IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1560 of 2015
IN
Civil Writ Jurisdiction Case No. 10495 of 2002

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M/s Patrons (India) Enterprises, a Partnership Firm, having its Factory at C-20, Industrial Area, Patliputra P.S.-Patliputra, District Patna through its Partner, Sri Birendra Gandhi.

.... Appellant/s

Versus

1. The Bihar State Electricity Board, Vidhut Bhawan, Bailey Road, Patna through its Chairman,
2. The Chief Engineer (Commercial) Bihar State Electricity Board, Vidyut Bhawan, Bailey Road, Patna.
3. The General Manager cum-chief Engineer, PESU, Strand Road, Patna.
4. The Electrical Superintending Engineer, PESU, West Mangles Road, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. S.D. Sanjay, Sr.Adv.
Mr. Alok Kumar Agrawal, Adv.
Mrs. Priya Gupta, Adv.
Ms. Parul Prasad, Adv.

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

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 24-04-2018

Challenging the judgment dated 22.06.2015 passed by the learned Writ Court in Civil Writ Jurisdiction Case No.10495 of 2002, the writ-petitioner has preferred this Intra-Court appeal.

2. The facts in brief are not in dispute. The appellant is running a rolling mill. Initially, he entered into a HT agreement with the Bihar State Electricity Board (hereinafter referred to as 'Board')

on 26th March, 1984 for 125 KVA of contract demand. On his request, the contract demand was extended to 300 KVA. The appellant executed a fresh agreement dated 12th December, 1995 and when he requested once again to sanction additional load of 235 KVA raising contract demand from 300 KVA to 535 KVA a third agreement dated 26th June, 1999 as contained in Annexure-5 to the writ application came to be executed. A glance over the HT agreement which is in the nature of a standard form agreement it would appear that the Board agreed to supply and the appellant/consumer agreed to take energy in bulk at the premises as fully described in the Schedule appended at the foot of the agreement. Clause 8, 9 and 12 of the agreement are relevant clauses on which the petitioner has raised an issue and, therefore, those clauses are quoted hereunder for a ready reference:-

> *"8. The agreement shall be ordinarily in force for a period of not less than three years in the first instance (except in exceptional cases in which written consent of the Board will be taken) from the date of commencement of supply, i.e. .... And thereafter shall continue from year to year until the agreement is determined as hereinafter provided.*
>
> *9. (a) The consumer shall not be at liberty to determine this agreement before the expiration of three years from the date of commencement of the supply of energy. The consumer may determine this agreement with effect from any date after the said period on giving to the Board not less than twelve calendar months previous notice in writing in that behalf and upon the expiration of the period of such notice this agreement shall cease and determine without prejudice to any right which may then have*

accrued to the Board hereinafter provided always that the consumer may at any time with the previous consent of the Board transfer and assign this agreement of any other person and upon subscription of such transfer this agreement shall be binding on the transferee and Board and take effect in all respect as if the transferee had originally been a party hereto in place of the consumer who shall henceforth be discharged from all liabilities under or in respect thereof.

(b) In case the consumer's supply is disconnected by the Board in exercise of its power under the agreement and/or law and the consumer does not apply for reconnection in accordance with law within the remainder period of the compulsorily availing of supply as stated above or the period of notice whichever be longer, he will be deemed to have been a notice on the date of the disconnection in terms of aforesaid clause 9(a) for the determination of the agreement and on expiration of the above said remainder period of compulsorily availing of supply or the period of notice whichever is longer, this agreement shall cease and determine in the same way as above.

xxxxxx xxxxxx xxxxxxx

12. In case the consumer desires to increase his contract demand the Board may require him to give twenty-four months" notice in writing stating the quantity of energy required but will not be obligatory on the part of the Board to supply the energy on such requisition".

3. It is not in dispute that every time when the contract demand was increased a fresh agreement has been executed. Dispute arose when the petitioner-appellant vide letter dated 08.09.2000 sent a notice in terms of Clause 9(a) of the agreement by registered post to the respondent Superintending Engineer requesting him to determine

the agreement dated 26th June, 1999 on the expiry of 12 calendar months from the date of receipt of the notice. The Board however disconnected the electric line of the appellant on 23rd July, 2001 when the petitioner could not pay the bills in the months of May and June, 2001. The Board continued to raise monthly bills for the months of July and August, 2001 which were at 75% of the contract demand, being the minimum chargeable irrespective of consumption being nil. The appellant is contesting the drawing of bills for the period after 7th September, 2001 as according to him on expiry of 12 months from the date of notice, the HT agreement stood terminated and no bill could have been raised after 7th September, 2001. Contention of the writ-petitioner did not find favour with the learned Writ Court.

