

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7710 of 1995

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M/S Ashok Engineering(Bihar)Ltd., village Sahokar, P.O. Sohsarai, P.S. Sahokar, District-Nalanda through its Director Rajib Ranjan Kumar, resident of Wazir Apartment, New Patliputra Colony, P.S. Patliputra Colony, Town and District-Patna

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, P.S. Kotwali, Town and District-Patna through its Chairman
2. The General Manager cum Chief Engineer, Central Bihar Area Electricity Board, at 8, Daroga Prasad Rai Path, Town and District-Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 7711 of 1995

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M/S Ashok Cold Storage Ltd., village-Sahokar, P.O. Sohsarai, P.S. Sahokar, District-Nalanda through its Director Shyam Sundar Prasad, S/o Sri Bhagwan Prasad, resident of Wazir Apartment, New Patliputra Colony, P.S. Patliputra Colony, Town and District-Patna

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, P.S. Kotwali, Town and District-Patna through its Chairman
2. The General Manager cum Chief Engineer, Central Bihar Area Electricity Board, Patna at Daroga Prasad Rai Path, Town and District-Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6724 of 1996

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M/S Ashok Engineering (Bihar) Ltd., village-Sahokar, P.O. Sohsarai, P.S. Sahokar, District-Nalanda through its Director Rajib Ranjan Kumar, S/o Sri Shyam Sundar Prasad, resident of Wazir Apartment, New Patliputra Colony, P.S. Patliputra Colony, Town and District-Patna

.... Petitioner/s

Versus

3. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, P.S. Kotwali, Town and District-Patna through its Chairman
4. The General Manager cum Chief Engineer, Central Bihar Area Electricity Board, 8, Daroga Prasad Rai Path, Town and District-Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 8208 of 1996

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M/S Jagjit Ispat Industries Pvt. Ltd., 48, Industrial Area, Bela Industrial Estate, P.S. Muzaffarpur, Town and District-Muzaffarpur, appearing through its Director, Harban Singh, son of Sardar Hari Singh, resident of Ramla, P.S. Town Muzaffarpur, Town and District-Muzaffarpur

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, P.S. Kotwali, Town and District-Patna through its Chairman
2. The General Manager cum Chief Engineer, Tirhut Area Electricity Board, Town and District-Muzaffarpur

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 12455 of 1996

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1. Ful Kunwar Devi, W/o Mahabir Prasad Arya
2. Om Prakash Gupta, S/o Mahabir Prasad Arya
3. Upendra Kumar, S/o Mahabir Prasad Arya
4. Jai Prakash, S/o Mahabir Prasad Arya
5. Uday Prakash, S/o Mahabir Prasad Arya
6. Raju Kumar, S/o Mahabir Prasad Arya

All resident of Near Dharamsala, Kadamkuan, P.S. Kadamkuan, Town and District-Patna

.... Petitioner/s

Versus

- 1 The Bihar State Electricity Board through its Chairman, Vidyut Bhawan, Bailey Road, P.S. Kotwali, Town and District-Patna
- 2 The Chief Engineer, Patna Electric Supply Undertaking, Mangles Road, P.S. Sachivalay, Town and District-Patna
- 3 The Elect. Superintending Engineer, Patna Electric Supply Undertaking (West) Mangles Road, P.S. Sachivalaya, Town and District-Patna
- 4 The Elect. Executive Engineer, Dakbunglow Electric Supply Division, PESU (West), P.S. Kotwali, Town and District-Patna
- 5 The Asstt. Elecl. Engineer (Revenue), Dakbunglow Electric Supply Division, PESU (West), P.S. Kotwali, Town & District-Patna
- 6 The Elecl. Executive Engineer, Patliputra Electric Supply Division, PESU (West), Boring Road, P.S.- S.K. Puri, Town and District-Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 6723 of 1996

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M/S Ashok Cold Storage Ltd., village-Sahokar, P.O. Sohsarai, P.S. Sahokar,

District-Nalanda through its Director Shyam Sundar Prasad, S/o Late Bhagwat Prasad, resident of Wazir Apartment, New Patliputra Colony, P.S. Patliputra Colony, Town and District-Patna

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Bailey Road, P.S. Kotwali, Town and District-Patna through its Chairman
2. The General Manager cum Chief Engineer, Central Bihar Area Electricity Board, 8, Daroga Prasad Rai Path, Town and District-Patna

