

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22050 of 2013

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M/s Balajee Ingot India Pvt. Ltd., A Company incorporated under the Provisions of Companies Act, 1956 having its registered Office at 11/A, Maharsh Devendra Road, 7th Floor, Room No. 10, Kolkata through its Director Ramesh Dharuka, Son of Shri Ratan Lal Daruka, Resident of Naya Bazar, Pachna Road, P.O. and P.S. Lakhisarai, District- Lakhisarai

.... Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Ltd., having its Office at Vidyut Bhawan, Bailey Road, Patna through its Chairman
2. The South Bihar Power Holding Company Limited, having its Office at Vidyut Bhawan, Bailey Road, Patna through its Managing Director
3. The General Manager-cum-Chief Engineer, Electric Supply Area, Bhagalpur
4. The Electrical Superintending Engineer, Electric Supply Circle, Munger
5. The Chief Engineer (Commercial), Bihar State Power (Holding) Co. Ltd., Vidyut Bhawan, Patna.
6. The Electrical Executive Engineer/Supply Division, Lakhisarai
7. The Assistant Electrical Engineer, Electric Supply Sub-Division, Lakhisarai

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 22825 of 2013

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South Bihar Power Distribution Company Ltd. (Sbpdcl) through Suresh Prasad Singh, Son of Late Ramjee Singh Resident of at and P.O. + P.S.- Mahnar, District- Vaishali and Working as Electrical Superintending Engineer, Electric Supply Circle, Munger

.... Petitioner/s

Versus

1. M/s Balajee Ingot Inida Private Limited, a Company incorporated under the Provisions of Companies Act, 1956, having its Registered Office at Naya Bazar, P.O. and P.S.- Lakhisarai, District- Lakhisarai, through Ramesh Daruka, son of Shri Ratan Lal Daruka Resident of Naya Bazar, Pachna Road, P.O. and P.S.- Lakhisarai, District- Lakhisarai
2. The Secretary, Consumer Grievance Redrassal Forum, Bihar State Power Holding Company Ltd., Vidyut Bhawan-II, Patna

.... Respondent/s

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Appearance:

(In CWJC No.22050 of 2013)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Manoj Priyadarshi, Advocate

For the Respondent/s : Mr. Vinay Kirti Singh, Advocate
Mr. Sanjay Kumar Giri, Advocate

(In CWJC No.22825 of 2013)

For the Petitioner/s : Mr. Sanjay Kumar Giri, Advocate

For the Respondent/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Manoj Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 21-09-2016

Heard.

Since both the writ petitions proceed to question the same very order dated 12.2.2013 of the Consumer Grievance Redressal Forum, Patna hence both the writ petitions have been heard analogous and with the consent of the parties, are being disposed of by a common judgment at the stage of admission.

For the sake of convenience, I shall be referring to the pleadings as present in CWJC No. 22050 of 2013 unless clarified with specific reference to the other writ petition.

Whereas CWJC No. 22050 of 2013 has been filed by the consumer *inter alia* praying for a direction to the Holding / Distribution Company and its authorities to give effect to the order dated 12.2.2013 passed by the Consumer Grievance Redressal Forum in Case No. 68 of 2012 communicated vide Memo No. 979 dated 14.2.2013, a copy of which is enclosed at Annexure-5 to the writ petition, the second writ petition bearing CWJC No. 22825 of 2013 has been filed by the South Bihar Power Distribution Limited



questioning the very said order of the Consumer Grievance Redressal Forum (hereinafter referred to as the 'CGRF') constituted under Section 42(v) of the Electricity Act, 2003 (hereinafter referred to as the 'Act') whereby the 'CGRF' has quashed the enhancement of contract demand of the consumer from 4303 KVA to 5360 KVA together with the arrear bill dated 08.1.2013 raised by the Power Holding / Distribution Company raised for the amount of Rs. 56,37,813/-.

