

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.736 of 2016

In

Civil Writ Jurisdiction Case No.9493 of 2013

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1. The Bihar State Electricity Board, Now known as Bihar State Power (Holding) Co-operation Ltd., Vidyut Bhawan, Bailey Road, Patna through its Chairman.
 2. The Finance Controller (Revenue), Bihar State Power (Holding) Corporation Ltd., Vidyut Bhawan, Bailey Road, Patna.
 3. The Electrical Superintending Engineer, Munger.

... .. Appellant/s

Versus

1. M/s Balaji Ingots India Pvt. Ltd., a Company incorporated under the provisions of the Companies Act, 1956 having its Office at Khairi Mahisona, Lakhisarai, District Lakhisarai through one of its Director Ramesh Daruka, S/o Shri Ratan Lal Daruka Resident of Naya Bazar, Pachna Road, P.O. and P.S., town and District- Lakhisarai.
2. The Electricity Ombudsman, Vidyut Bhawan-II, Bailey Road, Patna through its Chairman.
3. The Consumer Grievance Redressal Forum, Vidyut Bhawan-II, Bailey Road, Patna through its Chairman.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Kumar Giri
Advocate
For the Respondent/s : Mr. Manoj Priyadarshi
Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 30-11-2017

Heard counsel for the appellant and counsel for the respondents.

The State agency cannot be expected to play hot and cold at the same time or create a farce by first agreeing to give certain exemption and then take it away by trying to give it an interpretation, which by any rule of interpretation cannot be justified.



The issue is Delayed Payment Surcharge, which has been raised for the period August, 2006 to January, 2007. There was an obligation upon the respondent-company to make payment of additional surcharge deposit on account of enhancement of the load. However, it was agreed between the members of the Steel Industry of which the private-respondent was also a party and the State Electricity Board that if the said payment is made within the period fixed in installments, the 2 per cent liability would not be levied and for which even an agreement was reached in the year 2001. But despite that agreement, when draft agreement with regard to payment of the installment was presented before the parties including the private-respondent, the clause of 2 per cent imposition for Delayed Payment Surcharge was tried to be incorporated and pushed into the agreement between the Clauses. This was the reason for discord and the agreement could not be executed and delay happened between August, 2006 to January, 2007. Now the appellants are insisting on levying Delayed Payment Surcharge (DPS) for that period.

The Learned Single Judge for the reasons indicated as under came to an opinion that such a demand was unsustainable and arbitrary. This is what he has said in paragraph 16 and 17 of the impugned order:



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

17. It is not in dispute that the petitioner entered into an agreement on 19.02.2007 and paid the entire installments within time. Even as per agreement dated 19.02.2007, the DPS is also paid within the time schedule. The petitioner has paid all the installments within time, as such I find that there was no deliberate attempt on the petitioner not to



make payment of additional security on enhanced load, and the direction of the Board contained in letter dated 14.08.2006 is in teeth of letter dated 23.09.1999 and new tariff contained in letter dated 07.05.2001. Furthermore, the payment of additional security is not occasioned on account of any electricity consumed by the consumer but it is merely an amount of security guarantee, the payment in case any liability arises against the consumer.'

The view taken by the Learned Single Judge seems to be absolutely correct and the interpretation given therein is in consonance with the agreement, which was entered between the parties and the appellants. The offer made through the agreement by the appellants was not an empty formality.

The appeal has no merit. It is dismissed. No interference is warranted with the order of the Learned Single Judge.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

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