.... Respondent/s

Appearance:

(In CWJC No.7710 of 1995)

For the Petitioner/s : Mr. S.S. Rekhi, Advocate
Mr. Purushottam Kumar Singh, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Vijay Kumar Verma, Advocate
Mr. Akhileshwar Singh, Advocate

(In CWJC No.7711 of 1995)

For the Petitioner/s : Mr. S.S. Rekhi, Advocate
Mr. Purushottam Kumar Singh, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Vijay Kumar Verma, Advocate
Mr. Akhileshwar Singh, Advocate

(In CWJC No.6724 of 1996)

For the Petitioner/s : Mr. S.S. Rekhi, Advocate
Mr. Purusottam Kumar Singh, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Vijay Kumar Verma, Advocate
Mr. Akhileshwar Singh, Advocate

(In CWJC No.8208 of 1996)

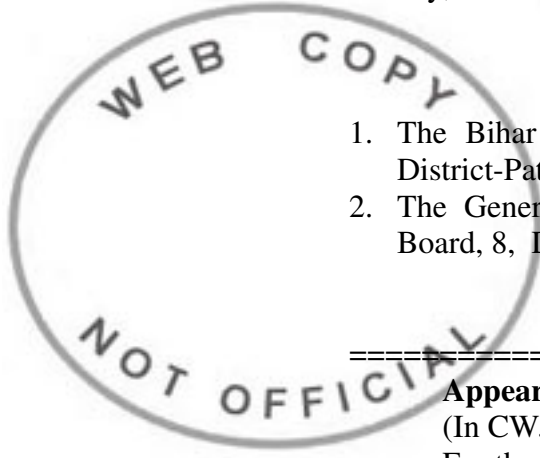
For the Petitioner/s : Mr. S.S. Rekhi, Advocate
Mr. Purusottam Kumar Singh, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Vijay Kumar Verma, Advocate
Mr. Akhileshwar Singh, Advocate

(In CWJC No.12455 of 1996)

For the Petitioner/s : Mr. S.S. Rekhi, Advocate
Mr. Purusottam Kumar Singh, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Vijay Kumar Verma, Advocate
Mr. Akhileshwar Singh, Advocate



(In CWJC No.6723 of 1996)

For the Petitioner/s : Mr. S.S. Rekhi, Advocate
Mr. Purusottam Kumar Singh, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Advocate
Mr. Vijay Kumar Verma, Advocate
Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 23-09-2016

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Written arguments have been filed.

Heard Mr. S.S. Rekhi, learned counsel for the petitioner and Mr. Vinay Kirti Singh, learned senior counsel for the Distribution Power Company.

In each of the writ petitions the claim of the petitioners raised under clause-13 of the HT agreement, has been rejected by the orders impugned in the respective writ petitions by the respondent no. 2 General Manager-cum-Chief Engineer which jurisdiction now vests in the Chief Engineer (Commercial) under the present arrangement of the respective Distribution Power Company.

These writ petitions were filed and were admitted for hearing when the licensee was the Bihar State Electricity Board which authority has since been succeeded by the Bihar Power Holding Company with the distribution work in the hands of the North Bihar Power Distribution Company and the South Bihar Power Distribution Company. The Power Distribution Companies are the successor in



office of the respondent authorities in the respective writ petitions and there is no dispute about. The dispute that arose in these batch of writ petition is as to the extent of relief to be granted to the petitioners under clause-13 of the HT agreement and in the nature of the issues raised, that the writ petitions were admitted as back as on 04.4.1997 and other dates.

The individual details of the petitioner in each of the writ petitions are given hereinbelow:

1. C.W.J.C. No. 7710 of 1995

In this case the petitioner questions the impugned order dated 05.12.1994 and 27.4.1995 impugned at Annexure-I and I/A passed by the respondent no. 2 the General Manager cum Chief Engineer.

2. C.W.J.C. No. 7711 of 1995

In this case the petitioner questions the impugned order dated 05.12.1994 and 27.4.1995 impugned at Annexure-I and I/A passed by the respondent no. 2 the General Manager cum Chief Engineer.

3. C.W.J.C. No. 6724 of 1996

In this case the petitioner questions the impugned order dated 25.3.1996 impugned at Annexure-I passed by the respondent no. 2 the General Manager cum Chief

Engineer.

