

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4893 of 2007

M/S Hai Medicare and Research Institute (Pvt) Ltd. Bailey Road, Raja Bazar, Police Station- Shashtri Nagar, Town and District- Patna appearing through its Managing Director Dr. Ahmad Abdul Hai, son of Late Dr. M.A. Hai, resident of Exhibition Road, Police Station- Gandhi Maidan, Town and District- Patna.

.... Petitioner/s

Versus

- 1. Bihar State Electricity Board, appearing through its Chairman, Bailey Road, Police Station- Kotwali, Town and District- Patna.
- 2. The General Manager cum Chief Engineer, Patna Electric Supply Undertaking, Police Station- Sachivalaya, Town and District- Patna.
- 3. The Secretary, Bihar State Electricity Board, Patna, P.S.- Kotwali, Town and District- Patna.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 7773 of 2007

M/S J.M.G. Steels (Pvt.) Ltd., having its Registered Office at Tehrighat, Macharhatta, Police Station- Khajekallan, Town – Patna City, District- Patna, appearing through its Director Gopichand Goenka, son of late Musadilal Goenka, resident of Tehrighat, Machharhatta, Police Station- Khajekallan, Town- Patna City, District- Patna.

.... Petitioner/s

Versus

- 1. Bihar State Electricity Board, appearing through its Chairman, Bailey Road, Police Station- Kotwali, Town and District- Patna.
- 2. The General Manager cum- Chief Engineer, Patna Electric Supply Undertaking, Police Station- Sachivalaya, Town and District- Patna.
- 3. The Secretary, Bihar State Electricity Board, Bailey Road, Police Station- Kotwali, Town and District- Patna.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 8654 of 2007

M/S J.M.G. Steel (Pvt.) Ltd., having its Registered Office at Tehrighat, Machharhatta, Police Station- Khajekallan, Town- Patna City, District- Patna appearing through its Director Sri Gopichand Goenka, son of Late Musadilal Goenka, resident of Khajakallan, Police Station- Khajakallan, Town- Patna City, District- Patna.

.... Petitioner/s

Versus

- 1. Bihar State Electricity Board, appearing through its Chairman, Bailey Road, Police Station- Kotwali, Town and District- Patna.
- 2. The General Manager cum Chief Engineer, Central Electric Supply Area, Daroga Prasad Rai Path, Police Station- Sachivalaya, Town and District- Patna.
- 3. The Electrical Superintending Engineer, Patna Electric Circle, R. Block, Police Station- Sachivalaya, Town and District- Patna.
- 4. The Electrical Executive Engineer, Commercial and Revenue, Patna Electric Circle, R. Block, Police Station- Sachivalaya, Town and District- Patna.
- 5. The Secretary, Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Police Station- Kotwali, Town and District- Patna.

.... Respondent/s

Appearance :
(In CWJC No.4893 of 2007)
For the Petitioner/s : Mr. S.S.Rekhi, Adv.



For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Adv. with
Mr. Vijay Kumar Verma, Adv.
Mr. Akhileshwar Singh, Adv.

(In CWJC No.7773 of 2007)

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

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Adv. with
Mr. Vijay Kumar Verma, Adv.
Mr. Akhileshwar Singh, Adv.

(In CWJC No.8654 of 2007)

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

For the Respondent/s : Mr. Vinay Kirti Singh, Sr. Adv. with
Mr. Vijay Kumar Verma, Adv.
Mr. Akhileshwar Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-02-2017

Heard Mr. S.S. Rekhi, learned counsel appearing for the petitioner(s) and Mr. Vinay Kirti Singh, learned senior counsel appearing for the Power Distribution Company.

In each of the writ petitions the claim of the petitioners raised under clause-13 of the HT agreement, has been rejected by the orders impugned in the respective writ petitions by the respondent no.2 General Manager -cum- Chief Engineer which jurisdiction now vests in the Chief Engineer (Commercial) under the present arrangement of the respective Distribution Power Company.

At the stage of filing of the writ petitions, the licensee was the Bihar State Electricity Board which authority has since been succeeded by the Bihar Power Holding Company with the distribution work in the hands of the North Bihar Power Distribution Company and the South Bihar Power Distribution Company. The Power Distribution Companies are the successor in office of the respondent authorities in the respective writ petitions



and there is no dispute about. The dispute that arose in this batch of writ petitions is as to the extent of relief to be granted to the petitioners under clause-13 of the HT agreement.

