IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9493 of 2013

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M/S Balajee Ingots India Pvt. Ltd. a Company incorporated under the provisions of the Companies Act, 1956 having its Office at Khairi Mahisona, Lakhisarai, District Lakhisarai through one of its Director Ramesh Daruka S/O Shri Ratan Lal Daruka, resident of Naya Bazar, Pachna Road, P.O. and P.S., Town and District Lakhisarai.

.... Petitioner

Versus

1. The Bihar State Electricity Board, now known as Bihar State Power (Holding) Corporation Ltd., Vidyut Bhavan, Bailey Road, Patna through its Chairman
2. The Electricity Ombudsman, Vidyut Bhavan- II, Bailey Road, Patna, through its Chairman.
3. The Consumer Grievance Redressal Forum, Vidyut Bhawan- II, Baliey Road, Patna through its Chairman
4. The Finance Controller (Revenue) Bihar State Electricity Board, Vidyut Bhavan, Bailey Road, Patna
5. The Electrical Superintending Engineer, Munger

.... Respondents

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Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Advocate
: Mr. Akash Chaturvedi, Advocate
For the Respondent/s : Mr. Vinay Kirti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 24-08-2015

The petitioner is an Induction Furnace under HTSS Category having a contract demand of 5510 KVA. It seeks quashing of the order dated 28.09.2012 passed by the Electricity Ombudsman, Bihar, Patna in Appeal Case No. 06 of 2010 affirming the order dated 20.07.2010 of Consumer Grievance Redressal Forum, Patna rejecting the complaint of the petitioner against the Bill, dated 06.05.2008, as well as letter, dated 07.05.2008 charging Delayed Payment Surcharge (DPS) and Compensation Charges, on payment of Additional Security. The petitioner also seeks a declaration that it would not be liable to pay D.P.S. in view of letter no. 484 dated 23.09.1999 (Annexure-1) amounting to Rs. 10,68,136/-.

2. Before I consider the submission of the petitioner, the relevant facts for adjudication is indicated herein below:

The Board vide letter dated 23.09.1999, communicated its decision that additional security for additional demand in case of induction furnace will be paid by the consumer in 12 monthly installments and no interest would be charged on these installments provided payments are made as per schedule. In the year 2001, again deliberations took place for changing the Tariff schedule of induction furnaces. After repeated discussions, a consensus was arrived in a meeting held on 24.04. 2001 between the high officials of the Board and the representative of Bihar Steel Manufacturers Association. Both the sides signed the frame work of tariff through their respective representatives. As per Clause 19, it was decided that Security/Additional Security amount due, consequent to increase of capacity of induction furnace from the consumer, would be accepted in 12 monthly installments and payment of interest of additional security for additional demand will be governed by the Board's letter dated 23.09.1999 (Annexure-1). Pursuant to the agreement, a communication was issued to all the Field Officials by the Secretary of the Board vide letter dated 07.05.2001.

3. In course of time, the furnace capacity of petitioner's unit was enhanced. The petitioner too requested for payment of Additional Security in 12 installments against additional demand of power. The respondent sanctioned 15 installments vide letter dated 14.08.2006 under the signature of Finance Controller (Revenue) (Anneuxre-3).

4. However, the letter stipulated that the Consumer as per provision of Tariff would pay compensation charge at the rate of 2% per month. The petitioner was also required to enter into an agreement before payment of 1st installment, failing which the line would be disconnected. Furthermore, the Board in its Resolution no. 8281 and office order No. 3288 dated 28.09.2006 resolved that if a consumer is allowed to pay the entire additional security in installments, then the Delayed Payment Surcharge levied on the aforesaid amount would be waived only after receipt of payment of last installment as per schedule. However, in case of default in payment of any installment, the waiver of DPS was to be on pro-rata basis and the Board would recover the amount and disconnect the line.

5. According to the petitioner, as the respondents were adamant to insert the Penal Clause, it had no option, but to enter into an agreement with the Board on 19.02.2007. The petitioner paid the entire installments of Additional Security within time. It appears that subsequent to the execution of agreement, respondent no.3 issued a

Bill, dated 06.05.2008 for Rs.10,68,136.37 both on account of P.D.S. charge for the period August, 2006 to January, 2007, as the petitioner did not make payment of additional Security deposit, and compensation charge from February 2007 to November, 2007 on account of payment made in installments.

