IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4103 of 2012

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J.M.D. Rolling Mill, A Division Of M/S J.M.D. Alloys Limited A Company Incorporated Under The Indian Companies Act, 1956 Having Its Registered Office At Usha Complex, Kankarbagh Road, Patna And Its Factory At Deokuli Bihta Through Its Director And Authorised Signatory Sri Sanjay Gupta

.... Petitioner/s

Versus

1. Bihar State Electricity Board Through Its Chairman Vidyut Bhawan, Bailey Road, Patna
2. Chairman, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna
3. General Manager-Cum-Chief Engineer Central Electric Supply Area, 8, Serpentine Road, Patna
4. Electrical Superintending Engineer Patna Electrical Circle, R-Block, Patna
5. Electrical Executive Engineer (Comm. & Revenue) Null Patna Electrical Circle, R-Block, Road No.1, Patna
6. Assistant Electrical Engineer (Comm. & Revenue) Patna Electrical Circle, R-Block, Road No. 1, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. GIRI, SENIOR ADVOCATE
Mr. RAJU GIRI

For the Respondent/s : Mr. VINAY KIRTI SINGH

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 05-09-2016

Heard learned counsel for the petitioner and learned counsel for the respondent-Bihar State Electricity Board (now the Bihar State Power Holding Company).

The petitioner seeks quashing of the final Annual Minimum Guarantee (AMG) bills dated 15.07.2011, 04.02.2012, 04.02.2012,15.07.2011,15.07.2011 and 15.07.2011 of the financial years 1998-99, 2000-01, 2001-02, 2002-03, 2004-05 and 2005-06 so far as imposition of delayed payment surcharge is concerned and further commanding the respondents to issue fresh AMG bills after deleting the delayed payment surcharge for the said years.

The petitioner, who is engaged in manufacture of iron rods, had entered into an agreement with the respondent-Board on 03.02.1997, which was substituted by a fresh agreement in the year 2010. The Board by its Resolution dated 20.07.1994, which was taken out in the form of a notification dated 29.07.1994 and was published in the Bihar Gazette Extraordinary on 16.09.1995, under clause 4 (c) and clause 6 (a) of the said notification, had provided as follows:

> "4 (c) If the consumers deposits sum representing 50% (fifty) of the amount in the bill for the shortfall in AMG charges, within due date and informs that he intend to file claim for remission then his electric 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 the clause.
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> 6 (a) Claim made under clause 13 of H.T. Agreement in respect of current year will be disposed of within a period of 4 months by the competent authority of the Board from the date of filing of claim".

For the years in question, the Board issued AMG bills on different dates in terms of the aforesaid notification dated 29.07.1994/06.09.1995. The petitioner deposited 50% of the AMG bills and filed claim petition for the remaining amount before the competent authority who, it is pointed out, is the General Manager-cum-Chief Engineer of the area concerned. The General Manager-cum-Chief Engineer of the area concerned disposed of the said claim petitions by order dated 5.07.2011 for the financial years 1998-99, 1999, 2002-03, 2004-05 and 2005-06 and by another order dated 17.01.2012 for the financial years 2000-01 and 2001-02. The said orders were communicated to the petitioner. The bills were thereafter raised for the different years from 15.07.2011 to 04.02.2012 in which delayed payment surcharge was charged for the period from the initial date till July, 2011 or January, 2012.

The grievance of the petitioner relates to the period of delayed payment surcharge for such a long period of time which had thus become many times over the original, in some of the cases even three times of actual payments after the order.

Mr. Y.V. Giri, learned Senior Counsel for the petitioner submits that in view of the notification dated 29.07.1994/06.09.1995, it is not open to the Board to raise any delayed payment surcharge beyond the period of four months within which the competent authority was required to dispose of any claim under clause 13 of the H.T. Agreement and since there was no delay on the part of the petitioner in filing the claim, any such delay by the competent authority of the Board does not give any right to the Board to take advantage of its own wrong committed by the Board and its senior officials.

In support of the same, learned counsel for the petitioner relies upon the provisions of clause 4 (c) read with clause 6 (a) of the said notification. It is submitted that under clause 4 (c) the consumer can challenge the demand made with respect to AMG charge by depositing 50% of the amount in the bill within 90 days and file a claim for remission, then his electric connection will not be disconnected for the dues relating to the bill but interest/DPS shall be charged for the balance payable amount as settled under the clause. Under clause 6 (a), it is submitted that the claim made under clause 13 of the H.T. Agreement in respect of current year has to be disposed of by the competent authority within a period of four months from the date of filing of claim. It is thus submitted that on failure of the competent authority being senior officials of the Board, namely, the General Manager-cum-Chief Engineer of the area concerned, the Board cannot take advantage of its own wrong or of its senior officials, if the claim is not decided within four months and continue to charge DPS/interest for the balance payable amount for any number of years, including for more than a decade in the present matter.

