

(2001) 04 JH CK 0006

Jharkhand High Court

Case No: CWJC No. 253 of 1993 (R)

Hiralal Agarwal

APPELLANT

Vs

Bihar State Electricity Board and
Others

RESPONDENT

Date of Decision: April 26, 2001

Citation: AIR 2001 Jhar 45

Hon'ble Judges: S.J. Mukhopadhyaya, J

Bench: Single Bench

Advocate: R.A. Chaubey and R.K. Merathia, for the Appellant; V.P. Singh and Rajesh Shekhar, for the Respondent

Judgement

S.J. Mukhopadhyaya, J.

The petitioner while challenged the electrical energy bill for the period January 1992 to June 1992 has also prayed for a declaration that the action/inaction of the concerned respondent, in not reducing load w.e.f. December 1991 is illegal, arbitrary and mala fide, Prayer has also been made to direct the respondents to refund or to adjust the excess amount stated to have been paid by the petitioner, after deduction of interest/delayed payment surcharge (DPS). Petitioner has also challenged the demand raised on audit objection in respect to 30% of the load factor vide amendment petition with further prayer not to charge DPS.

2. The brief fact of the case shows that the petitioner was running a "atta chakki in the name and title "Hira Flour Mill". It obtained electrical connection from respondents. Bihar State Electricity Board ("Board", for short) for his business, which was allowed with consumer No. L/1390 LTIS. The electricity load which was shown in the agreement was stated to have been increased from 20 HP to 22 HP, vide agreement dated 3rd May, 1980. It was further increased to 32 HP by subsequent agreement dated 23rd April, 1981.

3. According to the petitioner he gave one month notice on 11.11.1991 for reducing the load from 32 HP to 20 HP under clause 9(a) of the agreement and by letter dated 9th December, 1991 also requested the Board to correct the electric bill for the month of September 1991. audit charge having added therein.

4. The further case of petitioner is that respondents instead of taking any action started Increasing the bills and interest for every month which resulted billing of Rs. 63,748.77 p. for the month of November 1991. The petitioner having paid only Rs, 4,000/-by a letter dated 27th May. 1.992 issued by the respondents they asked him to pay full amount for restoring the electrical connection and reduction of load. Subsequently, in a bill, dated 29th July. 1992 the bill Clerk was ordered to issue corrected up-to-date bill vide note dated 8th July, 1992 and a sum of Rs. 35,299.0 p. was shown to be adjusted (see top right hand side of bill of Annexure 4).

5. According to the petitioner even the charge for the disconnected period from January 1992 to June 1992 was raised and submitted in July 1992 vide Annexure 5. The petitioner was harassed in the aforesaid manner.

6. When the petitioner moved this Court in the present case by an interim order dated 16.2.1992 this Court directed the respondents not to disconnect the electrical line if the petitioner pay 50% of the fixed charge on the basis of 20 HP sanctioned load, as also the current charges. The arrear was ordered to be recalculated on the basis of 20 HP sanctioned load, without prejudice to the petitioner's contention for reduction of load w.e.f. 10th December. 1991.

7. Counsel for the petitioner highlighted the development as took place during the pendency of the case, An inspection stated to have been made and a report submitted on 21st April, 1993. vide Annexure 10. wherein the authorities found the load to be 20 HP. The bill for the month of February 1994 was served in March 1994, vide Annexure 12, therein certain correction was made by deleting a sum of Rs. 35,299.04 p. as was ordered in July 1992, which was raised because of audit objection.

8. Initially, at the stage of admission of the case, counsel for the Board objected the prayer on the ground that the Clause 9 is not applicable for reduction of load; it only relates to the notice period for termination of the agreement. However, at the time of hearing, Mr. V.P, Singh, the counsel for the Board fairly accepted that there is no provision made for reduction of load and such applications for reduction of load are being filed and entertained only under Clause 9 of the agreement.

9. The stand of the respondents is that the demand as were made having not paid. the application of petitioner for reduction of load was not entertained. On the other hand, according to the counsel for the petitioner the sanctioned load stood reduced after the expiry of notice period w.e.f. 10th December. 1991, the notice for reduction of load having given on 11.11.1991.

10. The petitioner has also assailed the bills having raised on the basis of 30% load factor, the same having held to be illegal by Patna High Court in number of cases, including Smt. Rita Bose v. B.S.E.B., CWJC No. 2025/1989 disposed of on 15th December, 1989.

Reliance was also placed on a Bench decision of Patna High Court in Parmeshwar Kumar Agarwala Vs. Bihar State Electricity Board, Patna and Others, wherein, the Court held similar view relating to 45% load factor.