6. The petitioner disputed the bill on the ground that the Board vide letter no. 484 dated 23.09.1999 has issued direction for waival of DPS/compensation charges to HTSS consumer making payment in 12 equal monthly installments and as such he was not liable for payment of these charges. The petitioner's prayer for waival of DPS/compensation charge was rejected by the Secretary of the Board. Besides this, he also took the ground that even as per agreement with the ESE/Munger on 19.02.2007, it was mentioned in the last column that "benefit of waival of DPS will accrue to the consumer only after receipt of payment of final settlement", which installments they had regularly paid within time.

7. Being aggrieved, the petitioner filed a complaint before the CGRF. The learned CGRF vide his order dated 20.07.2010 rejected the complaint. The CGRF dismissed the complaint on the following grounds: (a) According to the CGRF letter no. 145 dated 07.05.2001, which exempted the HTSS consumer from payment of any interest, if they accepted to deposit the security/Additional

Security in 12 monthly installments, was superseded by Board's letter no.484, dated 23.09.1999 stood terminated to the issuance of new Tariff contained in notification dated 28.05.2011. (b) The Bill raised by ESE/Munger is in consonance with Clause 15.3 (c) of the Board's Tariff 1993. Clause 15.3(d), which relates to Security deposit states that "if additional deposit, where payable is not paid on demand by a date to be fixed by the Board in the manner specified in Clause 15.4(a), the service may be disconnected on 7 days notice and the connection can be restored, if the deposit is made in full along with the prescribed disconnection and reconnection charges and the surcharge at the rate of 2% per month on the outstanding amount. Clause 16.2.(b) too states that the Board will charge a compensation to be paid by the consumer at the uniform rate of 2% per month, which would be applicable to all type of consumers, who are allowed to pay arrears in installments.

8. The petitioner being aggrieved filed appeal before the learned Ombudsman, the appellate authority, bearing Appeal Case No. 06 of 2010, which too was dismissed. While dismissing the appeal, learned Ombudsman agreed with the findings recorded by the learned CGRF.

9. The petitioner being aggrieved by the orders of learned CGRF and learned Ombudsman has moved this Court in writ

jurisdiction.

10. The issue before this Court is whether the petitioner would be liable to pay a sum of Rs. 10,68,136/- contained in Bill dated 06.05.2008, which contain the PDS and Compensation charges on payment of Additional security.

11. The petitioner has assailed the said bill on the ground that it is violative of letter dated 23.09.1999 of the Board and the agreement dated 07.05.2001 between the Board and the Bihar Steel Manufactures Association contained in Annexure-2 and 2/A. On the other hand, the contention of the Board is that the agreement dated 07.05.2001 stood superseded and cancelled vide notification no. 166 dated 28.05.2001 and also did not hold good in view of Clause 15.3 (c) and (d) of Boards Tariff, 1993.

12. I will examine both these aspects one by one. It would appear that the Board took a decision on 23.09.1999 that additional security for additional demand in case of Induction furnace will be paid by the consumer in 12 monthly installments on which no interest would be charged provided payments are made as per schedule. In 2001, deliberations were held between the Board and the Bihar Steel Manufactures Association for Special Tariff for the consumers of induction furnace. After repeated discussions, a consensus was arrived with respect to Special Tariff and an agreement

was signed on 07.05.2001. Clause 19 of the Agreement, which is relevant in the context provided that payment of interest on Additional Security for Additional demand will be governed by BSEB letter dated 23.09.1999 (Annexure-A/1). Clause 19 of the agreement at page 26 is quoted herein below:

> 19. Instalment of Security/Additional Security:
>
> It has been decided that Security/Additional Security amount due from the consumer will be accepted in 12 monthly instalments. Payment of interest on additional security for additional demand will be governed by B.S.E.B's letter No. Com/Misc.-1043/99-484 dated 23.9.1999 (copy enclosed)
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> With the revision of the above tariff schedule with effect from 1.4.2001 the Board's Circular regarding fuel surcharge (No. Com/Fsc-805/2000 79/EB, dated 17.3.2001) will be withdrawn subject to Govt. of Bihar approving this tariff Schedule. Energy Department, Govt. of Bihar is being formally requested to notify this tariff in the Bihar Gazette."