In support of the same, learned counsel for the petitioner relies upon a decision of a learned single Judge of this Court in the case of M/s. Gaya Roller Flour Mills vs. Bihar State Electricity Board and others. : 1995 (2) PLJR 715, in paragraph Nos. 9 and 10 of which it has been held as follows:-

> "9. I, however, find that the Superintending Engineer has also included the delayed payment surcharge as part of the dues payable by the petitioner. It is to be noted that the Superintending Engineer found that the bill earlier given to the petitioner was raised, on the basis of a defective meter and, therefore, did not reflect the correct demand. He himself set aside that bill and made a fresh calculation of the charges payable by the petitioner. The earlier bill not having been prepared lawfully, I am unable to see how any delayed payment surcharge can be levied for non-payment of that bill. I am, therefore, of the view that the computation made by the Superintending Engineer is not correct so far as it includes the delayed payment surcharge and to that extent it requires correction.
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> 10. It is accordingly held that the petitioner is not liable to pay any delayed payment surcharge as shown in the computation made in the impugned order contained in Annexure-10. He would be liable, however, to pay the amount after deducting the delayed payment surcharge included under different heads. In case, there is any delay in the payment of this amount, then only the petitioner would be liable to pay the delayed payment surcharge for the period of delay and in accordance with law. I, am also

> not interfering with the observation made by the Superintending Engineer leaving it open to the petitioner to approach the proper authorities for fixation of instalments for payment of the dues."

It is submitted that the ratio of the aforesaid decision applies to the case of the petitioner as the claim of the petitioner has been held to have some basis and accepted to that extent by the competent authority of the Board. Moreover, it is submitted that irrespective of anything else the liability as per the said judgment would run only after the decision on the claim and followed by submission of the bill.

Learned counsel also relies upon another decision of a learned single Judge of this Court in case of M/s. Venky Steel Private Limited vs. The Bihar State Power (Holding) Company: C.W.J.C. No. 3638 of 2014, in which by order dated 26.09.2014 the decision of the Consumer Grievance Redressal Forum constituted under Section 42 (5) of the Electricity Act, 2003 in Case No. 54 of 2014, by which it had directed the Power Distribution Company to issue a fresh bill after recalculating the delayed payment surcharge in respect of the bill for Annual Minimum Guarantee for the period 1998-99 restricted for four months only with reference to clause 6 (a) of the notification dated 29.07.1994/06.09.1995, has been upheld. It is submitted that the case of the present petitioner is squarely covered within the four corners of the said decision and analogous writ petition, being CWJC No.13707 of 2014 filed by the North Bihar Power Distribution Company Ltd. vs. M/s. Venky Steel Pvt. Ltd., challenging the said part of the decision of the Consumer Grievance Redressal Forum has been dismissed. It is submitted that the said decision applies to the facts of the present case.

Learned counsel for the Bihar State Electricity Board, on the other hand, submits that under clause 5 (b) of the H.T. Agreement entered into between the petitioner and the Board, the failure of the petitioner to pay the amount of bill due under the agreement within due dates specified in the bill referred to in clause 5 (a) of the said agreement makes the petitioner liable to pay surcharge at the rate given in the tariffs framed by the Board and enforced from time to time. It is further submitted that clause 4 (c) of the notification dated 29.07.1994/06.09.1995 merely gives the benefit of non-disconnection on payment of 50% of the amount of the bill on a claim for remission being made but clearly provides that the interest/DPS for the balance payable amount would be charged as settled under the clause and thus merely by making claim the liability of the petitioner to pay delayed payment surcharge does not come to an end either in terms of the HT Agreement or clause 4 (c) of the notification.

With regard to clause 6 (a) of the notification, it is submitted by learned counsel for the Board that the same was only in respect of the current year in which the notification was issued and it cannot be held that the competent authority has to decide the matter positively within a period of four months in all cases of subsequent years also and thus no benefit can be claimed by the petitioner under clause 6 (a) of the said notification.

