IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14279 of 2017

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M/s. Ambika Bhawani Cold Storage Private Limited, a Company Incorporated under the provisions of the Companies Act, 1956 having its place of business at Village Bakhra, P.S.-Saraiya, District Muzaffarpur, through its Director, Rajesh Kumar Singh, Son of Late Paras Nath Singh, Resident of Village-Bakhra, P.S. Saraiya, District Muzaffarpur.

... ... Petitioner

Versus

1. The North Bihar Power Distribution Company Limited, Vidyut Bhawan Bailey Road, Patna, through its Managing Director.
2. The Chief Engineer (Commercial), North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The Electrical Superintending Engineer, Muzaffarpur Electric Circle, North Bihar Power Distribution Company Limited, Bhagwanpur Chouk, Muzaffarpur.
4. The Electrical Executive Engineer, Electric Supply Division, Muzaffarpur (West), Muzaffarpur.
5. The Electrical Executive Engineer, Commercial & Revenue Division, Muzaffarpur Circle, Muzaffarpur

... ... Respondents

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Appearance :

For the Petitioner : Mr. Suraj Samdarshi, Advocate
Mr. Indrajesh Kumar, Advocate

For the Respondents : Mr. Vinay Kirti Singh, Sr. Advocates
Mr. Vijay Kumar Verma, Advocate
Mr. Akhileshwar Singh, Advocate

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date : 31-07-2018

Heard Mr. Suraj Samdarshi along with Mr. Indrajesh Kumar, Advocates for the petitioner and Mr. Vinay Kirti Singh along with Mr. Vijay Kumar Verma and Akhileshwar Singh, Advocates for the respondents-North Bihar Power Distribution Company Limited (hereinafter referred to as the Power Distribution Company).

2. The petitioner in the present writ application seeks quashing of the bill dated 01.09.2017 as contained in Annexure-7 whereby an outstanding amount of Rs. 7,23,338/- has been incorporated for the disconnection period between September, 2013 to March, 2017.

3. The brief facts of the case is that the electric supply of the petitioner was energised on 03.04.2008 under High Tension Category for the purposes of cold storage in the name and style of M/s Ambika Bhawani Cold Storage Pvt. Ltd. at Muzaffarpur having a contract demand of 250 KVA. The dispute arose in January, 2009 when conductor of HT line was stolen, which was restored in March, 2009, being levied charges for the disconnected period, which was disputed by the petitioner and again energy supply was disconnected from 30.03.2009 till 26.02.2010 wherein a dispute arose regarding minimum guarantee charges which had been levied and the petitioner disputed the said charges by virtue of Industrial Incentive Policy, 2006. The said dispute was ventilated before the CRGF, Muzaffarpur which passed order dated 13.12.2013 disallowing the claim of the petitioner of

waiving of DPS. The matter went in appeal before the Electricity Ombudsman in Appeal No. 01/2014, which by order dated 09.05.2014 set aside the order of the CGRF, Muzaffarpur setting aside the energy bills raised between 07.04.2008 to 02.02.2011 and other bills which included wrong arrears subsequent to 02.02.2011 and direction was to issue fresh bill giving exemption in electricity duty and waiving of MMG from 07.04.2008 and discounting of DPS. The disputed bills were before the CGRF and the Ombudsman for an amount of Rs. 51,23,731/- showing arrears of Rs. 44,30,951/- vide bill dated 13.08.2011 as contained in Annexure-2. The order of the Electricity Ombudsman dated 09.05.2014, passed in Appeal No. 01/2014 having not been complied with, the petitioner moved this Court in C.W.J.C. No. 20851 of 2014 for implementation of the order dated 09.05.2014, Annexure-1 and this Court vide its order dated 19.05.2017 (Annexure-4) directed the petitioner to appear before the Chief Engineer (Commercial), North Bihar Power Distribution Company Limited, who would issue the corrected bills after resolving the dispute.

