IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5614 of 1999

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Jai Mangla Steels Pvt. Ltd., N.H.28, Phulwaria, P.S.-Barauni, Town and District-Begusarai, appearing through its Director, Ajoy Kumar, S/o Shri B.P. Singh, resident of Shrikrishna Nagar, P.S.-Begusarai, Town and District-Begusarai.

.... Petitioner/s

Versus

1. Bihar State Electricity Board, through its Chairman, Bailey Road, P.S.-Kotwali, Town and District-Patna.
2. General Manager-cum-Chief Engineer, Mithila Area Electricity Board, Darbhanga.
3. Revenue Officer-cum-Electrical Executive Engineer, Commercial and Revenue Division, Electrical Supply Circle, Samastipur.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 11432 of 1994

==========

Dumraon Textiles Limited, a public limited Company incorporated under the Companies Act, 1956 having its registered office at "Dumraon House", 26A, Camac Street, Calcutta- 700 016 and its Head Office and factory at Dumraon in the District of Buxar through the Company Secretary, Sri Baijnath Singh.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna, through its Chairman.
2. General Manager-cum-Chief Engineer, Central Bihar Area Electricity Board, Serpentine Road, Patna.
3. Electrical Executive Engineer, Bihar State Electricity Board, Moiri Parwa, Buxar.

4. Assistant Electrical Executive Engineer, Supply, Dumraon.

5. Revenue Officer, Bihar State Electricity Board, Electric Circle, Arrah, District-Bhojpur.

.... Respondent/s

With

==========

Civil Writ Jurisdiction Case No. 14386 of 2003

==========

Konark Alloy Pvt. Ltd., Munger, appearing through its Director, Abhay Kumar, S/o Late Nand Kishore Prasad Agarwal, resident of Bari Bazar, P.S.-Kotwali, Town and District-Munger.

.... Petitioner/s

Versus

1. Bihar State Electricity Board, appearing through its Chairman, Bailey Road, P.S.-Kotwali, Town and District-Patna.

2. General Manager-cum-Chief Engineer, Bhagalpur Electricity Area, Bhikanpur, P.S.-Ishashak, Town and District-Bhagalpur.

3. Electrical Superintending Engineer, Munger Electrical Circle, Munger.

4. Asstt. Electrical Engineer, Electric Supply, Sub-Division (West), Munger.

5. Junior Electrical Engineer, Electric Supply Section, Puraniganj, Munger.

.... Respondent/s

With

==========

Civil Writ Jurisdiction Case No. 10420 of 2002

==========

M/s Nirman Cements Ltd., a company incorporated under the Companies Act, 1956, having its head office at 501 B, Ashiana Chambers, Exhibition Road, Patna, through its Managing Director, Sri Sushil Kumar Khemka.

.... Petitioner/s

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Versus

1. Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna, through its Chairman.

2. General Manager-cum-Chief Engineer, Central Bihar Area Electricity Board, Serpentine Road, Patna.

3. The Electrical Superintending Engineer, Patna Electric Circle, Patna.

4. The Electrical Executive Engineer, Electric Supply Division, Bihta.

5. The Electrical Executive Engineer (Comm. & Rev.), Patna Electrical Circle, Patna.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 11237 of 2002

==========

M/S J M G Steel (Pvt.) Ltd., having its Registered Office at 214, Emarat Firdaus, Exhibition Road, P.S.-Gandhi Maidan, Town and District-Patna, appearing through its Director, Gopi Chand Goenka, S/o Late Musadi Lal Goenka, resident of Khajekalan, P.S.-Khajekalan, Town-Patna City, District-Patna.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, appearing through its Chairman, Bailey Road, P.S.-Kotwali, Town and District-Patna.

2. The General Manager-cum-Chief Engineer, Central Electricity Area, 8, Daroga Prasad Rai Path, P.S.-Sachivalaya, Town and District-Patna.

3. The Elecl. Superintending Engineer, R. Block, P.S.-Sachivalaya, Town and District-Patna.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 12094 of 2002

==========

Bihar Co-Operative Weavers Spinning Mills, having its Factory at Mokamah, District-Patna, appearing through its Assistant Manager (HRD), Jitendra Prasad, Son of late K.D. Singh, resident of BCWSM Colony, P.S.-Mokamah, Town-Mokamah, District-Patna.

.... Petitioner/s

Versus

1. Bihar State Electricity Board, appearing through its Chairman, Bailey Road, P.S.-Kotwali, Town and District-Patna.

2. The General Manager-cum-Chief Engineer, Central Electricity Area, 8, Serpentine Road, P.S.-Sachivalaya, Town and District-Patna.

3. The Elecl. Superintending Engineer, Patna Electrical Circle, R. Block, P.S.-Sachivalaya, Town and District-Patna.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 12514 of 2002

==========

M/s J. M. G. Steel P. Ltd., having its registered office at 214, Emarat Firdaous, Exhibition Road, Patna, appearing through its Director, Shri Gopichand Goenka, S/o Late Musadilal Goenka, resident of Khajekalan, P.S.-Khajekalan, Town & District-Patna.

.... Petitioner/s

Versus

1. Bihar State Electricity Board, appearing through its Chairman, Vidyut Bhawan, Bailey Road, P.S.-Kotwali, Town and District-Patna.

2. General Manager-cum-Chief Engineer, Central Bihar Electricity Area, P.S.-Sachivalaya, Town and District-Patna.

3. Electrical Superintending Engineer, Patna Electric Circle, R. Block, P.S.-Sachivalaya, Town and District-Patna.

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4. Electrical Executive Engineer, Commercial and Revenue, Patna Electric Circle, R. Block, P.S.-Sachivalaya, Town and District-Patna.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 80 of 2000

==========

M/s Sita Flour Mills Pvt. Ltd., Industrial Area, Donar, At P.S. and District-Darbhanga, through its Director, Sri Santosh Kumar Pansari.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna, through its Chairman.
2. The General Manager-cum-Chief Engineer, Mithila Area Electricity Board, At P.S. and District-Darbhanga.
3. The Electrical Superintending Engineer, Darbhanga Electrical Circle, Darbhanga.
4. The Electrical Executive Engineer, Darbhanga Electrical Circle, Darbhanga.

.... Respondent/s

With

==========

Civil Writ Jurisdiction Case No. 81 of 2000

==========

M/s Sita Flour Mills Pvt. Ltd., Industrial Area, Donar, At P.S. and District-Darbhanga, through its Director, Sri Anubhav Pansari.

.... Petitioner/s

Versus

1. Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna, through its Chairman.
2. The General Manager-cum-Chief Engineer, Mithila Area

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Electricity Board, At P.S. and District-Darbhanga.

3. The Electrical Superintending Engineer, Darbhanga Electrical Circle, Darbhanga.

4. The Electrical Executive Engineer, Darbhanga Electrical Circle, Darbhanga.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 106 of 2000

==========

M/s Sita Flour Mills Pvt. Ltd., Industrial Area, Donar, At P.S. and District-Darbhanga, through its Director, Sri Santosh Kumar Pansari.