While Mr. Manoj Priyadarshi has appeared for the consumer petitioner, the Power Holding / Distribution Company and its authorities are represented by Mr. Sanjay Kumar Giri.

The facts of the case briefly stated is that the consumer-petitioner entered into an agreement with the erstwhile Bihar State Electricity Board presently succeeded by the Bihar State Power Holding Company, on 06.8.2008 for a contract demand of 6977 KVA as a 'HTSS' consumer, for running their iron rolling and re-rolling mill. The consumer-petitioner subsequently made a request for reduction of the contract demand from 6977 KVA to 4303 KVA. The request for reduction of load from 6977 KVA to 4303 KVA, was acted upon as manifest from the letter dated 12.9.2011 of the General Manager cum Chief Engineer, Bhagalpur Electric Supply Area addressed to the Electrical Superintending Engineer, a copy of which is annexed at Annexure-1 to CWJC No. 22825 of 2013. A fresh



agreement was entered in between the parties on 28.9.2011 which is enclosed at Annexure-1 to CWJC No. 22050 of 2013. The billing accordingly started on the basis of the contract demand of 4303 KVA with effect from October, 2011. An inspection was carried out by the Special Task Force of the Power Holding / Distribution Company on the premises of the consumer-petitioner on 18.9.2012 and 19.9.2012, the report of which is present at Annexure-2 to the writ petition. Since according to the Power Holding / Distribution Company, the report present at Annexure-2 showed that the connected load of the consumer-petitioner was 5360 KVA and not 4303 KVA hence a bill was raised accordingly. In between, a letter was issued by the General Manager cum Chief Engineer to the petitioner bearing Memo No. 3339 dated 20.9.2012 whereby his connected load on the basis of the inspection carried out on the premises of the petitioner was calculated at 4580 KVA, a copy of which letter is present at Annexure-3. On the other hand the information collected by the Inspection team on the connected load in the premises of the petitioner, was followed by raising of the bill on 14.11.2012 impugned at Annexure-4 whereunder the contract demand of the petitioner was fixed at 5360 KVA and an arrear bill for an amount of Rs. 56,37,813/- dated 08.1.2013, was raised.

The petitioner being aggrieved filed a complaint before the



‘CGRF’ giving rise to Case No. 68 of 2012 and by the impugned order dated 12.3.2013, the complaint has been disposed of by the ‘CGRF’ whereby not only the enhancement of contract demand from 4303 KVA to 5360 KVA was quashed as being contrary to the regulations, even the bill dated 8.1.2013 showing an arrears to the tune of Rs. 56,37,813/- on account of enhancement of contract demand, has been set aside.

As mentioned above, the order is dated 12.2.2013 and since no steps were taken by the respondent Holding / Distribution Company to implement the same that the consumer-petitioner is before this Court in CWJC No. 22050 of 2013 and even the Power Holding / Distribution Company has followed suit to question the order of the ‘CGRF’ by filing the second writ petition.

It is the argument of Mr. Manoj Priyadarshi learned counsel for the petitioner, that the enhancement in the contract demand from 4303 KVA to 5360 KVA is on account of arbitrary calculation of the connected load as well as upon misapplication of the statutory provisions. It is submitted that the respondent-company while calculating the connected load has committed a serious error in counting some of the loads twice and which has resulted in the impugned demand. He with reference to the order of the ‘CGRF’ submits that the ‘CGRF’ on being satisfied with the plea so raised by



the consumer-petitioner has struck down the enhancement. According to Mr. Priyadarshi, the order of the 'CGRF' is well reasoned and would require no interference. Mr. Priyadarshi, with reference to the statement made in paragraph-16 and 17 of the writ petition has submitted that the inspecting team constituting the Special Task Force has incorrectly calculated some of the loads, twice. It is the argument of Mr. Priyadarshi that the procedure prescribed for calculating the load stands discussed in the order of the Forum and which confirms the abuse of statutory powers by the respondent-company. According to Mr. Priyadarshi, there is absolutely no foundation for calculation of the enhanced load of 5360 KVA even when the General Manager of the respondent-company has himself determined the load of the petitioner on the basis of the inspection report at 4580 KVA and not 6677 KVA which was the contract demand before the reduction of load.