4. Mr. S.D. Sanjay, learned senior counsel representing the appellant has assailed the impugned judgment submitting that the learned Writ Court has proceeded to consider the case of the writ-petitioner taking it as if it is a case relating to a dispute over the minimum guarantee charge. It is his contention that a bare perusal of Clause 12 of the HT agreement would show that the agreement provides for a request by the consumer who desires to increase his contract demand and for that purpose the Board was required to give twenty-four months notice in writing stating the quantity of energy required. Learned counsel would submit that no doubt in terms of

Clause 8 of the agreement there would be a lock in period of three years from the date of commencement of the supply, but the period of three years in the facts of the present case would be counted from the date of the first HT agreement. According to him, the subsequent agreements are mere supplemental agreement and cannot be taken as a fresh agreement between the parties. According to learned counsel, the Writ Court has erred in appreciating the terms of the agreement and the views taken by the learned Writ Court would result in a conflict amongst the various terms of the agreement and it would be rendered unworkable.

5. Mr. Vinay Kirti Singh, learned senior counsel representing the Board, however, contested the argument of the appellant and has drawn our attention to the crux of the impugned judgment of the learned Writ Court wherein it has been held that the agreement dated 26th June, 1999 enhancing the contract demand for 535 KVA will be treated to be a fresh agreement for the purpose of reckoning three years for determination of the agreement.

6. Contesting the submission of Mr. S.D. Sanjay, learned senior counsel for the appellant, Mr. Vinay Kirti Singh, learned senior counsel for the respondents would submit that the Writ Court has not committed any error in appreciation of the terms and conditions of the agreement. It is submitted that while considering the

submission of the writ petitioner, learned Writ Court has rightly gone through the judgment of the Hon'ble Apex Court in the case of **Bihar State Electricity Board Vs. Green Rubber Industries** reported in **AIR 1990 SC 699= (1990) 1 SCC 731** because in the said case the Hon'ble Apex Court was considering the various clauses of the agreement and the argument advanced on behalf of the parties about the nature of agreement. The Hon'ble Apex Court settled the law that a person who signs a document which contains terms and conditions contractual in nature would be bound by those terms and conditions even though he has not read them or is ignorant of the precise legal effect. In the said case, the issue was as to whether a consumer would be liable to pay minimum guarantee charges irrespective of whether any energy is used or not. The Hon'ble Apex Court relied upon the judgment of **House of Lords** reported in **1974(3) All ER 616 (Schroeder V. Macaulay)**.

7. The learned Writ Court found that the Hon'ble Apex Court has held that 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 while endeavoring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause. Following the analogy of the judgment of the Hon'ble Apex Court, the learned Writ Court further referred the

judgment of this Hon'ble Court in the case of **M/s Gaya Roller Flour Mills Pvt. Ltd. V. BSEB** reported in **1995 (2) PLJR 715** wherein Clause 9 of the HT agreement came for consideration. In the said case, this Court held that even though the line was disconnected the consumer is bound to pay the minimum guarantee charges for the period mentioned in the agreement. Further the issue of interpretation and effect of the agreement between the Board and the consumer came for consideration in the case of **M/s Mahakali Milling Company (P) Ltd. V. BSEB** reported in **2002(2) PLJR 230** wherein the Court has held that there is no dispute between the parties that even though it is allowed, a fresh agreement has to be entered into between the parties after observing the formality.

8. Having heard learned counsel for the parties and upon perusal of the judgment of the learned Writ Court, we find no illegality or infirmity in the impugned judgment. We are also of the view that by entering into a fresh agreement every time with increase in contract demand, the writ petitioner-appellant has undertaken the obligations provided in Clause 8 of the agreement and the agreement so executed shall be ordinarily in force for a period of not less than three years in the first instance (except in exceptional cases in which written consent of the Board will be taken). Various Clauses referred hereinabove would show that the nature of the agreement executed by

the parties are in the nature of a fresh and new contract because it refers to the Board agreeing to supply and the consumer agreeing to take energy in bulk at the premises as fully described in the schedule appended at the foot of the agreement.

9. The minimum lock in period of three years is in relation to the contract demand which was provided to the writ petitioner-appellant on his request by the Board. It is only because the writ petitioner-appellant agreed to the terms and conditions of the agreement that it shall be ordinarily in force for a period not less than three years in the first instance, the Board agreed to provide the contract demand as referred in the schedule appended to the agreement. A reading of Clause 12 of the agreement would show that the Board was not under obligation to supply and increase the demand on the request of the consumer, therefore if the Board has accepted the request of the consumer to provide increase in his contract demand on the consumer agreeing to undertake afresh that the agreement shall be ordinarily in force for a period of not less than three years, later on consumer cannot be allowed to say that he was not aware of the consequences of such agreement either in facts or in law. Contention of learned senior counsel for the appellant that it should be taken as supplemental agreement is not fit to be accepted because by doing so this Court sitting in its writ jurisdiction under Article 226 of the

Constitution of India would be re-writing the agreement for the purpose.

10. We find no merit in the Letters Patent Appeal. It is, accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
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