.... Petitioner/s

Versus

1. Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna, through its Chairman.

2. The General Manager-cum-Chief Engineer, Mithila Area Electricity Board, At P.S. and District-Darbhanga.

3. The Electrical Superintending Engineer, Darbhanga Electrical Circle, Darbhanga.

4. The Electrical Executive Engineer, Darbhanga Electrical Circle, Darbhanga.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 382 of 2000

==========

M/s Sita Flour Mills Pvt. Ltd., Industrial Area, Donar, At P.S. and District-Darbhanga, through its Director, Sri Anubhav Pansari.

.... Petitioner/s

Versus

1. Bihar State Electricity Board, Vidyut Bhawan, Bailey Road,

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Patna, through its Chairman.

2. The General Manager-cum-Chief Engineer, Mithila Area Electricity Board, At P.S. and District-Darbhanga.

3. The Electrical Superintending Engineer, Darbhanga Electrical Circle, Darbhanga.

4. The Electrical Executive Engineer, Darbhanga Electrical Circle, Darbhanga.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 3749 of 2000

==========

M/s Kalyanpur Cement Limited, a registered Company under the provisions of the Companies Act, 1956, having its registered office at 2 & 3 Clive Row, Calcutta-700 001, and a Branch office at Maurya Center, 1, Fraser Road, Patna-800 001, through its D.G.M. (Legal) S.N. Veena, S/o Bhagwat Prasad.

.... Petitioner/s

Versus

1. Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna, through its Chairman.

2. The General Manager-cum-Chief Engineer, Transmission Zone-III, Bihar State Electricity Board, Chandauti, Gaya.

3. The Electrical Superintending Engineer, Bihar State Electricity Board, Transmission Circle, Dehri-on-Sone.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 6347 of 2000

==========

Dumraon Textiles Limited, A Public Limited Company incorporated under the Indian Companies Act, 1956 having its registered office at 'Dumraon House', 26A, Camac Steet, Calcutta-700016 and its

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Head Office and factory at Dumraon in the District of Buxar through its Managing Director, Shri Chandra Vijay Singh.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna, through its Chairman.
2. The General Manager-cum-Chief Engineer, Central Bihar Area Electricity Board, Serpentine Road, Patna.
3. The Electrical Superintending Engineer, Bhojpur Electrical Circle, Arrah.
4. The Electrical Executive Engineer, Bihar State Electricity Board, Bhojpur Electrical Circle, Arrah.
5. The Assistant Electrical Engineer, Electric Supply Division, Dumraon.
6. The Revenue Officer, Bihar State Electricity Board, Electric Circle, Arrah, District-Bhojpur.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 339 of 2002

==========

M/s Jai Mata Di Metal Pvt. Ltd., N.H.28, Phulwaria, P.S.-Barauni, Town and District-Begusarai, appearing through its Director, Sanjay Kumar Singh, S/o Shri B.P. Singh, resident of S.K. Nagar, P.S.-Begusarai, Town and District-Begusarai.

.... Petitioner/s

Versus

1. Bihar State Electricity Board, through its Chairman, Bailey Road, P.S.-Kotwali, Town and District-Patna.
2. General Manager-cum-Chief Engineer, Mithila Area Electricity Board, Darbhanga.
3. Revenue Officer-cum-Electrical Executive Engineer, Commercial and Revenue Division, Electrical Supply Circle, Samastipur.

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.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 9092 of 2002

==========

M/s Dadiji Steel (Pvt.) Ltd., having its Registered Officer at 208, Vrindawan Kunj, Exhibition Road, P.S.-Gandhi Maidan, Town and District-Patna, appearing through its Director, Vinay Kumar Singh, Son of Late R.K. Singh, resident of Sabalpur, P.S.-Didarganj, Town-Patna City, District-Patna.

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, appearing through its Chairman, Bailey Road, P.S.-Kotwali, Town and District-Patna.
2. The General Manager-cum-Chief Engineer, Central Electricity Area, 8, Daroga Prasad Rai Path, P.S.-Sachivalaya, Town and District-Patna.
3. The Electrical Superintending Engineer, Patna Electrical Circle, R' Block, P.S.-Sachivalaya, Town and District-Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 5614 of 1999)

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

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 11432 of 1994)

For the Petitioner/s : Mr. Mrigank Mauli

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 14386 of 2003)

For the Petitioner/s : Mr. S.S. Rekhi
Mr. Ramendra Pd. Shrivastava

For the Respondent/s : Mr. Vinay Kirti Singh

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(In CWJC No. 10420 of 2002)

For the Petitioner/s : Mr. L.K. Bajla
Mr. M.K. Choudhary

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 11237 of 2002)

For the Petitioner/s : Mr. S.S. Rekhi
Mr. Amarendra Kumar Singh

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 12094 of 2002)

For the Petitioner/s : Mr. S.S. Rekhi

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 12514 of 2002)

For the Petitioner/s : Mr. S.S. Rekhi

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 80 of 2000)

For the Petitioner/s : Mr. L.K. Bajla
Mr. Pravin Kumar Sinha

For the Respondent/s : Mr. S.S. Rekhi
Mr. Purusottam Kumar Singh
Mr. Vinay Kirti Singh
Mr. Rahul Priyadarshi

(In CWJC No. 81 of 2000)

For the Petitioner/s : Mr. L.K. Bajla
Mr. Pravin Kumar Sinha

For the Respondent/s : Mr. S.S. Rekhi
Mr. Purusottam Kumar Singh
Mr. Vinay Kirti Singh
Mr. Rahul Priyadarshi

(In CWJC No. 106 of 2000)

For the Petitioner/s : Mr. L.K. Bajla
Mr. Pravin Kumar Sinha

For the Respondent/s : Mr. S.S. Rekhi
Mr. Purushottam Kumar Singh

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Mr. Vinay Kirti Singh
Mr. Rahul Priyadarshi

(In CWJC No. 382 of 2000)

For the Petitioner/s : Mr. L.K. Bajla
Mr. Pravin Kumar Sinha

For the Respondent/s : Mr. S.S. Rekhi

(In CWJC No. 3749 of 2000)

For the Petitioner/s : Mr. L.K. Bajla
Mr. Pravin Kumar Sinha
Mr. Swapna Kamal

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 6347 of 2000)

For the Petitioner/s : Mr. Mrigank Mauli
Mr. Rajesh Mohan
Mr. Vijay Kumar Sin

For the Respondent/s : Mr. Vinay Kirti Singh

(In CWJC No. 339 of 2002)

For the Petitioner/s : Mr. S.S. Rekhi

For the Respondent/s : Mr. J.P. Shukla
Mr. Kumar Alok
Mr. Mohit Kumar Shah

(In CWJC No. 9092 of 2002)

For the Petitioner/s : Mr. S.S. Rekhi

For the Respondent/s : Mr. Vinay Kirti Singh

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 13-05-2016

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The present batch of applications, filed under Article 226 of the Constitution of India, involve common disputes in relation to grant of remission, in terms of Clause 13 of the H.T. Agreement, entered into between the *erstwhile* Bihar State Electricity Board (succeeded by Bihar State Power Holding Company, ***hereinafter referred to as the 'Board'***) and the petitioners.

