

(2012) 02 JH CK 0011
Jharkhand High Court
Case No: L.P.A. No. 397 of 2011

M/s. Vikromatic Steel Private
Limited

APPELLANT

Vs

Jharkhand State Electricity Board
and Others

RESPONDENT

Date of Decision: Feb. 6, 2012

Citation: (2012) 2 JCR 44

Hon'ble Judges: Prakash Tatia, J; Aparesh Kumar Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Heard learned counsel for the parties.
2. The appellant is aggrieved against the order passed by learned Single Judge dated 27th September, 2011 whereby the petitioner's writ petition has been dismissed.
3. The petitioner is having electric connection since 1996 and he is running an induction furnace as well as a rolling mill by this very single connection. The contract demand of the petitioner's Unit is 1400 KVA at the beginning and now it has been increased to 3800 KVA. The petitioner was billed according to the tariff which has been provided after the tariff schedule issued in the year 2004 under the category of HTSS which according to the writ petitioner-appellant was even disadvantageous to the writ petitioner at the relevant time.
4. Be that as it may, the licensee, Jharkhand State Electricity Board applied to the commission for prescribing the tariff with a proposal to merge the HTS and HTSS categories. This specific prayer as made in the tariff application was specifically rejected by the Jharkhand State Electricity Regulatory Commission in Point No.

12.33. And in spite of the fact that the petitioner was billed by JSEB according to HTSS category since beginning and proposal to merge HTSS category with HTS category has been rejected by the Commission yet the Electricity Board has issued a letter to the writ petitioner asking it to pay the electricity charges according to the tariff for HTS and further required the petitioner to obtain separate connection for his re-rolling mill. Before the learned Single Judge though copy of the tariff application and tariff orders rejecting said prayer, both were placed, but both the learned counsels submitted that inadvertently the learned Single Judge in its impugned order dated 13th September, 2011, proceeded to decide the matter assuming that tariff proposal given by the Jharkhand State Electricity Board was accepted and therefore, passed the order impugned.

5. In addition to the above factual mistake, the Commission before us in L.P.A. submitted an affidavit clearly indicating that in view of the tariff order the Jharkhand State Electricity Board had no right to raise a bill by treating this Unit as HTS category Unit.

6. However, learned counsel for the Electricity Board tried to distinguish the facts by stating that the petitioner's Unit is having an induction furnace, but at the same time is running re-rolling Mill also and therefore, the petitioner's unit cannot be termed to be a Unit of induction/arc furnace unit and according to the learned counsel for the Electricity Board, it is clearly provided in tariff order 2009 under the heading Special Service (HTSS), that it will be applicable to all the consumers, who have contracted demand of 300 KVA and more for induction/arc furnace. In case of induction/arc furnace, contract demand shall be based on total capacity of the induction/arc furnace and the equipments as per technical specification and not on the basis of measurement. It is also provided in the clause of applicability of the HTSS that this tariff schedule will not apply to casting units having induction furnace of melting capacity having 500 Kg. or below, therefore, according to the learned counsel for the Electricity Board the HT Special Service (HTSS) tariff is applicable to those units only which are having induction / arc furnace and if a consumer is using the electricity for any other purpose in addition to for induction/arc furnace, then he cannot be placed in a category of consumers who are running only induction / arc furnace.

7. Learned counsel for the Electricity Board also submitted that if the petitioner wants to run two units, one the furnace and another re-rolling mill then he should take two separate connections. Learned counsel for the Electricity Board drew our attention to Section-14 of the tariff order for the financial year 2011-2012 containing terms and condition of supply which specifically provide that the power supply shall normally be provided at a single point for the entire premises. But it is the normal rule and exception has been given in this very condition that in certain categories like coal mines power may be supplied at more than one point on request of consumer subject to technical feasibility. But in such cases metering and billing shall

be done separately for each point. Learned counsel for the Board submitted that it will be absolutely unjust to allow a consumer to have a very small unit falling within the category of consumers of HTSS category but who may utilize the electricity for other purposes like for running re-rolling mill.

8. We have considered the submissions of the learned counsel for the parties and perused the relevant orders as well as the reasons given by the learned Single Judge. At the outset we may observe that there was some mistake, which is apparent in the judgement impugned, when the learned Single Judge proceeded to decide the matter under impression that the prayer of the State Electricity Board to merge HTS category and HTSS category was accepted by the Commission whereas in fact it was rejected. Therefore, by tariff order merger of HTS and HTSS has been refused categorically and specifically and, therefore, the State Electricity Board can put the consumer and charge the electricity according to the category in which consumer is falling, either in HTS or HTSS.

9. The petitioner is running induction unit having a contract demand of more than 300 KVA (in this case 3800 KVA) and also running an induction furnace and is also a unit having a melting furnace of the capacity of more than 500 Kg (in this case the petitioner's unit has melting capacity of 5000 Kg.) and therefore, in view of this admitted position the petitioner's unit is certainly falling in the category of HTSS.

10. In tariff order, it is provided that the industrial units should normally have one electric connection rather say as per the reply filed by the Commission the industrial units should have one point connection, therefore, there should be one consumer for electricity for one unit and the suggestion given by the Electricity Board of having sub-meter for the rerolling mill is concerned for that, we do not find any lawful reason from the tariff order or any order which can prevail inspite of no provision in tariff order.

11. In view of the decision of the Commission which is binding upon the licensee as well as Section 14 of the tariff order 2010 also indicate that normally supply should be provided at single point and which is being provided to the premises of the writ petitioner since 1996. An exception appears to be there but of limited consequence and applies to certain connection which has been made very clear in this clause itself when it clearly stated that "In certain categories like coal mines power may be supplied at more than one point on request of consumer subject to technical feasibility." This specific inclusion cannot be made a general inclusion so as to have more than one connection for one unit. It is also not in dispute that the licensee can charge the electricity according to the tariff order only and not otherwise even they were charging otherwise before the tariff order.

12. In the light of decision on above legal issue both the L.P.As are allowed and the bills raised by the Jharkhand State Electricity Board by placing the petitioner under the category of HTS are quashed and the respondent, Jharkhand State Electricity

Board will be free to raise the bills by putting the petitioners in the category of HTSS consumer.