4. C.W.J.C. No. 8208 of 1996

In this case the petitioner questions the impugned order dated 20.7.1996 impugned at Annexure-I passed by the respondent no. 2 the General Manager cum Chief Engineer.

5. C.W.J.C. No. 12455 of 1996

In this case the petitioner questions the impugned order dated 26.7.1995 impugned at Annexure-I as also letter no. 991/EEE DKB dated 26.7.1995 at Annexure-I/A passed by the respondent no. 2 the General Manager cum Chief Engineer.

6.C.W.J.C. No. 6723 of 1996

In this case the petitioner questions the impugned order dated 25.3.1996 impugned at Annexure-I passed by the respondent no. 2 the General Manager cum Chief Engineer.

In between there came to be a judgment of the Jharkhand High Court since reported in AIR 2002 Jharkhand page 1 (Rishi Cement Company vs. Bihar State Electricity Board) which was in conflict with the opinion expressed in two judgments of this Court since reported in **1995 (2) PLJR 810 (M/s. Balajee Wire Products**



vs. The Bihar State Electricity Board & Ors.) and 1999(2) PLJR 105 (M/s. Bihar Gases Limited vs. The Bihar State Electricity Board & Ors.). The backdrop for the difference in opinion is a circular of the respondent Electricity Board dated 29.7.1994 published in the Bihar Gazette Extraordinary on 06.9.1995 and which relates to the disposal of the claims raised under clause-13 of the HT Agreement.

Since the opinion expressed by the Jharkhand High Court in the case of **Rishi Cement Company** (supra) on the notification dated 29.7.1994 was in conflict with the Single Bench decision rendered by this Court in the case of **M/s. Bihar Gases** and **M/s. Balajee Wire Products** (supra) that on a similar issue being put to consideration in a matter arising from CWJC No. 5614 of 1999 (**Jai Mangla Steels Pvt. Ltd. Vs. Bihar State Electricity Board & Ors.**), the Bench referred the matter for consideration by a larger Bench in view of the divergent opinions taken note of in the reference order passed on 08.3.2002 which reads thus:

“The short question which is argued at length is whether the consumer is entitled to remission on basis of the formula provided in the matter of **M/s Balajee Wire Products-vrs-The Bihar State Electricity Board** (1996(2) P.L.J.R. 810) and in the matter of **M/s Bihar Gases Limited-vrs-The Bihar State Electricity Board and ors.** (1999(2) P.L.J.R. 106) or in accordance with Board’s circular dated 29.7.94 as contained in

Annexure-3.

In the matter of Bihar Gases Limited and M/s Balajee Wire Products, the High Court has found that the remission in the demand charges should be calculated in the following manner:-

Total KVA charged x Total Hours of non-supply

Total hours of power to be supplied

In Annexure-3 the Board has observed that remission under clause-13 will be allowable only when A.M.G. has been charged and the maximum amount of remission would not be more than the shortfall in A.M.G. charged.

It is not in dispute before me that if the formula applied by the High Court in the matter of Balaji Wires is applied to the present case, the remission to which the petitioner is entitled would be 9438 KVA. It is also not in dispute before me that if Annexure-3 is held to be applicable the petitioner would not be entitled to more than shortfall charges, which admittedly is 2921 KVA in the present case.

When the matter was taken up for hearing a judgment of the High Court of Jharkhand in the matter of Rishi Cement Co. Ltd. and etc. Vrs. B.S.E. Board and others (A.I.R. 2002 Jharkhand 1) was brought to my notice. In the said matter the present circular/notification no. 810 dated 29.7.94 (Annexure-3) was under consideration. A learned single Judge of Jharkhand High Court has held that the said notification issued by the Secretary, Bihar State Electricity Board is valid. It has also been held in the said judgment that Section 79 empowers the Board to make regulations not inconsistent with the Act and the Rules made thereunder to provide for all or any

of the matter set out therein. The High Court has further observed that the notification dated 29.7.1994 are clarificatory, letter dated 13.7.1996 issued by the Board is perfectly legal and valid and binding on the consumers. The case of Bihar Gases Limited and Balaji Wire Products were also taken up for consideration in the said judgment.