In support of his stand, learned counsel relies upon the decision of the Supreme Court in the case of Bihar State Electricity Board vs. M/s. Green Rubber Industries and others: AIR 1990 S.C.699, in paragraph No.21 of which it has been held as follows:

> "21. It is true that the agreement is in a standard form of contract. The standard clauses of this contract have been settled over the years and have been widely adopted because experience shows that they facilitate the supply of electric energy. Lord Diplock has observed: " If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable." A Schroeder Music Publishing Co. Ltd v. Macaulay, (1974) 3 All ER 616 (624). In such contracts a standard form enables the supplier to say: "If you want these goods or services at all, these are the only terms on which they are available. Take it for leave it." It is a type of contract on which the conditions are fixed by one of the parties in advance and

are open to acceptance by anyone. The contract, which frequently contains many conditions is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect. In view of clause 4 having formed one of the stipulations in the contract along with others it cannot be said to be nudum pactum and the maxim nudum pactum ex quo non oritur actio does not apply. Considered by the test of reasonableness it cannot be said to be unreasonable inasmuch as the supply of electricity to a consumer involves incurring of overhead installation expenses by the Board which do not vary with the quantity of electricity consumed and the installation has to be continued irrespective of whether the energy is consumed or not until the agreement comes to an end. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause. This agreement with the stipulation of minimum guaranteed charges cannot be held to be ultra vires on the ground that it is incompatible with the statutory duty. Difference between this contractual element and the statutory duty have to be observed. A supply agreement to a consumer makes his relation with the Board mainly contractual, where the basis of supply is held to be statutory rather than contractual. In cases where

> such agreements are made the terms are supposed to have been negotiated between the consumer and the Board, and unless specifically assigned, the agreement normally would have affected the consumer with whom it is made, as was held in Northern Ontario Power Co. Ltd.v. La Roche Mines Ltd. (1938) 3 All ER 755."

I have considered the submissions of learned counsels for the parties.

This Court in Gaya Roller Flour Mills' case (supra) has clearly held that once a challenge to a bill is raised on the basis of a defective meter which did not reflect the correct demand and the same is set aside and a fresh calculation of the charges payable by the consumer is made, the earlier bill not having been prepared lawfully, any delayed payment surcharge cannot be levied for non-payment of that bill till the revised bill is issued. In the case of Venky Steel (supra), a learned single Judge of this Court dismissed the writ petition filed by the North Bihar Power Distribution Company, by which the Consumer Grievances Redressal Forum had directed the Power Distribution Company to issue a fresh bill after recalculating the delayed payment surcharge in respect of the bill for AMG for the period 1998-99 by restricting it for four months on precisely the same facts as in the present matter. This Court is of the view that the said decision is squarely applicable to the present matter.

Learned counsel for the respondent Power Holding Company submits that clause 6 (a) of the notification dated 29.07.1994/06.09.1995 only directed the disposal of the claims made under clause 13 of the H.T. Agreement for the current year only. As a matter of fact, the notification itself was dated 29.07.1994 and thus the current year will probably be 1994-95 but the same had been finally gazetted and acquired legal force on 06.09.1995 and therefore the current year probably means the financial year 1995-96. The argument of learned counsel for the Board appears to stretch the clause 6 (a) of the notification to an extent which is not permissible. The reference to the current year was only in the context of the claims being made for that year. The notification having fixed a period of four months for decision by the competent authority the said period has to be treated as a reasonable period within which the competent authority of the Board is respected to decide the claim. It also means that the liability to pay interest/DPS on the balance amount after paying 50% of the AMG surcharge bill as provided under clause 4 (c) of the notification would be confined only to the reasonable period of four months and not for a period of 15 or 20 years or any such period of time as may be taken by the competent authority of the Board to decide the claim of the consumer since the Board cannot be allowed to take advantage of its own wrong or of its officials, that too, a senior official like the General Manager-cum-Chief Engineer of the area concerned. Thus it has to be held that the liability to pay interest/DPS under clause 4 (c) of the notification would be limited to the period of four months from the making of the claim and thereafter the liability for further payment of any interest/DPS as provided in the agreement with the Board or any statutory tariff or regulation could only arise after the revised bills are issued to the consumer for any further delay made in the payment of the said revised bills.

In the aforesaid view of the matter, the writ application is allowed. The bills dated 15.07.2011 and 04.02.2001 for the financial years 1998-99, 2000-01, 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06 in so far as they impose delayed payment surcharge beyond the period of four months are quashed and the respondents are directed to issue fresh bills for the said periods confining the delayed payment surcharge to the period of four months only. It is pointed out that the petitioner has already deposited amounts of Rs. 10,00,000/- Lacs and Rs.40,00,000/- Lacs during the pendency of the writ application on the orders of this Court. Therefore, the liability of the petitioner shall only be to the extent of any remaining amount payable under the said bills to be raised afresh as directed by this Court and any amount found, thereafter, shall be paid by the petitioner in accordance with law.

Let the said bills be handed over to the petitioner within a period of two months from the date of receipt/production of a copy of this order.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

AFR/NAFR	
CAV DATE	
Uploading Date	12-01-2017
Transmission Date	