13. The case of the Board is that agreement dated 07.05.2001 stood superseded with the issuance of the Board's tariff, contained in notification no. 166, dated 28.05.2001. The notification dated 28.05.2001 has been annexed as Annexure-7 to the writ application. It is worthwhile noticing that Clause 3 of the notification,

dated 28.05.2001 states that induction furnace consumers have entered into agreement with the Board for billing on the basis of this tariff with effect from 01.4.2001 and therefore this tariff would be effective from that date. As such I find that the tariff agreement, in fact acknowledges the agreement dated 07.05.2001 with respect to revised tariff schedule w.e.f. 01.4.2001 pursuant to consensus arrived with BSMA. There is no indication that it intended to supersede the tariff agreement arrived between the two parties (impliedly or especially). The learned CGRF and learned Ombudsman while rejecting the petitioner's claim, have relied upon Clause 15.3 (c) and (d) of 1993 tariff, relating to security deposit. Clause 15.3(c) deals with the situation, in which security deposit would be enhanced and the security amount to be deposited. Clause 15.3 (d) states that if the additional deposit, wherever payable, is not paid on demand by a date to be fixed by the Board in the manner specified in clause 15.4(a), the service may be disconnected on serving seven days notice and connection can only be restored if the deposit is made in full, alongwith the other charges including the surcharge @ 2% per month on the amount outstanding. In this context Clause 15.3(d) of 1993 tariff is quoted herein below:

> "Clause 15.3 (d) If the additional deposit, wherever payable, is not paid on demand by a date to be fixed by the Board in the manner specified in clause 15.4(a),

> the service may be disconnected on serving seven days notice and connection thereafter can only be restored if the deposit is made in full alongwith the prescribed disconnection and reconnection charges and, the surcharge @ 2% per month on the amount outstanding."

14. It is relevant to state here that 1993 tariff was in existence when the Board took a decision as contained in letter, dated 23.09.1999, not to charge interest on additional security for additional amount in case of induction furnace, if the consumer pays the same in 12 monthly installments. Again, the Board vide letter dated 07.05.2001 introduced Special Tariff schedule of HT consumers having induction furnace pursuant to consensus arrived at with the representative of the BSMA, at which time Clause 15.3 (c) and (d) of 1993 tariff was well in invouge. The Board fully conscious of the 1993 tariff, introduced new tariff schedule for HT consumers, as such reliance by the respondents on 1993 tariff is misplaced and misconceived and is accordingly rejected. The Board 'being a State' under Article 12 of the Constitution cannot go back on its own promise and representation to the disadvantage of the consumers acting on such promise.

15. Learned counsel for the respondents lastly argued that the Board vide letter dated 14.08.2006 asked the petitioner to

enter into an agreement for payment of additional security in 15 installments on which they will be liable to pay compensation at the rage of 2%.But the petitioner entered into an agreement only on 19.02.2007, after six months and as such the Board was within its right to charge DPS for the month of August 2006 to January 2007and compensation for the remaining months February 2007 to November, 2007 at the rate of 2% per month.

16. In my view, the Board was not correct in asking the petitioner to pay additional security Rs. 63,29,700/- in 15 installments along with liability to pay compensation at the rate of 2% per month. The letter dated 14.08.2006 is in teeth of the letter, dated 23.09.1999 contained in Annexure-1 and the New Tariff schedule of the Board arrived at, after deliberations with BSMA contained in Annexure-2/A, particularly it's Clause 19, which provides that security/additional security amount due from the consumer would be accepted in 12 monthly installments and payment of interest would be governed by letter dated 23.09.1999. The petitioner cannot be faulted for not having entered into an agreement pursuant to letter, dated 14.08.2006. In case, the direction to deposit additional security would have been in terms of letter, dated 23.09.1999 and tariff notification contained in letter, dated 07.05.2001, the petitioner would have been liable to pay the DPS/compensation charge in case of any delay in entering into an

agreement for payment of the said amount in installments, which is not the situation in the instant case.

17. It is not in dispute that the petitioner entered into an agreement on 19.02.2007 and paid the entire installments within time. Even as per agreement dated 19.02.2007, the DPS is also paid within the time schedule. The petitioner has paid all the installments within time, as such I find that there was no deliberate attempt on the petitioner not to make payment of additional security on enhanced load, and the direction of the Board contained in letter dated 14.08.2006 is in teeth of letter dated 23.09.1999 and new tariff contained in letter dated 07.05.2001. Furthermore, the payment of additional security is not occasioned on account of any electricity consumed by the consumer but it is merely an amount of security guarantee, the payment in case any liability arises against the consumer.

18. In view of the forgoing reasons, I find that the order of learned CGRF and learned Ombudsman dated 20.07.2010 and 28.09.2012 are not sustainable in law and are accordingly set aside. The bill, dated 06.05.2008 set aside.

19. This application stands allowed.

(Samarendra Pratap Singh, J.)

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