2. When C.W.J.C. No.4614 of 1999 was taken up by a learned single Judge of this Court, noticing a decision of Jharkhand High Court, in case of ***Rishi Cement Company Limited & Ors. Vs. Bihar State Electricity Board & Ors. (A.I.R. 2002 Jharkhand 1)*** to be in conflict with two decisions of this Court, in cases of ***M/s. Balajee Wire Products Vs. The Bihar State Electricity Board & Ors.***, reported in ***1995 (2) PLJR 810***, and ***M/s. Bihar Gases Limited Vs. The Bihar State Electricity Board & Ors.***, reported in ***1999 (2) PLJR 105***, referred the matter to be decided by a larger Bench. Following is the said order of reference, dated 08.03.2002, passed by learned single Judge, in C.W.J.C. No.5614 of 1999:-

> **"***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 (1995(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. 105) 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 entitiled 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 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 take 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 29.7.94 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 a 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 uncertaintity I consider present to be a fit case for making reference to a larger Bench. The matter may be placed before My Lord the Learned Chief Justice for constitution of a Division Bench for deciding the matter in accordance with law."

(Emphasis supplied)

3. C.W.J.C. No.11432 of 1994 and C.W.J.C. No.6347 of 2000 have been filed by the same petitioner, *viz.* Dumraon Textiles Limited, a company incorporated under the Companies Act, 1956. By separate orders, the matters have been directed to be heard by Division Bench along with the main case, i.e. C.W.J.C. No.5614 of 1999, the core issues involved in these matters being same, arising out of the said Clause 13 of H.T. Agreement.

4. In order to appreciate the background in which the learned single Judge referred the matter for adjudication by a larger Bench, taking note of previous decisions of this Court, in cases of ***M/s. Balajee Wire Products*** (supra) and ***M/s. Bihar Gases Limited*** (supra) and subsequent decision of Jharkhand High Court, in case of ***Rishi Cement Company Limited & Ors.*** (supra), in which the Jharkhand High Court dealt with the Board's circular, dated 29.07.1994, it would be apt to discuss those decisions, the Board's circular, dated 29.07.1994, relevant clauses of the H.T. Agreement and the foundational facts, which are common in all cases.

5. All these petitioners admittedly entered into an H.T. Agreement with the Board for supply of electrical energy, for the purposes of running their respective industries. Clause 1 (a) of the H.T. Agreement cast an obligation upon the Board to furnish to the consumer and upon the consumer to accept, at the point of supply, on and from the date on which the said premises were to be connected with the supply, distributing mains; a constant supply of electrical energy.

6. Clause 4 (a), Clause (b) and Clause 4 (c) of the said H.T. Agreement, which are relevant for present adjudication and for the purpose of answering the reference, are being extracted hereinbelow for the benefit of quick

reference:-

"4. (a) *Subject to the minimum contract demand applicable for the category of supply in which the consumer falls as per Board's tariff, the consumer shall pay to the Board for the energy so supplied and registered or taken to have been supplied as aforesaid at the appropriate rates applicable to the consumer according to the tariffs framed by the Board and in force from time to time, there presently enforced tariffs being given in the Schedule to this agreement for easy reference. Such reference is subject to provisions of clause 14 appearing hereinafter.*

Provided that notwithstanding anything said above but subject to the provisions of clause 13 appearing hereinafter, the consumer shall have to pay minimum charges as specified in the above said tariffs framed by the Board and enforced from time to time irrespective of whether energy to that extent has been consumed or not. (Such minimum charges are referred as "minimum guaranteed charges" at other placed in this agreement."

"4. (b) *For the purpose of this agreement the maximum demand of the consumer for each month shall be largest total amount of Kilovolt amperes*

(KVA) delivered to the consumer at the point of supply during any consecutive 30 minutes in the month."

***"4. (c)** Maximum demand charges for supply in any moth will be based on the maximum KVA demand for the month or 75 percent of the contract demand whichever is higher, subject to provision of clause 13. For the first twelve months' service the maximum demand charges for any month, will however, be based on the actual monthly maximum demand for that month."*

7. Clause 13 of the said H.T. Agreement is also being extracted hereinbelow, the same being at the center of the dispute:-

***"13.** If any time the consumer is prevented from receiving or using the electric energy to be supplied under this agreement either in whole, or in part due to strikes, riots, fire, floods, explosions act of God or any other case reasonably beyond control or if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all of the causes mentioned above then the demand charge and guaranteed energy charge set out in the Schedule shall be reduced in proportion to the ability of the*

consumer to take or the Board to supply such power and the decision of the Chief Engineer, Bihar State Electricity Board, in this respect shall be final."

8. Clause 3 of the H.P. Agreement lays down the procedure for measurement and registration of supply of electrical energy to a consumer through a meter or meters and it contains other ancillary procedures for the said purpose. Upon careful reading of Clause 4 of the H.T. Agreement, it can be easily noticed that there are following components/determinants for raising bills against supply of electrical energy:-

[i] A consumer is required to pay for energy at appropriate rates applicable to the consumer according to the tariffs framed by the Board and enforced from time to time (energy charge).

[ii] This payment against supply of energy at appropriate rates is subject to the Minimum Contract Demand, applicable for the category of supply in which the consumer falls as per the Board tariffs. Meaning thereby that a consumer will have to make payment against the Minimum Contract Demand irrespective of the fact that the consumption is less than the said Minimum Contract Demand. This requirement, under the H.T. Agreement, is apparently for the purpose that

the Board is not made to suffer loss because of non-consumption of electrical energy by a consumer below Minimum Contract Demand, despite arrangements, having been made by the Board, for such supply to a consumer. This component has been described as Annual Minimum Guaranteed Charge ***(hereinafter referred to as the 'A.M.G. Charge')***, which are to be generally billed annually, as is manifest from Clause 4 (d) of the H.T. Agreement.

[iii] Maximum Demand Charge for supply in any month depending upon maximum KVA, demanded for the month or 75% of the contract demand, whichever is higher.

[iv] The A.M.G. Charge and Maximum Demand Charge are subject to the provisions of Clause 13 of the H.T. Agreement, as has been quoted hereinabove.

9. There is no dispute and there cannot be that Clause 13 of the H.T. Agreement, which speaks of grant of remission in certain circumstances mentioned therein, is applicable to the both, i.e., Minimum Guaranteed Charges and Maximum Demand Charges. We will be later referring to Division Bench decision of this Court, in this regard, in our present judgment.