Though the judgment of Jharkhand High Court would not bind me, but the logic applied to come to a particular finding would always have a persuasive value. If I take the view that the said judgment of the Jharkhand High Court, is correct in upholding the validity of circular dated 29.7.1994 then I will be running contrary to the earlier judgments in the matter of Balaji Wires and Bihar Gases. If I take a view contrary to the view taken by the Jharkhand High Court then it would create an impossible situation because the very same notification would have binding effect in State of Jharkhand and would not have any binding effect in the State of Bihar.

To avoid the uncertainty I consider present to be a fit case for making reference to a larger Bench. The matter may be placed before My Lord the Chief Justice for constitution of a Division Bench for deciding the matter in accordance with law.”

It is in consideration of the relief claimed in the present batch of writ petitions as to the applicability of the circular dated 29.7.1994 on the claim raised under clause-13 of HT Agreement that these matters were directed to be put up after the disposal of the case of **Jai Mangla Steels Pvt. Ltd.** (supra). The writ petition bearing



CWJC No. 5614 of 1999 filed by Jai Mangla Steels Pvt. Ltd. (supra) was heard along with batch of writ petitions and the Division Bench vide judgment and order passed on 13.5.2016 has allowed the claims raised by the petitioner(s) in terms of the relief granted by the Jharkhand High Court in the case of **M/s. Rishi Cement Company Limited (supra)**. It is held that the inability of the consumer to draw the electricity as per the minimum guarantee would not be a factor for denial of the claim raised rather the relevant factor would be whether the Board was able to supply electricity for the said period. The conclusion drawn by the Division Bench can be found in paragraph-35 of the judgment and for ready reference is being quoted herein below:-

“35. Upon analysis of various decisions of this Court, as noted above, and the decision of Jharkhand High Court, in case of **Rishi Cement Company Limited & Ors.** (supra), with reference to the Boards" resolution, dated 29.07.1994, we hold as follows:-

- (i) In view of the Division Bench decision of this Court, in case of **M/S Suprabhat Steels Limited & Ors.** (supra), more particularly paragraph 40 thereof, as noticed above, remission, in Annual Minimum Guaranteed Charges, will have to be allowed to the consumers on the basis of inability of the

Board to supply electrical energy and no other component can be introduced for calculation of such remission.

- (ii) Clause 2 of the said notification, dated 29.07.1994, will have to be read inconsonance with paragraph 11 of the Division Bench decision of this Court in case of *M/s Hind Agriculture Farm & Anr.* (supra), and it is, accordingly, held that consumers shall be entitled to such remission, which would be available from the record maintained by the Board in respect of its (Board's) inability to supply electrical energy *and not inability of the petitioners to use the same*. It is further directed that remission in Demand Charges shall be calculated on the basis of following formula:-

$$\frac{\text{Total KVA charged} \times \text{Total hours of non-supply}}{\text{Total hours of power to be supplied.}}$$

- (iii) Clause 3 of the said notification, dated 29.07.1994, is struck down being in violation of Division Bench decision of this Court in case of *M/S Suprabhat Steels Limited & Ors.* (supra).
- (iv) Rest of the provisions, under the said notification, dated 29.07.1994, cannot be said to be in violation of any decision of this Court or otherwise arbitrary.”

Parties are in agreement that the issue raised in these

batch of writ petitions and the relief prayed, is covered by the judgment rendered in the case of **Jai Mangla Steels Pvt. Ltd. (supra)** and other analogous cases.

In result, the order(s) impugned in the respective writ petitions rejecting the claim raised by the petitioners under Clause 13 of the H.T. Agreement, are quashed and set aside. The claim raised by the petitioners put to consideration here in these writ petitions, are remitted before the competent authority which according to Mr. Vinay Kirti Singh learned counsel for the respondents would be the Chief Engineer, Commercial, of the respective Distribution Company, for consideration of their claim afresh and for its disposal in accordance with law and in the light of the law laid down by the Division Bench in the case of **Jai Mangla Steels Pvt. Ltd (supra)**. Since the matters have remained pending for quite some time, an expeditious disposal preferably within a period of three months from the date of receipt / production of a copy of this order would serve the purpose

The writ petitions are allowed.

(Jyoti Saran, J)

S.Sb/-

NAFR	
CAV DATE	
Uploading Date	
Transmission Date	