

(1999) 12 PAT CK 0109**Patna High Court****Case No:** C.W.J.C. No. 10802 of 1999

M/s. Venky Steels (P) Ltd.

APPELLANT

Vs

Bihar State Electricity Board and
Others

RESPONDENT

Date of Decision: Dec. 13, 1999**Citation:** (1999) 3 PLJR 66**Hon'ble Judges:** Aftab Alam, J**Bench:** Single Bench**Advocate:** Parimal Chand Das and Tej Bahadur Roy, for the Appellant; Y.V. Giri and D.K. Dubey for Board, for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

Aftab Alam, J.

The petitioner is a company incorporated under the Indian Companies Act.. It has a High Tension Industrial connection with a contract demand of 1400 KVA for running induction furnace for manufacture of alloy steel products. The officials of the Board inspected the Company's factory premises on 27.3.1999. On the basis of the objective findings recorded during the inspection it was found and held that the petitioner was engaged in theft of electricity and a F.I.R. was also lodged against one of the Directors of the petitioner company. On 22.4.1999 another inspection was held of the unit which led to the filing of another F.I.R. Four days thereafter a bill for Rs. 1,72,30,901/- was issued against the petitioner. The bill was raised under clause 16.9 of the tariff which contains the penal provisions for raising bill in case of use of unauthorized excess load and/or theft of electricity.

2. The petitioner then filed C.W.J.C. No. 4522 of 1999 challenging the action of the Board in raising the demand against it under clause 16.9 of the tariff and disconnecting its electrical line for non-payment of the bill. That writ petition was

disposed of by judgment and order, dated 14.9.1999 [1999(3) PUR 473] passed by me. In that judgment and order this court noted some of the material circumstances and findings which according to the Board led to the inescapable inference that the unit was engaged in theft of electricity. In paras 5 to 7 of the judgment in the earlier case, it was noted as follows :

5. Mr. Bajla, counsel appearing for the Board submitted that the objective findings recorded during the inspection held on 22.4.1999 were damning against the petitioner and conclusively established that the petitioner was engaged in the theft of electricity. In the F.I.R. it is stated that the inspection term arrived at the company's factory premises at about 11.15 AM. On seeing the inspection term, the induction furnace which was in operation from before was shut down but motors of different capacities, adding to a total of 55 HP, and some other electrical appliances were left in operation. The Inspecting team entered the meter room by breaking open its lock and took the reading recorded in the meter at 11.31.22 A.M. The inspection team stayed there for over four hours with the motors and electrical appliances running but the meter did not record the consumption of a single unit over that period. Then on investigation it was detected that the linking device in the C.T./P.T. box was tampered with. On opening the C.T./P.T. box it was found that the four terminals of C.T. were short circuited by connecting them with a copper wire and as a consequence no current was being allowed to pass through the terminal.

6. In course of inspection it was further found that an underground three phase cable was taken to supply electricity from the petitioner's connection to another unit under a different company set up on the adjacent piece of land. An application for giving electrical connection to that unit was about six months ago and the matter of giving connection to it was still under process.

7. In course of that inspection number of articles were seized from the petitioner's premises which included plastic seal bits, plainly showing that the C.T./P.T. were being tampered with by removing the seal put there by the Board officials and replacing them by fake seals. These are some of the more serious findings/allegations made on the basis of the inspection held on 21.4.1999; the rest of the details are to be seen in the F.I.R./inspection report.

3. Though the objective findings coming to light in course of inspection of the company's factory premises quite serious, on the legal issue in the case, this court held that before invoking the penal and highly stringent provisions of clause 16.9, the Board was obliged to give a notice to the concerned consumer and to consider its show cause, if any, filed within the specified time. With reference to the facts coming to light in the case of the petitioner observed that in view of the legal position no exception could be made on the basis of the facts alone. In that regard, observed as follows :

13. Mr. Bajla appearing on behalf of the Board submitted that the objective findings coming to light in course of the subsequent inspection 22.4.1999 were so overwhelming that the theft of electricity at the hands of the petitioner was self evident and no other inference was possible on the basis of the findings noted in the inspection report dated 22.4.1999. According to Mr. Bajla, therefore, in the facts of this case there was hardly any need for a further notice allowing the petitioner the opportunity to show cause.

14. I am unable to accept the submission. As the saying goes hard facts may often lead to the making of bad law and the court must always be on its guard in such cases. If the submission of Mr. Bajla is accepted and an exception is made in this case then it will become difficult to draw a line between cases where a show cause notice may be required and where it may not be required. It must, therefore, be held that in all cases in which clause 16.9 is invoked, the Board would be required to give a notice to the concerned consumer and to consider its show causes, if any, filed within the specified time.