10. We will now advert to the decisions of this

Court, in cases of ***M/s. Balajee Wire Products*** (supra) and ***M/s. Bihar Gases Limited*** (supra), interpreting the same clauses of the H.T. Agreement and that of the Jharkhand High Court, in case of ***Rishi Cement Company Limited & Ors.*** (supra). Referring to the Chief Engineer's power, under Clause 13 of the H.T. Agreement to adjudicate upon a claim of remission in Minimum Guaranteed Charges, this Court held, in case of ***M/s. Balajee Wire Products*** (supra), that having derived such power from Clause 13 of the H.T. Agreement, he must confine himself to that provision and must not take into consideration elements and factors, which are foreign to that provision. In paragraph 5 of the decision, the learned single Judge of this Court, in case of ***M/s. Balajee Wire Products*** (supra), held as follows:-

> ***"5.*** *…… But it must be borne in mind that the Chief Engineer derives its power to adjudicate upon a claim for remission of minimum guaranteed charges from clause 13 of the agreement. It, therefore, follows that he must confine himself to that provision and must not take into consideration elements and factors which are foreign to that provision. Clause 13 on a plain meaning of the language, provides that the consumer is entitled to remission proportionate to the Board's inability to supply electrical energy. In*

case of the Board's inability to supply electrical energy the hypothetical question of the consumer's ability or inability to consume, had the Board been able to maintain a continuous supply is quite immaterial and irrelevant."

(Emphasis supplied)

Learned single Judge held that the Chief Engineer was in error in not allowing remission in Minimum Guaranteed Energy Charges (A.M.G.), on the basis of admitted hours of non-supply. Noticing the stand taken on behalf of the Board, in the said case, the learned single Judge held that remission in demand charges should be calculated in the following manner:

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

11. To appreciate what was urged on behalf of the Board, in relation to remission of Demand Charges ***M/s. Balajee Wire Products*** (supra), we have considered it apposite to refer the manner in which the calculation was done in that case, which is as under:-

1.	*Contract Demand . . . .*	*115*	*KVA*
2.	*Total KVA recorded . . . .*	*420.17*	*KVA*
3.	*Total KVA charged . . . .*	*776.25*	*KVA*
4.	*Total KVA charged over & above*	*356.08*	*KVA*
5.	*Total hrs. of power to be*	*6576*	*Hrs.*

	supplied (24 x 274)		
6.	*Total admitted hrs. of non supply*	*87.44*	*Hrs.*
	Say	*588*	*Hrs.*
7.	*Total Hrs. of power supplied*	*-5988*	*Hrs.*
8.	*Proportionate Relief in terms of (420.17 x 588) 5988 KVA*	*41.25*	*KVA*
	Say	*41*	*KVA*
9.	*Admissible relief for 41 KVA @ Rs. 35/-*	*Rs. 1435/-*	

12. We also take note of paragraphs 10 and 11 of the said decision, which reads thus:-

> ***"10.*** *Mr. Shiva Kriti Singh, learned counsel for the Board, accepts this position. He, however, points out one more mistake in the calculation of proportionate relief (serial no. 8 of the reproduced calculation). Mr. Singh pointed out that not only the higher of the two figures (being 776.25 at serial no. 3) should have been multiplied by the total admitted hours of non-supply but the product should have been divided not by the total hours of power supplied at serial no. 7 but by the higher figure of total hours of power to be supplied at serial no. 5."*

> ***"11.*** *In my opinion, Mr. Shiva Kirti Singh, is quite right in his submission. The position that emerges, thus, is 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."***

13. Reiterating the view taken in case of ***M/s. Balajee Wire Products*** (supra), a learned single Judge of this Court held, in paragraph 7, in case of ***M/s. Bihar Gases Limited*** (supra), as follows:-

> ***"7.*** *…… in this case too the General Manager seems to have proceeded on the erroneous assumption that remission in maximum demand charges would be admissible only in case the recorded reading is less than 75% of the contract demand. It is an erroneous assumption not warranted by the plain language of Clause 13 of the H.T. Agreement that no remission in maximum demand charges would be admissible in case the recorded reading in the meter is as per the contract demand or within 75% of the contract demand. This court has repeatedly held that remission in contract demand, on the basis of hours of non-supply of electricity as provided in Clause 13 of the agreement is to be allowed regardless of*

whether the recorded reading was as per the contract demand or within 75% or below 75% of the contract demand."

(Emphasis supplied)

14. In case of ***Rishi Cement Company Limited & Ors.*** (supra), the Jharkhand High Court had the occasion to consider the validity of a notification, dated 29.07.1994, issued by the Board, which has been brought on the record by way of Annexure-3 to C.W.J.C. No.5614 of 1994, laying down guidelines for settlement of claims, under Clause 13 of the H.T. Agreement. The said guidelines have been described to have been issued, under Section 79 (J) of the Electricity (Supply) Act, 1948, in suppression of all earlier instructions on the subject issued from time to time. The said notification, *inter alia*, prescribed limitation period of 90 days from the date of issuance of A.M.G. bill, for filing claim, under Clause 13 of the H.T. Agreement, beyond which no claim could be entertained. Paragraph 3 of the said circular provided that grant of proportionate relief for interruption of duration of 30 minutes or more only will be admissible.

15. Whether such guidelines could be validly issued, were the questions before the Jharkhand High Court. A learned single Judge of Jharkhand High Court, in case of ***Rishi Cement Company Limited & Ors.*** (supra), did not uphold the relevant clause of the guidelines, which prescribed

the period of 30 minutes interruption or more in supply of electricity, only to be considered for grant of remission, relying on Division Bench's decision of this Court, in case of ***M/S Suprabhat Steels Limited & Ors. Vs. The Bihar State Electricity Board & Ors.***, reported in ***1994 BBCJ 369***. The learned single Judge of Jharkhand High Court, in case of ***Rishi Cement Company Limited & Ors.*** (supra), upheld the power of the Board to issue guidelines, in the nature of regulations, having binding effect on all its consumer. However, having found Clause 3 of the said regulation to be contrary to the law, laid down by a Division Bench of this Court and subsequent decisions, declared it to be wholly unjustified.

16. In present batch of applications, the petitioners are aggrieved by respective orders, passed by concerned General Manager-Cum-Chief Engineer of the Bihar State Electricity Board, whereby they have been allowed proportionate reduction in shortfall units for the year 1997-1998, on the basis of *"ability to avail power"*. The ability of the consumer, as per the orders, under challenge, had been assessed, on the basis of energy actually consumed by them in total hours of supply and thereby computing their ability to consume during interruption hours of supply. This is in relation to A.M.G. While computing Demand Charges, the formula, as set-up by this Court, in case of ***M/s. Balajee***

Wire Products (supra), has been applied and after having reached to a calculation, the General Manger-Cum-Chief Engineer has applied the instructions, as contained in Clause 1 of the notification, dated 29.07.1994, which prescribes that the remission would not be more than shortfall charge and, accordingly, granted less remission towards A.M.G./Maximum Demand Charge, than the figure arrived at by applying the said formula of total KVA charged into admitted hours of non-supply divided by total hours to be supplied.