4. It may be noted that in pursuance to the interim order passed by this Court dated 17.03.2017 in the earlier writ application, a bank draft of Rs. 10 lakhs was deposited and on the

direction of this Court the disputed bill was revised to Rs. 35,16,116/-. During pendency of the writ application a communication thereof was sent to the petitioner vide letter dated 15.04.2017 from April, 2008 to February, 2013 which also reflected the DPS charge for the disconnected period. But the said bills were directed to be re-examined by this Court vide order dated 19.05.2017 as contained in Annexure-4. In compliance to the order dated 19.05.2017, passed in C.W.J.C. No. 20851 of 2014 Power Distribution Company then sent a revised bill dated 01.09.2017 of Rs. 12,77,324 in which arrears of energy of Rs. 7,23,338/-, which is actually charges for the disconnected period between September 2013 to March, 2017, had been incorporated which has been challenged by the learned counsel for the petitioner as being incorrect, illegal and without any basis and in the teeth of the order passed by the Electricity Ombudsman.

5. Learned counsel for the petitioner submits that the bill dated 16.08.2017 contained in Annexure-5/A shows the statement of impugned bill charged from September, 2013 to June, 2017 and Annexure-5B Item-2 shows charges from September, 2013 to March, 2017 (disconnected period) to the tune of Rs. 7,23,338/-, which ought not to have been charged. He submits that as per own showing of the Power Distribution Company in their counter

affidavit, paragraph-7 enclosing details of the said amount of Rs. 7,23,338/- (as per paragraphs 8 and 9) shows that the claim is as per Clause 7.14(4) of the Bihar Electricity Supply (2nd Amendment) Code, 2007 (hereinafter referred to as the Code, 2007). He contends that the said charges could not have been levied firstly because it was for the disconnected period and secondly it is in the teeth of the order of the Electricity Ombudsman, as according to Clause 7.14(4), in case, the service line of the consumer has not been removed by the licensee and if a consumer desires to revive his permanently disconnected connection, it may be revived after payment of demand charges/ fix charges and minimum charges and disconnection/ reconnection charges by the consumers for the period of disconnection. It is submitted that the service line has neither been removed nor permanently disconnected by the licensee as the line had been restored on 17.03.2017 and, thus, Clause 7.14(4) would not be relevant to the facts of present case. For ready reference Clause 7.14(4) of the Code, 2007 is extracted hereinbelow :

> "In case the service line has not been removed by the licensee and a consumer desires to revive his permanently disconnected connection, it may be revived after payment of demand charges/ fix charges and minimum charges and disconnection/reconnection charges by the

consumers for the period of the disconnection"

6. Counsel for the petitioner further contends that this Court in a catena of decisions has held that once energy bills are revised by the licensee itself accepting the arrears (here a demand on revision was raised by the respondents of Rs. 51,23,731/- as on 15.03.2013{Annexure-2}, revised to Rs.35,16,116/- on 15.04.2017 {Annexure-3A} and further revised to Rs. 9,45,154/- vide bill dated 16.08.2017{Annexure-5A}), the charges for the disconnected period arising from non-payment of such illegal demand cannot be justified. For the said proposition, he relies on the judgment of this Court in the case of ***M/s Electric (Patliputra) Power Equipment Private Ltd. vs. The Bihar State Electricity Board and others*** since reported in ***1992(2) PLJR 62, paragraph 3*** stating therein that if the earlier electricity bills having been quashed and subsequent bills, which relate to the present period, no minimum charges could be levied for the disconnected period.

7. This proposition has further been reiterated by this Court in the case of ***M/s Iceberg Industries Ltd. vs. The Bihar State Electricity Board & Ors.*** since reported in ***2010(4) PLJR 574, paragraph 26*** with a reasoning that if it is found that the disconnection was illegal then the Board (here Power Distribution Company) is not entitled to levy any such charge simply because

that would give premium to the Board to disconnect the supply illegally, which amounts to unjust enrichment. For ready reference paragraph 26 is extracted hereinbelow :

> *"26. The consequence of this illegal disconnection gives rise to the second issue. I need not dwell upon this as this issue has been settled by several judgments of this Court including a division Bench judgment of this Court in the case of M/s Electric (Patliputra) Power Equipment Private Ltd. since reported in 1992(2) PLJR 62. There the Board contended that having disconnected the line, the consumer was liable to pay the minimum amount during the disconnected period in the shape of minimum guarantee charges etc. This was negatived by this Court, where it found that if the disconnection was illegal then Board is not entitled to levy any such charge, simply because that would give premium to the Board to disconnect illegally, which amounts to unjust enrichment. This court felt so because if one illegally disconnect and then he turn around and demands charges for the period for which he has not supplied electricity and deprived the consumer from consuming electricity and forcing it to pay the amount being the minimum amount for disconnected period would be arbitrary and expropriatory. Such an attitude cannot be but termed as arbitrary and illegal."*