4. This Court accordingly set aside the impugned bill dated 26.4.1999 but on the facts of the case declined to give any direction for the restoration of the electrical connection of the petitioner. Instead, the court gave the following directions in para 18 of the judgment :

18. Normally, on setting aside the bill this court should have given the direction for the restoration of the electrical line of the consumer disconnected for non-payment of the bill. In the special facts and circumstances of this case, however, I am not inclined to do so. Instead, I direct that a show cause notice in the light of this judgment be given to the petitioner within a week from today. It will be open to the petitioner to raise all his defences against the charge of committing theft of electrical energy. The notice will be given by the General Manager-cum- Chief Engineer, Kosi Area Electricity Beard, Saharsa or by any other officer of the Board of an equal or higher rank. The officer issuing notice will consider the petitioner's show cause, if any, filed within a week from the date of service of the notice. He will then pass a final order after giving the petitioner an opportunity of hearing if so requested. The final order will be passed within seven days from the date of receipt of the show cause filed on behalf of the petitioner. The liabilities of the petitioner will be determined on the basis of the final order passed on this matter and it will be open to the Board to raise a fresh bill on the basis of that order. Needless to say that in case the officer considering the petitioner's show cause rejects the pleas raised on behalf of the petitioner he will pass a speaking order briefly assigning reasons.

5. Pursuant to the direction given by this court, the Chief Engineer, Kosi Area Electricity Board issued a detailed show cause notice to the petitioner under his memo no. Cl, dated 18.9.1999. The petitioner filed its reply to the show cause notice on 27.9.1999 and thereafter the Chief Engineer heard the parties on October 12 and 13, 1999. After hearing the parties the Chief Engineer passed the order dated

16.10.1999. In that order, he reiterated the finding "that the electrical power was being consumed by the consumer in unauthorized and illegal way by creating obstruction in running of the meter and by interfering (sic) with a system of supply and it attracts provision of section 16.9. (A).I,(b) of tariff notification." He accordingly directed for issuance of a fresh bill as per his order and in accordance with the provisions of Clause 16.9 of the tariff.

6. The petitioner is once again before this court now trying to challenge the order dated 16.10.1999 passed by the Chief Engineer following the earlier direction given by this Court.

7. This case was heard along with C.W.J.C. No. 18042 of 1999 (M/s J.M.D. Alloys Limited vs. Bihar State Electricity Board and others) and Mr. Parimal Chandra Das, learned counsel appearing for the petitioner in this case adopted all the arguments advanced by Mr. Navneeti Prasad Singh in the case of M/s. J.M.D. Alloys Limited. All those arguments are to be rejected for the same reasons as discussed in the decision given today in the case of M/s J.M.D. Alloys Limited.

8. Mr. Das further submitted that the Chief Engineer did not at all deal with the matter as directed by the High Court. After taking note of the case of the parties and submissions made on behalf of the petitioner, he simply passed an order without assigning reasons for rejecting the case of the petitioner. I am unable to accept the submission and, in my view, it will be too much to except the Chief Engineer to write an order like a person having long judicial training. I have carefully gone through the order passed by him. In the order, he has fully taken note of the case of the petitioner and the submissions made on its behalf and then he has come to the finding that the petitioner was engaged in committing theft of electricity. From the order it is evident that he has not failed to take into consideration any fact or circumstances relied upon on behalf of the petitioner or any submission made on its behalf. Moreover, on the basis of the objective findings coming to light in course of inspection of the petitioner's factory I do not think it possible to come to any other conclusion than that the petitioner's factory was engaged in theft of electrical energy.

9. In support of the submission that the order passed by the Chief Engineer does not come upto the requirement natural justice, Mr. Das relied upon of number of Supreme Court decisions. These are in the cases of the The Manager, Government Branch Press and Another Vs. D.B. Belliappa, , Mahindra & Mahindra Limited vs. Union of India & Another, AIR 1979 SC 798, M/s Mahabir Prasad Santosh Kumar State of U.P. and others, AIR 1170 1302 and Uma Charan Vs. State of Madhya Pradesh and Another, .

10. In my view those decision have no application in the facts and circumstances of this case.

11. In the facts and circumstance-This case I am satisfied that the petitioner was allowed a full and complete opportunity of putting forth its case order was passed by the Chief Engineer after taking into due considerate case of the petitioner as well as all material facts and circumstance findings cannot be said to be perverse or being founded on no evidence. I, therefore, see no reason to interfere in this matter.

12. This writ petition, is thus, held to be without any substance or merit and it is accordingly dismissed.