17. The petitioners have questioned the various orders, passed by the General Manager-Cum-Chief Engineer of the Board, in the present batch of applications, on the plea that the circular, dated 29.07.1994, has been misinterpreted and wrongly applied, while computing proportionate reduction in Demand Charges, permissible under Clause 13 of the H.T. Agreement, which has no relationship with Guaranteed Demand Charges or shortfall in Guaranteed Demand Charges.

18. Mr. S.S. Rekhi and Mr. Suraj Samdarshi, learned counsel, appearing on behalf of the petitioners in some of the cases, have placed heavy reliance upon Division Bench decision, in case of ***M/S Suprabhat Steels Limited & Ors.*** (supra), and have submitted that the Board is bound to grant remission for any duration, if a case is made out of tripping, load-shedding or power-cut, in whatever form, causing disturbance in supply of electricity for any reason,

other than the exceptions enumerated in Clause 13 of the H.T. Agreement, and the consumer, would be, as a matter of right, entitled to proportionate remission in A.M.G. and Maximum Demand Charges.

19. Reliance has also been placed on a Division Bench decision of this Court, in case of ***M/s Hind Agriculture Farm & Anr. Vs. The Bihar State Electricity Board & Ors.***, reported in ***1995 (2) PLJR 405***, to buttress their contention that calculation of proportionate remission, on the basis of *"ability to consume"*, in the impugned orders is alien to the provisions of the H.T. Agreement and the decisions, on such basis, is wholly unjustified and arbitrary. They have also relied on decisions of this Court, in cases of ***M/s. Balajee Wire Products*** (supra) and ***M/s. Bihar Gases Limited*** (supra).

20. Mr. Mrigank Mauli, learned counsel, appearing on behalf of the petitioner, in C.W.J.C. No.11432 of 1994 and C.W.J.C. No.6347 of 2000, has submitted that the A.M.G. bill is prepared where there is any shortfall in unit consumption than the Minimum Guaranteed Units, at the end of the year. The Minimum Guaranteed Amount, in respect of the Demand Charges, is to be billed on monthly basis. It is his contention that the Demand Charges have to be reduced proportionately from the charges, to the extent and in proportion to the time for which there was no supply of

electricity. According to him, this provision, in Clause 13 of the H.T. Agreement, has been incorporated in the background of the fact that the basic premise for Demand Charge is continuous/un-interrupted supply to the extent of maximum demand of the consumer. It is his case that there is no dispute over A.M.G., since the petitioner has been able to consume energy in excess of A.M.G. As regards Demand Charge, it is submitted that the petitioner is entitled to proportionate reduction to the extent of non-supply of electricity by the Board. On the issue of applicability of the notification, dated 29.07.1994, he has argued that the claim of the petitioner relates to the period 1971-1972 to 1984-1985 (C.W.J.C. No.11432 of 1994) and period 1985-1986 to 1996-1997 (C.W.J.C. No.6347 of 2000). He agues that the notification, dated 29.07.1994, covers period of only 2 years, i.e., 1995-1996 to 1996-1997.

21. Mr. Mauli has referred to following decisions of Supreme Court, to contend that statutory notifications/statutory instructions can have prospective effect only, unless it is specifically made to be retrospective:-

(i) (2009) 9 SCC 454 [Anil Chandra & Ors. Vs. Radha Krishna Gaur & Ors.];

(ii) (2010) 2 SCC 422 [Union of India & Anr. Vs. Kartick Chandra Mondal & Anr.];

(iii) (2009) 11 SCC 453 [State of Jharkhand & Ors. Vs. Shiv Karampal Sahu]; and

(iv) (2009) 2 SCC 589 [Panchi Devi Vs. State of Rajasthan & Ors].

He has also submitted that even the said notification, dated 29.07.1994, does not come in the way of grant of remission, in terms of Clause 13 of the H.T. Agreement, there being no apparent conflict between the two.

22. Mr. Vinay Kirti Singh, learned counsel, appearing on behalf of the respondents-Board, on the other hand, has submitted that this Court in its judgments, in cases of ***M/s. Balajee Wire Products*** (supra), and ***M/s. Bihar Gases Limited*** (supra), did not take note of statutory notification, dated 29.07.1994, which has been considered by a learned single Judge of the Jharkhand High Court in its decision, in case of ***Rishi Cement Company Limited & Ors.*** (supra). According to him, the said guideline is binding on all consumers, same having been framed by the Board in exercise of power, under Section 79 (J) of the Electricity (Supply) Act, 1948.

23. Mr. Singh, learned counsel, has doubted the correctness of formula laid down by this Court, in case of ***M/s. Balajee Wire Products*** (supra), and has submitted that the remission cannot be allowed for the entire shortfall,

irrespective of consumers' ability, particularly, after issuance of the circular, issued *vide* notification No.810, dated 29.07.1994. He has submitted that the said circular, restricts maximum limit of remission to the extent of shortfall units charged by way of A.M.G. bills, served at the end of financial year and once validity, thereof, has been upheld by the Jharkhand High Court, there would be no question of grant of remission, in case of shortfall unit charge. He has submitted that if remission is allowed directly, on the basis of inability of the respondents-Board, to supply energy, irrespective of the ability of the consumer to consume, it would lead to an anomalous situation, where the consumer, though not able to consume energy on account of different reasons, will take advantage of inability of the Board to supply, for the purpose of remission. He has also submitted that the contract between the Board and the consumer being not statutory, the present writ applications, under Article 226 of the Constitution of India, should be dismissed, as not maintainable. He has also submitted that the notification, dated 29.07.1994, having not been challenged, the petitioners cannot question the correctness of the decision of the Board, as contained in the said circular.

24. To appreciate rival contentions raised on behalf of the parties, as have been noted above, we now need to take note of the Board's notification, dated

29.07.1994, issued under Section 79 of the Electricity (Supply) Act, 1948. The guidelines have been termed as regulations, having statutory force. Section 79 of the Electricity (Supply) Act, 1948, enabled the Board to make regulations, by notification in the official gazette, not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all or any of the matters mentioned therein. The matters, as enumerated in Section 79 (a) to 79 (i), 79 (jj) and 79 (k), do not at all relate to the controversy in question. Item (j) of Section 79 of the Electricity (Supply) Act, 1948, deals with *"principles governing the supply of electricity by the Board to persons other than licensees under Section 49"*. Section 49 of the Electricity (Supply) Act, 1948, reads thus:-

> ***"49. Provision for the sale of electricity by the Board to persons other than licensees.–****(1) Subject to the provisions of this Act and of regulations, if any made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.*
>
> *(2) In fixing the uniform tariffs, the Board shall have regard to all or any of the following factors, namely:-*
>
> *(a) the nature of the supply*

and the purposes for which it is required;

(b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee;

(c) the simplification and standardisation of methods and rates of charges for such supplies;

(d) the extension and cheapening of supplies of electricity to sparsely developed areas.

