

(2004) 06 MP CK 0012

Madhya Pradesh High Court (Indore Bench)

Case No: Writ Petition No. 2275 of 2001

Pan Steels Pvt. Ltd.

APPELLANT

Vs

M.P. State Electricity Board and
Others

RESPONDENT

Date of Decision: June 21, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2004) 4 MPHT 71 : (2004) 4 MPLJ 467

Hon'ble Judges: A.M. Sapre, J

Bench: Single Bench

Advocate: G.M. Chafekar and Vivek Phadke, for the Appellant; Surjeet Singh, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.M. Sapre, J.

The challenge in this petition filed under Article 226/227 of the Constitution of India is to the bills/demand raised (Annexure P-10-A, B and C) by the respondents on the petitioner for the month of June, July and August, 2001 towards electricity and other charges as specified in these bills.

The petitioner is a H.T. consumer of electricity. They have entered into an agreement (Annexures P-2 and P-3) with the Board for supply of 974 KVA as also 124 KVA to their Unit. According to petitioner they have also installed transformer having a capacity of 1000 KVA for running their Unit. It is the case of petitioner that on 25-6-2001, the transformer installed by them was blown due to which they were unable to consume the electricity and run the plant. The petitioner, therefore, requested the Board to allow them to reduce their contract demand from 1100 KVA to 60 KVA by their letter, dated 25-6-2001 (Annexure P-4). It is the case of petitioner

that instead of acceding to the request made by the petitioner for reduction of the demand, the Board (respondent) raised the impugned demand giving rise to its challenge in this writ. The respondent Board has defended the impugned demand and contended inter alia that it has been issued strictly in accordance with the terms of the agreement and secondly and in any event, the question, whether prayer made by the petitioner for reduction of contract demand is based on valid cause, or not being in the nature of disputed question of fact can not be probed by this Court in its writ jurisdiction but it can be gone into only by the Regulatory Commission Authority or in arbitration proceedings as contemplated in the agreement. This in substance is the defense of the Board.

Heard Shri G.M. Chafekar, learned Senior Counsel with Ku. Vandana Kasrekar, learned Counsel for the petitioner and Shri Surjeet Singh, learned Counsel for respondents.

In my opinion, one of the questions that have a bearing for the disposal of this petition or to say for deciding the tenability of the impugned demand is the cause that led to blowing up the transformer installed by the petitioner in their unit. Indeed, the Board has joined issue on the causes which they had inquired from the petitioner. This is clear when I read the letter correspondence exchanged between the petitioner and Board on this issue. The question, whether transformer was blown due to petitioner's fault, or due to technical snag, or at whose fault, are some of the questions that is required to be gone into on their respective merits. This needs an inquiry rather technical inquiry as a fact finding one. It is only then all other questions as to whether petitioner was justified in asking for reduction of contract demand and whether Board was justified in raising the impugned demand can be decided.

Submission of learned Counsel for the petitioner was that it is not so necessary because the fact that transformer was out of order is not in dispute. He, therefore, contended that there is no need to investigate the cause nor is necessary to direct holding of any fact finding inquiry. I do not agree. In my view, the cause of failure of transformer is one of the relevant factors in this case. It may be that explanation offered by the petitioner may be good or may not be, but in any event it needs to be probed by a technical expert.

In a case of this nature, the Writ Court can not be called upon to embark upon such type of inquiry. This can be done only by the Commission, or Arbitrator, as the case may be. In my view, in the facts of this case, Clause 37 of agreement can be pressed in service or a committee of experts appointed by the Board can be asked to settle such dispute and submit their report giving a right to petitioner to nominate one of their nominee in the committee.

I, therefore, while declining to examine the tenability, legality and correctness of the impugned demand in this writ, direct the Board - the respondent herein to appoint

the committee of experts in this field consisting of three persons of which one will be a nominee of petitioner. The committee will examine the case of the petitioner as also examine the tenability of the demand raised by the Board in terms of the agreement and then submit their reasoned report. Needles to observe the committee will allow both the parties, Le., petitioner and Board to submit their case including all documents and evidence. The committee will also, if necessary make spot inspection and examine the causes of failure of transformer as alleged by the petitioner and then submit the report, as to whether demand in question could be raised and if so, to what extent, it is justified or not ? The report of committee will be binding on both the parties. Let this be done within three months from the date of this order. Till then no coercive steps to give effect to the impugned demand against petitioner shall be taken.

It is with these directions, this petition is disposed of. C.C. within three days.