The argument of Mr. Priyadarshi is contested by Mr. Sanjay Kumar Giri learned counsel for the Power Company and who submits that it is on the own request by the consumer-petitioner that the load was reduced but when an inspection was carried out to assess the load available in premises of the consumer on the basis of the connected load, it transpired that the connected load available in the premises of the consumer-petitioner was 5360 KVA and not 4303 KVA which



had been claimed by the consumer-petitioner as the load on reduction. He submits that a determination of contract demand is based on mathematical calculation and it is on simply application of the mathematical formula prescribed for calculation of a contract demand that has resulted in the enhancement. He submits that the order of the 'CGRF' impugned in the writ petition filed by the Power Holding / Distribution Company, is in the teeth of the statutory provision and contrary to the factual position. According to Mr. Giri, the 'CGRF' while exercising such jurisdiction not vested in them, has committed a serious error in quashing the enhancement in the contract demand as well as the arrear bill dated 08.1.2013, which is in conformity of the fact situation. Mr. Giri in response to the opinion of the Chief General Manager present at Annexure-3 dated 20.9.2012 whereunder the connected load of the consumer-petitioner was assessed at 4580 KVA and has been heavily relied upon by Mr. Priyadarshi to support the order of the 'CGRF' while contesting the writ petition of the Power Holding / Distribution Company, has submitted that the opinion expressed by the General Manager cum Chief Engineer as found in his letter dated 20.9.2012 placed at Annexure-13 is on a wrong briefing by the Assistant Electrical Engineer and it is on a misconception that he has opined that the load of the consumer-petitioner was 4580 KVA.

Mr. Sanjay Kumar Giri has referred to Annexure-5 of



CWJC No. 22825 of 2013 which is a circular dated 30.10.2014 issued by the erstwhile Bihar State Electricity Board, Patna as to the manner of determination of capacity of an induction furnace. He submits that the calculation of the connected load has been carried out by the Power Company in tune with the prescriptions provided in the circular and the application of the formula would give the result as present in the calculation chart enclosed with the supplementary counter affidavit filed in CWJC No. 22050 of 2013 by the Power Company.

Responding to the argument advanced by Mr. Giri, it is the argument of Mr. Priyadarshi that since the calculation chart was not put for consideration before the 'CGRF' hence the Power Company cannot introduce new documents. With reference to clause 6.39 and 6.40 of the Electricity Supply Code, 2007, he submits that the stipulations present therein have not been followed.

I have heard learned counsel for the parties and I have perused the records. The limited issue which arises for consideration from the contest is whether the determination of the connected load of the petitioner by the Power Company as impugned before the 'CGRF' suffered any infirmity warranting interference.

The formula applied and the calculation carried out by the authorities of the Power Holding / Distribution Company to reach a conclusion on the connected load of the consumer-petitioner, is stated



to be on the basis of the inspection report present at Annexure-1 to the writ petition. According to Mr. Giri learned counsel for the Power Company it is the information available in the inspection report, when applied against the mathematical formula, that the connected load has been found to be 5360 KVA and not 4303 KVA. Even when learned counsel for the Power Company spoke of mathematical calculation, since neither the inspection report nor the counter affidavit filed in the proceedings gave any explanation on the manner of calculation of 5360 KVA that this Court vide order passed on 13.1.2016 required Mr. Giri to place on record the mathematical calculation made by the authorities of the Power Company to determine the connected load of the petitioner at 5360 KVA.