(3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show

undue preference to any person."

25. The said guidelines have manifestly been issued for the purpose of settlement of claims, under Clause 13 of the H.T. Agreement. The terms of the said notification, dated 29.07.1994, cannot, therefore, be construed in a manner, which runs counter to the interpretation of Clause 13 of the H.T. Agreement, given in various decisions of this Court, as have been noted above.

26. Clause 1 of the notification, dated 29.07.1994, provides as follows:-

> ***"1.*** *Remission under clause 13 will be allowable only when AMG has been charged and the maximum amount of remission would not be more than the shortfall in AMG Charged."*

Clause 2 of the said notification, dated 29.07.1994, provides as follows:-

> ***"2.*** *The relief is allowable both for demand charges and guaranteed energy charges as per clause 13 of the H T agreement. However, the remission under clause 13 should be granted in proportion to the ability of the consumer to take or the Board to supply such power as provided in the said clause. The inability to take supply of electrical energy by the consumers for non availability of raw materials, labour*

unrest without supporting documents if arising out due to Sundays and other holidays would not attract clause 13 of the H T agreement."

27. For the purpose of computation of remission, under Clause 13 of the H.T. Agreement, the said guidelines provided that it shall be in proportion to the ability of the consumer to take or the Board to supply such power, as provided in the said clause. It also prescribed that inability to take supply of electrical energy by the consumers for non-availability of raw materials and labour unrest, without supporting documents, if arising out due to Sundays and other holidays, would not attract Clause 13 of the H.T. Agreement. Clause 3 of the said notification, dated 29.07.1994, prescribes that proportionate relief shall be granted only when duration of interruption is more than 30 minutes.

28. At the cost of repetition, we point it out that the said notification, dated 29.07.1994, was issued for giving effect to Clause 13 of the H.T. Agreement and, therefore, cannot be read in a manner, which may diminish, attenuate, alter or nullify the terms of the contract itself. Clause 13 of the H.T. Agreement has been interpreted by a Division Bench of this Court, in case of ***M/s Hind Agriculture Farm & Anr.*** (supra), wherein this Court, in most *unambiguous* terms held

that a consumer, under Clause 13 of the H.T. Agreement, is entitled to remission, proportionate to the Board's inability to supply power and the twist introduced in the decision of the Board that had the supply of energy been wholly uninterrupted, even then total units consumed by the consumer would have been less than the Minimum Guaranteed Units, was untenable based on extraneous considerations. The Division Bench of this Court in paragraph 7, in case of ***M/s Hind Agriculture Farm & Anr.*** (supra), held as follows:-

> ***"7.*** *Having heard learned counsel for the parties and having perused the impugned order, we are of the opinion, that though the mode of calculation adopted by the General Manager-cum-Chief Engineer may be called ingenious, it does not have the sanction of Clause 13, as quoted above. The material provision in the H.T. Agreement provides that a consumer is entitled to remission proportionate to the Board's inability to supply power; the twist introduced in the impugned order that had the supply of energy been wholly uninterrupted even then the total units consumed by the consumer would have been less than the minimum guaranteed units appears to be a consideration extraneous to the provision of the statutory contract and, therefore, any calculation made on that*

basis cannot be sustained in the eye of law."

(Emphasis added)

29. Further, in case of ***M/s. Balajee Wire Products*** (supra), this Court laid down a formula for the manner in which the remission in Demand Charges should be calculated, as has been noted above, which is being reproduced hereinbelow:-

$$\frac{\textbf{Total KVA charged x Total Hours of non-supply}}{\textbf{Total hours of power to be supplied}}$$

This formula, as laid down by this Court, is based on interpretation of Clause 13 of the H.T. Agreement, which provides that the Demand Charge and Guaranteed Charge shall be reduced in proportion to the inability of the consumer to take in certain contingencies mentioned therein or the Board to supply such power. Based on the language of Clause 13 of the H.T. Agreement, dealing with the Demand Charges, this Court, in case of ***M/s. Balajee Wire Products*** (supra), has held that *total KVA charges multiplied by admitted hours of non-supply divided by the total hours of power to be supplied* will give figure for allowing remission towards Maximum Demand. This interpretation of Clause 13 of the H.T. Agreement, in our view, is based on sound principles of interpretation of an instrument. We do not find any reason to take a different view.

30. In case of ***M/S Suprabhat Steels Limited & Ors.*** (supra), a Division Bench of this Court, considering Clause 1 (a) of the H.T. Agreement and the provisions of Electricity (Supply) Act, 1948, read with Indian Electricity Act, 1910, has observed that it is well settled principles of construction that relevant provisions of an instrument have to be read as a whole so as to gather the intention of the parties cost thereto. The Division Bench of this Court in paragraph 40, in case of ***M/S Suprabhat Steels Limited & Ors.*** (supra), held as follows:-

> ***"40.*** *It is a well settled principles of construction that the relevant provisions of an instrument have to be read as a whole so as to gather the intention of the parties cost thereto. Clause 1(a) of the Agreement imposes a contractual obligation on the part of the Board to make constant supply of electrical energy. The Board has a statutory obligation to supply electrical energy to a consumer in terms of the provisions of the Electricity (Supply) Act, 1948 read with Indian Electricity Act, 1910 and the rules framed thereunder. It, therefore matters not as to whether at a given point of time the consumer is required to supply electrical energy or not. A consumer at his convenience may run his factory for a part of the day or for the whole day.*

Even when the machines are not operating, the consumer may require supply of electrical energy for the purpose of maintenance of machinery, security etc. The provisions of the contract of supply of electrical energy vis-a-vis the power of the Board to charge Minimum guarantee charges and maximum demand charges have to be viewed in that contest."

(Emphasis added)

In most clear terms, the Division Bench of this Court, in case of ***M/S Suprabhat Steels Limited & Ors.*** (supra), held that even when the machines were not operative, the consumer may require supply of electrical energy for the purpose of maintenance of machinery, security etc. and the requirement, under the H.T. Agreement, of supply of electrical energy, *vis-à-vis* power of the Board to charge Minimum Guarantee Charges and Maximum Demand Charges have to be viewed in that context.

31. The learned single Judge of Jharkhand High Court, in case of ***Rishi Cement Company Limited & Ors.*** (supra), upheld the validity of said notification, dated 29.07.1994, and its clarificatory letter, dated 13.07.1996, taking into account Clause 11 of the H.T. Agreement, which reads thus:-

"11. *This agreement shall be read*

and construed as subject in all respects to the provisions of the Indian Electricity Act, 1910, rules framed thereunder and the Electricity (Supply) Act, 1948 together with rules, regulations (if any), tariffs and terms and conditions for supply of electricity framed and issued thereunder and for the time being in force as far as the same may respectively be applicable and all such provisions shall prevail in case of any conflict or inconsistency between them and the terms and conditions of this agreement."

