-1995. In doing that also the General Manager seems to have acted injudiciously.

13. For all these reasons, it is evident that the impugned order dated 27-1-1999 is wholly untenable in law. It is accordingly set aside and the matter is once again remitted back to the General Manager for a redetermination on the petitioner's claim for remission under Clause 13 of the Agreement in the light of the observations and directions made in this order.

14. In the result, this writ petition is allowed but with no order as to costs.

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