

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12129 of 2005

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Shambhu Sharan Sharma, son of Sri Ram Charitra Sharma, Managing Director of
M/S Vimla Wood Crafts (Private) Limited at Mohankunda, Purnia, resident of
Korma Kothi, New Paharpur, Anishabad, P.S.-Gardanibagh, Town & District-Patna
.... Petitioner/s

Versus

1. The Bihar State Electricity Board, through its Chairman, Vidyut Bhawan,
Bailey Road, Patna.
2. The General Manager-cum-Chief Engineer, Kosi Electric Supply Area, Saharsa.
3. The Electrical Superintending Engineer, Purnia Electrical Circle, Purnia.
4. The Electrical Executive Engineer (Commercial & Revenue), Purnia Electrical
Circle, Purnia.
5. The Electrical Executive Engineer, Electric Supply Division, Forbesganj,
Purnia.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Ram Krishna Sahay, Advocate Mr. Indrajesh Kumar, Advocate
For the Respondents	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Vijay Kumar Verma, Advocate Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

Date: 02-05-2017

Heard learned counsel for the petitioner and the learned
Senior Counsel appearing for the North Bihar Power Distribution
Company Limited.

2. The writ petitioner has challenged the order dated
15.05.2004 and also the order dated 21.01.1999 passed by the
General Manager-cum-Chief Engineer, Kosi Electric Supply Area,
Saharsa, rejecting his claim for grant of proportionate remission in
A.M.G. and M.D. charges under Clause 13 of the H.T. Agreement.

3. Learned counsel for the petitioner has submitted that



the present writ application had earlier come up for consideration and this Court, taking into consideration the fact that several other writ applications are pending with regard to the same issue, had directed that the present writ be considered after disposal of CWJC No.5614 of 1999 (Jai Mangla Steels Pvt. Ltd. vs. Bihar State Electricity Board & Ors.).

4. The said writ application (CWJC No.5614 of 1999) was ultimately heard along with a batch of writ petitions and the Division Bench of this Court, vide judgment and order dated 13.05.2016, has allowed the claim raised by the petitioner of the said writ cases in terms of the relief granted by the Jharkhand High Court in the case of M/s. Rishi Cement Company Limited vs. Bihar State Electricity Board. The said case has been reported in AIR 2002 Jharkhand 1.

5. The Division Bench of this Court has ultimately held that the inability of the consumer to draw the electricity as per the minimum guarantee would not be a factor for denial of the claim raised rather the relevant factor would be whether the Board was able to supply electricity for the said period. The conclusion drawn by the Division Bench can be found in paragraph 35 of the judgment and for ready reference is being quoted herein below :

“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



Board's 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:-
$$\frac{\text{Total KVA charged} \times \text{Total hours of non-supply}}{\text{Total hours of power to be supplied.}}$$
- (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."

6. Learned counsel for the petitioner submits that the matter having been clearly resolved and decided by this Court and subsequently another batch of writ petitions (CWJC No.4893 of 2007 & other analogous cases) have also been disposed of by a single Bench of this Court, vide order dated 23.02.2017, taking the said rationale, this writ application may also be disposed of in similar terms.

7. In view of the aforementioned submissions and the



decision of law stated in the case of Jai Mangla Steels Pvt. Ltd (supra), this case is also disposed of on the similar proposition.

8. The orders dated 15.05.2004 and 21.01.1999, impugned in the present writ application, rejecting the claim raised by the petitioner under Clause 13 of the H.T. Agreement, are quashed and set aside. The case is now remitted back to the competent authority, being the Chief Engineer (Commercial) of the North Bihar Power Distribution Company Limited for fresh consideration and decision in accordance with law. The said decision should be taken positively within a period of three months from the date of receipt/production of a copy of the judgment/order.

9. With the aforementioned observations and directions, the writ application is allowed and disposed of. No costs.

(Anjana Mishra, J)

PNM

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.05.2017
Transmission Date	N.A.