The individual details of the petitioner in each of the writ petitions are given hereinbelow:

1. C.W.J.C. No. 4893 of 2007

In this case the petitioner questions the impugned order dated 9.1.2007 and 19.2.2007 impugned at Annexure-4 and 4/A passed by the respondent no. 2 the General Manager cum Chief Engineer.

2. C.W.J.C. No. 7773 of 2007

In this case the petitioner questions the orders dated 26.4.2007 impugned at Annexure-3 and 3/A passed by the respondent no. 2 the General Manager cum Chief Engineer.

3. C.W.J.C. No. 8654 of 2007

In this case the petitioner questions the order dated 26.4.2007 impugned at Annexure-4 passed by the respondent no. 2 the General Manager cum Chief Engineer.

As I have already indicated by the orders impugned in the three writ petitions, the claim advanced by the three petitioners under Clause 13 of the H.T. Agreement, has been rejected.

While these matters were pending consideration at hearing stage, that a judgment was delivered by a Bench of the



Jharkhand High Court since reported in **AIR 2002 Jharkhand page 1 (Rishi Cement Company vs. Bihar State Electricity Board)** explaining the circular of Board dated 29.7.1994 which was in conflict with the opinion expressed in two judgments of this Court since reported in **1995 (2) PLJR 810 (M/s. Balajee Wire Products vs. The Bihar State Electricity Board & Ors.)** and **1999(2) PLJR 105 (M/s. Bihar Gases Limited vs. The Bihar State Electricity Board & Ors.)**.

Since the opinion expressed by the Jharkhand High Court in the case of **Rishi Cement Company** (supra) on the notification dated 29.7.1994 was in conflict with the Single Bench decision rendered by this Court in the case of **M/s. Bihar Gases** and **M/s. Balajee Wire Products** (supra) that on a similar issue being put to consideration in a matter arising from CWJC No. 5614 of 1999 (**Jai Mangla Steels Pvt. Ltd. Vs. Bihar State Electricity Board & Ors.**), the Bench referred the matter for consideration by a larger Bench in view of the divergent opinions taken note of in the reference order passed on 08.3.2002 which reads thus:

“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 (1996(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. 106)** 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:-

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

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 entitled 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 the 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 taken 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 29.7.1994 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 an 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 uncertainty I consider present to be a fit case for making reference to a larger Bench. The matter may be placed before My Lord the Chief Justice for constitution of a Division Bench for deciding the matter in accordance with law.”

It is in consideration of the relief claimed in the present batch of writ petitions as to the applicability of the circular dated 29.7.1994 on the claim raised under clause-13 of HT Agreement that these matters were directed to be put up after the disposal of the case of **Jai Mangla Steels Pvt. Ltd.** (supra) vide order passed on 31.7.2012.

The writ petition bearing CWJC No. 5614 of 1999 filed by Jai Mangla Steels Pvt. Ltd. (supra) was heard along with batch of writ petitions and the Division Bench vide judgment and order passed on 13.5.2016 has allowed the claims raised by the petitioner(s) in terms of the relief granted by the Jharkhand High Court in the case of **M/s. Rishi Cement Company Limited (supra)**. It is 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 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:-

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

Learned counsel for the contesting parties are in agreement that the issue raised in this batch of writ petitions and the relief prayed therein, is covered by the judgment rendered in the case of **Jai Mangla Steels Pvt. Ltd. (supra)** and other analogous cases and that these writ petitions can be disposed of on similar terms.

Having considered the legal position existing and the



submissions of learned counsel for the parties, the order(s) impugned in the respective writ petitions rejecting the claim raised by the petitioners under Clause 13 of the H.T. Agreement, are quashed and set aside. The claim raised by the petitioners put to consideration here in these writ petitions, are remitted before the competent authority which according to Mr. Vinay Kirti Singh learned senior counsel for the respondents, would be the Chief Engineer (Commercial) of the respective Distribution Company, for consideration of their claim afresh and for its disposal in accordance with law and in the light of the law laid down by the Division Bench in the case of **Jai Mangla Steels Pvt. Ltd (supra)**. Since the matters have remained pending for quite some time, an expeditious disposal preferably within a period of three months from the date of receipt/production of a copy of this order would serve the purpose.

The writ petitions are accordingly allowed in terms of the Division Bench judgment rendered in the case of **Jai Mangla Steels Pvt. Ltd. (supra)**.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09-03-2017
Transmission Date	NA