11. The aforesaid decision has been affirmed by Supreme Court in Bihar State Electricity Board and others Vs. Parmeshwar Kumar Agarwala, etc. etc..

12. It is not in dispute that the petitioner applied for reduction of load from 32 to 22 HP on 11.11.1991 but the respondents did not choose to reduce the load the petitioner having not paid the amount in terms with demand as was raised in the bills, of earlier period, even evident from letter dated 27.5.1992. In the case of B.S.E.B. v. Anubhav Steel Pvt. Ltd. and others, (unreported). LPA No. 334/98(R), disposed of on 6th March, 2000 similar question relating to reduction of load fell for consideration. Therein the bill was raised on the basis of 75 KVA though the respondents of the said case stated to have prayed for reduction of load from 75 to 40 HP. Learned single Judge while allowed the prayer vide judgment and order, dated 3rd July. 1998 in CWJC No. 712/90(R), Division Bench in the aforesaid case (LPA No. 334/98(R)] reversed the judgment taking into consideration the fact that no material was brought on record to satisfy that nature of supply can be changed without making corresponding change in the installation.

13. In the present case, counsel for the petitioner tried to distinguish his case as the case of B.S.E.B. v. Anubhav Steel Pvt. Ltd., LPA No. 334/98(R) related to reduction of load from 75 to 50 HP, i.e., from high tension to the lower one. It was submitted that reduction sought for in the present case from 32 to 22 HP. both being LTIS. the terms for both the load being similar, there was no requirement to make corresponding changes in the installation. However, such submission cannot be accepted as necessary change of load factor to be made, if necessary by replacing appropriate meter and the inspection report to that effect is accepted to suggest that the load factor does not increase the load as sought for on such reduction.

Thereby, the submission of the petitioner that the load as shown in the agreement to be reduced on completion of one month's notice period cannot be accepted and no declaration to that effect can be given.

13-A. One of the question arises as to whether the payment of arrears can be made as precondition for reducing of load if the bill for the earlier period raised and submitted. The answer will be in affirmative, as a consumer is liable to pay the arrears within the stipulated period, if there is no pending dispute.

14. In the present case in respect to bill in question the amount of 30% load factor was reflected on audit objection. The competent authority of the Board ordered to delete/exclude a sum of Rs. 35,299,00 p. as was raised on audit objection. This will be evident from Annexure 4 and the order passed in May 1992, as contained in Annexure 11 read with Annexure 12 to the amendment petition. Thereby, in the present case there being a dispute raised by the petitioner as accepted by respondents they should not have forced the petitioner to make full payment, as a precondition for reduction of load factor without deciding the objection.

15. Admittedly, the petitioner, made an application for reduction of load on 11.11.1991. A report was also submitted after inspection on 21st April. 1993 (vide Annexure 10) wherein the connected load was found to be 20 HP. Now the question arises as to from which date relief can be granted in favour of petitioner and direction can be issued on respondents to charge bill on the basis of reduced load of 20 HP.

16. From the interim order of this Court, dated 16.2.1993. It would be evident that Court directed to recalculate the arrears on the basis of 20 HP sanctioned load. The petitioner was allowed to ask for a fresh bill or calculation on the basis of 20 HP sanctioned load for the period subsequent to 10th December. 1991. Such relief having allowed in favour of petitioner, by interim order w.e.f. 10th December, 1991, this Court is not inclined to modify the order but affirm the direction as given on 16.2.1993. If, a fresh bill, after calculation on the basis of 20 HP sanctioned load for the period subsequent to 10th December. 1991 prepared and paid by the petitioner, such payment be accepted as final and the petitioner be not forced to pay the amount on the basis of higher load of 32 HP for the period subsequent to 10th December, 1991, till some other agreement is reached between the parties. If, so required, appropriate agreement reducing the load to 20 HP w.e.f. 10.12.1991 to be made.

17. In view of the directions aforesaid and interim order, dated 16.2.1993, as fresh bill is supposed to have been prepared for the period January 1992 to June 1992, respondents are directed not to add or make further demand for the period as shown in the bill of July 1992 as contained in Annexure 5 to the writ petition.

18. As the petitioner has deposited 50% of the fixed charges in terms of the order, dated 16.2.1992, if on the basis of reduced bill further amount is found payable, respondents may make further demand which the petitioner is liable to pay. In such case respondents will not charge DPS there being pending dispute between the parties, nor raise bill on the basis of 30% load factor, taking into consideration the decision as referred above.

19. "The writ petition stands disposed of with the aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

20. Petition disposed of.