It is pursuant to the direction of this Court that a supplementary counter affidavit was filed in CWJC No. 22050 of 2013 enclosing a calculation chart to demonstrate the connected load of the petitioner at 5360 KVA on the basis of the information present in the inspection report. For the sake of convenience the calculation chart is being reproduced hereinbelow:

CHART

**Capacity measurement of Induction Furnace crucible
installed in the premises of M/S Balajee Ingot India Pvt. Ltd.,
Lakhisarai**

Consumer No.-KHR-34 HTSS, Contract demand=4303 KVA.

Ref:-CE(Commercial), BSEB O.O. No. 3339 dated 30.08.2012

Date of Inspection-18.09.2012 to 19.09.2012

Location of crucible-(East) side

Measurement of diameter of crucible from inner edge to inner edge of naked coil-111.83 Cm.

Height of coil from top to the bottom of the furnace=152.43 Cm.

Capacity of crucible= $\pi^2 h \times \text{Density} = \pi \left(\frac{D}{2}\right)^2 \times H \times \text{Density}$.

As the contract demand is 4303 KVA=7171.66kg. (Assuming 4303 KVA is capacity of furnace and 600 KVA=1000kg); The allowable thickness of ramming mass of furnace will be 12.5. Cm (one side).

Effective d=111.83-25=86.83

$$\frac{22}{7} \times \left(\frac{86.83}{2}\right)^2 \times 152.43 \times 6.965$$

$$=6289205.7 \text{ gm}$$

$$=6.2892057 \text{ T.} = 6.3 \text{ T}$$

$$\text{KVA} = 6.3 \times 600 = 3780 \text{ KVA}$$

Connected load except Furnace load found at the time of inspection=1905HP

$$=1905 \times \frac{0.746}{0.9} = 1579.033 = 1580 \text{ KVA}$$

Total connected load found at the time of inspection

=Furnace load + other connected load

$$=3780+1580=5360 \text{ KVA}$$

(Calculation of Furnace has been done as per Secretary, BSEB, Patna, Comm/Misc. 1050/99 letter no. 610 dated 30.10.2004)



The supplementary counter affidavit though served on the counsel for consumer-petitioner on 05.8.2016, no rejoinder has been filed contesting the calculation either on the application of the formula or on merits. On the contrary, an objection is being raised by Mr. Priyadarshi, learned counsel for the consumer-petitioner that since the calculation was not a subject matter of proceedings before the 'CGRF' it cannot be entertained. In my opinion the objection is only noticed to be rejected; firstly because the calculation chart prepared by the Power Company is in compliance of this court's direction and secondly it merely provides an answer to the load calculation.

As I have observed above, the consumer-petitioner had all opportunity to contest the calculation but he has not chosen to do so and in my opinion, the calculation of the load being based upon an application of the mathematical formula, until such time that the consumer-petitioner would have been able to contest the calculation, a refuge being taken, that the calculation was not put up for consideration before the 'CGRF', is no ground to reject the calculation. In my opinion, the 'CGRF' went in error in the calculation of connected load and in concluding that some of the loads had been counted twice without appreciating the legal position. In the nature of dispute raised, the forum should have satisfied itself on the calculation of the load before finding error in the calculation and not having done

so, it has resulted in serious infirmity. The calculation of the connected load of the consumer petitioner having been explained by the Power Company which besides being explanatory remains uncontested, would satisfy the action of the Power Company impugned in the writ petition filed by the consumer-petitioner.

A calculation of connected load in a case of present nature, is a combination of a physical exercise coupled with mathematical application to ascertain the connected loads existing in a premise of a consumer as per the procedure provided under the statutory provisions and the circulars issued on the subject and which exercise stands explained by the Power Company.

For the reasons aforementioned and the discussions on the issue, the order dated 12.2.2013 of the ‘CGRF’ passed in Case No. 68 of 2012 cannot be upheld and is accordingly set aside. In result, CWJC No. 22825 of 2013 is allowed and CWJC No. 22050 of 2013 is disposed of.

(Jyoti Saran, J)

S.Sb/-

AFR	
CAV DATE	
Uploading Date	
Transmission Date	