8. He submits that the case of M/s Iceberg Industries Ltd. (supra) has been affirmed by the Division Bench in appeal in

the case of ***Bihar State Electricity Board through its Chairman, Patna vs. Ice Berg Industries Ltd. and Ors.*** since reported in ***AIR 2013 Patna 78, paragraph 21*** and that if the MMG and DPS for the period of disconnection was disallowed by the Ombudsman reiterating the subsequent illegal bill also for the period of disconnection, the same would be held to be illegal.

9. He further contends that even under the Code, 2007 under Clause 10.20 the temporary disconnection has to be restored after the outstanding charges/ dues, amount of installment fixed along with disconnection/ reconnection charges as applicable is paid by the consumer. He submits that the case of the petitioner would squarely fall under Clause 10.14(C) of the Code, 2007, which says that if it is found that the bill is erroneous the licensee would furnish a revised corrected bill. It does not stipulate levy of delayed payment surcharge or charges like meter rent and minimum charges as figured in the impugned bill dated 01.09.2017, break up of which has been provided by the Power Distribution Company in their counter affidavit. He, thus, contends that the charges for the disconnected period from September, 2013 to March, 2017 of Rs. 7,23,338/- in the revised bill dated 01.09.2017, which is order under challenge, cannot be sustained in the eye of law, is not in accordance with the provisions of Code,

2007 and the law laid down by this Court as well as in the teeth of the order dated 09.05.2014, passed by the Electricity Ombudsman in Appeal No. 01/2014 (Annexure-1).

10. Counsel for the Power Distribution Company, however, submits that the bills were revised in pursuance to the order of the Electricity Ombudsman on monthly basis and through detailed calculation. The petitioner has paid only Rs. 2,21,816/- out of a sum of Rs. 9,36,530/- on 30.08.2017 deleting the amount of the so called disconnected period and the bill of Rs. 51 lakhs and odd was revised to nearly Rs. 9 lakhs and as per Clause 9.22 of the Code, 2007 petitioner is required to pay energy charges including other charges. In this connection, he relies on the judgment in the case of ***Bihar State Electricity Board, Patna and others vs. M/s. Green Rubber Industries and others*** since reported in ***AIR 1990 SC 699*** stating therein that if the consumer enters into an agreement with the Electricity Board with stipulation to pay MMG charges whether energy consumed or not, the consumer is liable to pay the same till the agreement subsists. Hence, the charges of meter rent and minimum charges for the disconnected period between September, 2013 to March, 2017 is in accordance with law.

11. After hearing the rival submissions of the parties, it is apparent that the impugned bill dated 01.09.2017 wherein outstanding amount of Rs. 7,23,338/- has been shown as arrears for the disconnected period is in the teeth of the order passed by the Electricity Ombudsmen and is contrary to the decisions rendered by this Court in the case of ***M/s Electric (Patliputra) Power Equipment Private Ltd.*** (supra) and ***M/s Iceberg Industries Ltd.*** (supra) affirmed by the Division Bench, as such, the writ application is allowed with the following directions and observations :

(i) The Power Distribution Company would have to delete from the demands being made as against the petitioner for the disconnected period between September, 2013 to March, 2017 as the petitioner cannot be made to pay for such disconnected period.

(ii) As this Court has found that the amounts as claimed were incorrectly charged, the bills would be revised, which would not contain charges for the disconnected period i.e. from September, 2013 to March, 2017.

12. Petitioner by way of I.A. No. 3845 of 2018 has prayed for a direction to the respondent authorities restraining them from disconnecting the electricity supply of the petitioner in

furtherance to the letter No. 7034 dated 21.04.2018, which is sought by way of amendment in the said I.A.

13. The respondent authorities would not disconnect the electricity supply of the petitioner till the revised bill are issued deleting the charges for the disconnected period i.e. from September, 2013 to March, 2017 and the DPS charged on the said amount in the subsequent bills.

14. I.A. No. 3845 of 2018 is also allowed.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	20.07.2018
Uploading Date	31.07.2018
Transmission Date	NA