Referring to Clause 13 of the H.T. Agreement, the learned single Judge of the Jharkhand High Court held that rules and regulations that might be made under the Indian Electricity Act, 1910, and Electricity (Supply) Act, 1948, shall be binding on the consumer and shall always prevail over the H.T. Agreement.

32. At the same time, the learned single Judge of the Jharkhand High Court, in case of ***Rishi Cement Company Limited & Ors.*** (supra), held that Clause 3 of the same very notification, dated 29.07.1994, was wholly unjustified being contrary to law, laid down in cases of ***M/s. Balajee Wire Products*** (supra) and ***M/s. Bihar Gases Limited*** (supra), the Jharkhand High Court applied the ratio, as laid down in cases of ***M/s. Balajee Wire Products***

(supra) and ***M/s. Bihar Gases Limited*** (supra), and held Clause 3 of the notification, dated 29.07.1994 to be unjustified, being contrary to the interpretation of Clause 13 of the H.T. Agreement, in case of ***Rishi Cement Company Limited & Ors.*** (supra).

33. In case of ***M/s Hind Agriculture Farm & Anr.*** (supra), a Division Bench of this Court, interpreting Clause 13 of the H.T. Agreement, specifically held that a consumer is entitled to remission proportionate to Board's inability to supply power and no other component could have been introduced to the disadvantage of the consumer for the purpose of denying him remission, like his inability to consume, even if the supply of energy had been uninterrupted. The Division Bench of this Court held that the consumer shall be entitled to such remission, which would be available from the record, maintained by the Board, in respect of its inability to supply electrical energy and not the inability of the consumers to use the same. Paragraph 11 of the said decision, in case of ***M/s Hind Agriculture Farm & Anr.*** (supra), is relevant and is being extracted hereinbelow:-

> ***"11****. As noted above, the matter had earlier come to this Court when the General Manager-cum-Chief Engineer was given specific directions to decide the petitioners' claim and was also given the guidelines regarding the manner in*

which the claim was to be decided. This Court had directed that the petitioners shall only be entitled to such remission which would be available from the record maintained by the Board in respect of its inability to supply electrical energy and not the inability of the petitioners to use the same."

34. In view of the discussions above, we are of the considered view that the notification, dated 29.07.1994, issued for the sole purpose of settlement of claim of the H.T. Agreement, cannot be interpreted or allowed to read beyond the scope of Clause 13 of the H.T. Agreement. Clause 3 of the notification, dated 29.07.1994, has already been held to be unjustified by the learned single Judge of Jharkhand High Court, in case of ***Rishi Cement Company Limited & Ors.*** (supra), same being in conflict with the decisions of this Court, in cases of ***M/s. Balajee Wire Products*** (supra) and ***M/s. Bihar Gases Limited*** (supra). The terms of the interpretation of notification, dated 29.07.1994, which run contrary to the law laid down by this Court, in cases of ***M/S Suprabhat Steels Limited & Ors.*** (supra), ***M/s. Balajee Wire Products*** (supra), ***M/s. Bihar Gases Limited*** (supra) and ***M/s Hind Agriculture Farm & Anr.*** (supra), cannot be said to be justified on same logic. The amount of remission, as contemplated in Clause 13 of the H.T. Agreement, will

have to be calculated in confirmity with the law laid down by this Court, in cases of ***M/S Suprabhat Steels Limited & Ors.*** (supra), ***M/s. Balajee Wire Products*** (supra), ***M/s. Bihar Gases Limited*** (supra) and ***M/s Hind Agriculture Farm & Anr.*** (supra), which, in our view, lay correct interpretation of Clause 13 of the H.T. Agreement. Though, in case of ***Rishi Cement Company Limited & Ors.*** (supra), the learned single Judge of the Jharkhand High Court has, on the one hand, held Clause 3 of the notification, dated 29.07.1994, to be unjustified, he has held in paragraph 22 as follows:-

> ***"22.*** *Having regard to the facts and law discussed hereinabove, I, therefore, hold that the Notification dated 29-7-94 and the Clarificatory Letter dated 13-7-96 issued by the Board is perfectly legal and valid and binding on the consumers including the petitioners."*

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:-

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

(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.

36. We answer the reference accordingly.

37. We would have remitted the matter back to a learned single Judge for disposal of the matters in view of our answer, aforesaid, to the reference made by the learned single Judge. However, after having laid down the procedure in which the remission is to be calculated and allowed, under Clause 13 of the H.T. Agreement, we have considered it appropriate to dispose of the present batch of writ applications. From the orders impugned, we find that proportionate reduction in Demand Charge has been brought down, referring to said notification, dated 29.07.1994, holding that the remission cannot be more than shortfall charges. The shortfall has been discussed in paragraph 35 of the counter affidavit, filed on behalf of the respondents-Board, according to which, Maximum Demand of the consumer for each month shall be the largest total amount of KVA delivered at the point of supply during any consecutive 30 minutes in a month. If Maximum Demand recorded is less than 75% of the Contract Demand, 75% of the Contract Demand is taken as the Maximum Demand and the differences, thereof, is the shortfall. It has been described that proportionate remission in Demand Charges can be granted only up to the amount/level of shortfall for which the

consumer has been charged. The grant of proportionate remission in Demand Charges, in the manner stated, is *ex-facie* illogical and runs counter to the basic contractual obligation on the part of the Board to make constant supply of electrical energy. In paragraph 50 of its decision, in case of ***M/S Suprabhat Steels Limited & Ors.*** (supra), a Division Bench of this Court held that in terms of the Agreement, a consumer is liable to pay Maximum Demand Charges, on the basis of Maximum Demand Indicator as the same have been the Contract Demand for the month in question, but it would not mean that for the rest of the period, if the Board is unable to supply electrical energy, for one reason or the other, as enumerated in Clause 13 of the Agreement, the consumer would not get proportionate reduction in the Demand Charge. This Court, on scrutinizing Clause 13 of the Agreement, laid down an empirical formula, scientifically sound, in case of ***M/s. Balajee Wire Products*** (supra), which should be the basis for calculation of proportionate remission.

