IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1183 of 2012
IN
Civil Writ Jurisdiction Case No. 2941 of 2010

==

1. The Bihar State Electricity Board , Appearing Through The Chairman, Bailey Road, P.S. - Kotwali, Town And District - Patna
2. The Electrical Superintending Engineer, Nalanda Electric Circle, Bihar Sharif
3. The Electrical Executive Engineer, Bihar Sharif Electric Supply Division, Bihar Sharif, District Nalanda
4. The Assistant Electrical Engineer Bihar Sharif (Rural) Electric Supply Sub-Division, Bihar Sharif District - Nalanda

.... Appellants

Versus

1. Shanta Mani Hand Made Paper Industries Having Its Works At Dopia (Nalanda) Appearing Through Its Proprietor Anil Kumar Son Of Sri Surendra Kumar Resident Of Village Karkaria, P.S. - Noorsarai, District - Nalanda
2. The Accountant General, Bihar, Birchand Patel Marg, Patna (Audit)

.... Respondents

==

Appearance :
For the Appellants : Mr. VINAY KIRTI SINGH, Advocate.
For the Respondents : Mr. Suraj Samdarshi, Advocate.

==

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 18-02-2015

The erstwhile Bihar State Electricity Board is in appeal against the judgment and order dated 13.07.2011 passed in C.W.J.C. No. 2941 of 2010 (Shanta Mani Hand Made Paper Industries Vs. The Bihar State Electricity Board & Ors).

We have heard the parties at length and we are not inclined to interfere in the matter for the reasons given hereunder.

There are no disputes in fact. The writ petitioner was a proprietorship firm having electric connection under the L.T.Is. Category. On 27.12.2003 its connected load was enhanced 99 HP. On 22.03.2006 it applied for enhancement of his connected load to 120 HP under HT Category. All fees and other formalities were completed. On 29.09.2006 the Electrical Executive Engineer MRTP Division was directed to visit the site for assessing the suitability of supply of assessing the load sought to be enhanced. In the light of aforesaid on 09.03.2007 an inspection was conducted and it was opined that there was a load of 141.5 HP. Accordingly, on 24.05.2007 a H.T. agreement was entered into between the writ petitioner and the Board showing commencement of supply with effect from March, 2007 for a load of 141.5 H.P. Accordingly, the Board started billing the writ petitioner and there was no dispute. It appears that in the year 2009 the Accountant General Bihar, Patna while inspecting the accounts of the Board opined that in fact the inspection that was carried out on 09.03.2007 be treated as an inspection for the purposes of determining the mal-practice and accordingly it opined that the consumer ought to have been billed on the basis of Clause 16.9 of the Tariff for the passed six months at two times penal rates and accordingly the Board for the period September, 2006 to February, 2007 on the basis of calculation as made by the Accountant General, served the writ petitioner a bill of about Rs. 11,83,375/-. It is this bill and propriety thereof that was challenged by the writ petitioner which challenged was accepted by the writ Court. Hence, the intra-court appeal by the Board.

Sri Vinay Kirti Singh, learned counsel for the Board submits that when an inspection was conducted on 09.03.2007 unauthorized load was found. This has been contested by Sri Suraj Samdarshi, learned counsel appearing on behalf of the writ petitioner.

In my view, the later is correct. Before one can consider the effect of inspection, one has to consider as to why inspection was done. The inspection was not any surprise inspection but the said inspection was in pursuant to the direction given to the Electrical Executive Engineer for load assessment for the purposes of fresh agreement on enhanced load. This is how the Board had understood that is why no penal action was taken and it is upon that inspection that an agreement was entered into for 141 HP. There was no finding recorded in the inspection report of any unauthorized load or unauthorized user of energy. It is clear that the auditor was unaware of the circumstances under which the inspection was done and the circumstances under which agreement was entered into opined for levy penal charges, that was baseless.

The other reason for not interfering is the invocation of Clause 16.9 of the Tariff. The Auditor and the Board totally misapplied themselves. The penal clause 16.9 of the Tariff was in relation to 1993 Tariff. This Tariff of 1993 was superseded by a new Tariff of November, 2001. This continued even after the Electricity Act, 2003 came replacing the earlier Act, but in 2006 a new Tariff came in which there was no penal clause even existing equal to clause 16.9 of the Tariff. It is on the date of inspection i.e. 09.03.2007 there was no provision akin to clause 16.9 in the Tariff. Both the Auditor and the Board loss their sight of the ban. Therefore, any Tariff clause 16.9 was not at all permissible. It was not in existence. That being so, the bill as raised and impugned in the writ petition was itself illegal.

For the reasons aforesaid, we are not inclined to interfere in the matter. This appeal is accordingly dismissed.

If the consumer has already made payment and the same has not been adjusted, the same shall be adjusted in future bill.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

Abhay/-

U			