

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1059 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 9993 of 2013

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1. The Bihar State Electricity Board now Bihar State Power (Holding) Company Ltd., through its Chairman cum Managing Director, Vidyut Bhawan, Bailey Road, Patna.
 2. The Secretary, Bihar State Electricity Board now Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
 3. The Finance Controller (Revenue), Bihar State Electricity Board now Bihar State Power (Holding) Company Ltd., Vidyut Bhawan, Bailey Road, Patna.
 4. The General Manager-cum-Chief Engineer, PESU, Electricity Supply Area, Patna.
 5. The Superintending Engineer, Electricity Supply Circle, PESU (East), Patna.
 6. The Executive Engineer, Electric Supply Division, PESU (East), Patna.

.... Appellant/s

Versus

M/s Puja Engineers (Private) Ltd., through its Director, Dinesh Kumar Khowala son of Late Mahabir Prasad Khola, the office of which at Ch-2, Road No.26, Sri Krishna Nagar, Patna- 800001.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anand Kumar Ojha, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 08-08-2017

Delay of 70 days in filing of this appeal is condoned.

I.A. No. 3834 of 2016 stands allowed and disposed of.

2. Seeking exception to an order dated 20th of January, 2015 passed by the learned Writ Court in C.W.J.C. No. 9993 of 2013, this appeal has been filed by the Board.

3. Writ-petitioner, respondent herein, was permitted establishment of the Industry in pursuance to the Industrial Policy of



2006 and levy of electricity duty was to be done in accordance to the Industrial Policy which also contemplated payment of minimum guarantee charge monthly. However, the dispute arose with regard to refund of minimum guarantee charge paid by the respondent for three months in the year 2007, namely, October, November and December. The learned Writ Court finding that the amount of minimum guarantee charge for the aforesaid three period was not refunded within time directed for refund of the amount along with interest at the rate of 10 per cent.

4. The question in this appeal is as to whether the direction of the Writ Court in refunding the amount along with interest at the rate of 10 per cent was proper.

5. Even though the Industrial Policy contemplated a provision for charging minimum guarantee charge but there were certain gray area in the policy particularly with regard to payment of this charge when the establishment is non-functional and is unable to produce or effect production for a particular period. The issue was as to whether for the three months in question when petitioner establishment was non-functional minimum guarantee charge can be collected. This was not clear from the policy and, therefore, it was only on 28.12.2012 that the Government clarified the position with regard to under what circumstances the minimum guarantee charges



can be refunded and immediately after this decision was taken communicated on 28.12.2012, the Board refunded the minimum guarantee to the respondent on 15.01.2013. That being so, it was not proper on the part of the Court to direct for refund of the entire amount with interest right from the year 2007. When the question was only decided by the Government on 28.12.2012, therefore, interest should have been directed to be paid from the date the position was clarified by the Government i.e. 28.12.2012 till date of refund of the amount and not prior to that.

6. Accordingly, we allow this appeal in part and direct that interest on the amount to be refunded shall be paid to the respondent with effect from 28.12.2012 at the rate of 10 per cent till its actual payment.

7. With the aforesaid, the Letters Patent Appeal stands allowed and disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	11.08.2017
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