38. Taking the first case (Jai Mangla Steels Pvt. Ltd. Vs. Bihar State Electricity Board and Ors.), as the representative case, we notice from the records that the petitioner is the consumer of the electricity, who entered into an H.T. Agreement with the Board, in a standards prescribed form. During the financial year 1995-1996, the respondents-

Board was unable to supply electricity for a total period of 3862 hours. A claim was, accordingly, filed seeking proportionate reduction in Demand Charges and Guaranteed Energy Charges, under Clause 13 of the H.T. Agreement, for the said financial year. The claim of the petitioner has been disposed of by impugned communication, dated 11.01.1999, issued by the General Manager-cum-Chief Engineer, Mithila Area Electricity Board, Darbhanga. By the said communication, the claim of the petitioner that he is entitled for remission for interruption of short duration, up-to 30 minutes, was denied and the said hours were excluded from the total hours of interruption, in terms of the notification No.810, dated 29.07.1994. Excluding the said period, the petitioner has been allowed proportionate reduction in A.M.G. bill, on the basis of his ability to avail power. The ability of consumer has been assessed on the basis of energy actually consumed by him in the total hours of supply, i.e., 4994 hours, accordingly, during interrupted hours of supply, his ability has been computed by applying the following formula:-

> ***"Energy actually consumed divided by total hours of supply multiplied by interrupted hours of supply" (17,38,200 / 4994 X 3790 KWH = 13,19,138 KWH).***

Applying the formula given in the case of ***M/s. Balajee Wire Products*** (supra), which reads thus;

<u>Total KVA charged x Total hours of non-supply</u> ;
Total hours of power to be supplied

the competent authority found that remission allowable towards M.D. (Maximum Demand) was 9438 KVA, but in view of the instructions contained in the notification, dated 29.07.1994, the remission would not be more than the shortfall charged and, therefore, the maximum remission towards M.D. has been allowed for 2921 KVA only, which is the shortfall KVA charged to the consumer in the year. It has been argued on behalf of the petitioner that the said computation is contrary to this Court's decision, in cases of ***M/S Suprabhat Steels Limited & Ors.*** (supra), ***M/s. Balajee Wire Products*** (supra), ***M/s. Bihar Gases Limited*** (supra) and ***M/s Hind Agriculture Farm & Anr.*** (supra).

39. In view of what has been discussed above, we find the order, dated 11.01.1999, to be *ex-facie* illegal, contrary to this Courts' decision, in case of ***M/s. Balajee Wire Products*** (supra). Further, determination of ability of the consumer to be one of the basis for grant of remission, as has been noticed above, is not only hypothetical but is also contrary to the Division Bench decision of this Court, in case of ***M/s Hind Agriculture Farm & Anr.*** (supra), paragraph 7 of which has been quoted hereinabove. Further, the order pertaining to grant of remission against Maximum Demand

Charges is also not justified in the light of law laid down by this Court, in case of ***M/s. Balajee Wire Products*** (supra), which we have approved.

40. With similar reasoning, claims of the petitioners, in other batch cases (except C.W.J.C. No.12514 of 2002), for remission, under Clause 13 of the H.T. Agreement, have been decided by separate orders, which have been impugned in the present batch of writ applications.

41. For the reasons, noted above, (i) the order, dated 11.01.1999, passed by respondent No.2, in C.W.J.C. No.5614 of 1999, (ii) the order, dated 22.04.1991, passed by respondent No.2, in C.W.J.C. No.11432 of 1994, (iii) the order, dated 08.08.2003, passed by respondent No.2, in C.W.J.C. No.14386 of 2003, (iv) the order, dated 16.07.2002, passed by respondent No.2, in C.W.J.C. No.10420 of 2002, (v) the order, dated 16.07.2002, passed by respondent No.2, in C.W.J.C. No.11237 of 2002, (vi) the order, dated 22.07.2002, passed by respondent No.2, in C.W.J.C. No.12094 of 2002, (vii) the order, dated 21.09.1999, passed by respondent No.2, in C.W.J.C. No.80 of 2000, (viii) the order, dated 21.09.1999, passed by respondent No.2, in C.W.J.C. No.81 of 2000, (ix) the order, dated 31.08.1999, passed by respondent No.2, in C.W.J.C. No.106 of 2000, (x) the order, dated 21.09.1999, passed by respondent No.2, in C.W.J.C. No.382 of 1998, (xi) the order, dated 24.08.1994,

passed by respondent No.2, in C.W.J.C. No.3749 of 2000, (xii) the order, dated 23.02.2000, passed by respondent No.2, in C.W.J.C. No.6347 of 2000, (xiii) the order, dated 06.12.2001, passed by respondent No.2, in C.W.J.C. No.339 of 2002 and (xiv) the order, dated 22.06.2002, passed by respondent No.2, in C.W.J.C. No.9092 of 2002, are quashed.

42. All the matters, aforementioned, are remitted back to the competent authority of the successor company of the Board to pass an order afresh on the respective claims of the petitioners.

43. In C.W.J.C. No.11432 of 1994 (Dumraon Textiles Limited Vs. The Bihar State Electricity Board & Ors.), it has been argued on behalf of the petitioner that the Agreement, in his case, was entered into prior to issuance of notification, dated 29.07.1994, and by no stretch of imagination, the logic, as mentioned therein, have been applied in the case.

Upon perusal of the impugned order, dated 09.09.1994, we find that same is in teeth of law laid down by this Court in various decisions, as have been noted above, which *a fortiori*, deserves to be said and has, accordingly, been set aside.

44. These matters are, accordingly, allowed.

45. All the matters stand remitted back to the competent authority of successor company of the Board for

passing orders afresh on the respective claim of the petitioners for grant of remission, under Clause 13 of the H.T. Agreement, with a direction to decide their respective claim in accordance with, what we have held in paragraph 35 of the present judgment.

46. The petitioner of C.W.J.C. No.12514 of 2002 has questioned the correctness of Clause 4 (c) of the notification No.810, dated 29.07.1994, issued by the Board, which, according to the petitioner, is in contravention of Clause 13 of the H.T. Agreement. Reliance, in support of the plea, has been placed on the Supreme Court decision, in case of ***Bihar State Electricity Board & Anr. Vs. M/s. Dhanawat Rice and Oil Mills (A.I.R. 1989 S.C. 1030)***.

47. Clause 4 (c) of the said notification prescribes as follows:-

> ***"4 (c).*** *If the consumer deposit a sum representing 50 percent of the amount in the bill for the shortfall in AMG charges, within due date and inform that he intends to file claim for remission, then his electricity line will not be disconnected for the dues relating to this bill. But interest/DPS will be charged for the balance payable amount as settled under clause."*

48. We do not find the said provision to be in conflict with H.T. Agreement nor the said clause otherwise

appears to be arbitrary. It provides for deposit of 50% of the amount in the bill for the shortfall in A.M.G. Charges, in case a consumer intends to file claim for remission, in which circumstance his line will not be disconnected for the dues relating to the said bill. It further lays down that interest/DPS will be payable for balance amount as settled under the clause. Apparently, if something is found payable after settlement of claim, under Clause 13 of the H.T. Agreement, the consumer will be liable to pay interest/DPS, on the said amount, in accordance with terms of the Agreement or any statutory provision.

49. We do not find any merit in C.W.J.C. No.12514 of 2002, which is, accordingly, dismissed.

50. Parties shall bear their own costs.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ.:- I agree

(I. A. Ansari, ACJ.)

Praveen-II/-

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