

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12174 of 2018

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M/s. Mehrotra Engineering Works Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Bela Industrial Estate, Muzaffarpur, through one of its Directors, Sunil Mehrotra S/o Dwarika Natha Mehrotra R/o Juran Chhapra, Road No. 1 Town & 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, Vidyut Bhawan, Bailey Road, Patna
3. The Electrical Superintending Engineer, Electric Supply Circle, Muzaffarpur
4. Muzaffarpur Vidyut Vitran Limited, Power House Chouk, Opposite Government Circuit House, Gobarsahi Road, Maripur, Muzaffarpur, through its Chief Executive Officer
5. The General Manager, Finance, Muzaffarpur Vidyut Vitran Limited, Power House Chouk, Opposite Government Circuit House, Gobarsahi Road, Maripur, Muzaffarpur,
6. The Business Head, Muzaffarpur Vidyut Vitran Limited, Power House Chouk, Opposite Government Circuit House, Gobarsahi Road, Maripur, Muzaffarpur,

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate
For Respondent/s	:	Mr. Sanjay Kumar Giri, Advocate
		Mr. Binod Kr. Singh, Advocate
		Ms. Vagisha Pragya Vacaknavi, Advocate
		Mr. Pratyush Pratap Singh, Advocate

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
C.A.V. JUDGMENT

Date : 10-10-2018

Petitioner in the present writ application has prayed for the following reliefs :



(i) For a direction to the respondent authorities and in particular respondent no. 4 and 5, to restore the electric supply of the petitioner which has been disconnected despite an interim protection granted by the Consumer Grievances Redressal Forum, Muzaffarpur under Section 42(5) of the Electricity Act, 2003.

(ii) For a direction to the respondent no. 2 and 3 to ensure that the Distribution Franchise should abide by the orders which are being passed under Section 42(5) of the Electricity Act, 2003 and upon their failure to do so, compensate the petitioner for the period of disconnection.

(iii) For a direction to the respondent authorities to revise the energy bill of the petitioner and grant installment facility, so that the petitioner can make payment of the outstanding amount; and for any other relief or reliefs to which the petitioner is found entitled.

2. The petitioner, a Private Limited Company through one of its Director Sunil Mehrotra, is primarily engaged in supply of fabricated materials to the South Bihar Power Distribution Company Limited (in short SBPDCL) and North Bihar Power Distribution Company Limited (in short NBPDCCL). The petitioner is a high tension consumer having a contract demand of 270 KVA under HTS-1 category bearing Consumer ID No. 0300000217. Earlier the electric supply of the petitioner was disconnected since 16.01.2016 for non-payment of energy charges to the tune of Rs.



1117993=00 as it stood on 10.09.2016, against which the petitioner had moved this Court in CWJC No. 16600 of 2016 claiming interest on security deposit of Rs. 5,83,002=00 deposited on 16.09.2009 and exemption from payment of electricity duty under Industrial Incentive Policy of 2006 and 2011 as well as restoration of electric connection. This Court vide order dated 15.12.2016, passed in C.W.J.C. No. 16600 of 2016 directed the Managing Director, NBPDCCL to dispose of the claim of interest on security deposit and exemption of electricity duty under Industrial Incentive Policy of 2006 and 2011 within a period of six weeks. So far as restoration of electricity connection, this Court directed the petitioner to deposit Rs. 4 lakhs by 31st December, 2016 and on such deposit the electricity connection would be restored within 48 hours and the petitioner would accompany the said demand with an undertaking before the Franchisee regarding the schedule of payment. The petitioner was also directed to deposit Rs. 3 lakhs by 31st January, 2017 along with current charges as it existed on the date of order dated 15.12.2016 which would be deposited within the time stipulated in the bills. This Court fixed equal installments of Rs. 1 lakh to be paid by 15th of each month with effect from February, 2017 until the clearance of entire balance arrears. This Court further observed that if there was default in payment of



either the instalments or the current bills the Franchisee would be at liberty to disconnect the electricity supply.

3. Admittedly, the petitioner did not adhere to the said schedule of payment as directed by this Court in the earlier round of litigation. However, the petitioner approached the respondent Franchisee (respondent nos. 4 to 6) on 30.12.2017 vide Annexure-2 and deposited Rs. 4 lakhs on 01.01.2018 after which the electricity connection was restored by the respondent, Franchisee. In the meantime, the petitioner's claim for interest on security deposit and exemption for electricity duty had been disposed of by the respondent no. 1 on 02.02.2018 by which it was observed that Rs. 1,97,635=08 had already been adjusted in financial year 2009-10 to 2015-16 and a sum of Rs. 36051=18 was proposed to be adjusted for the financial year 2016-17 by the Franchise in the next energy bill of the consumer which related to interest on security deposit. So far as exemption against electricity duty under the Industrial Incentive Policy of 2006 and 2011 of the Government of Bihar is concerned, an adjustment of Rs. 218519=26 was directed to be adjusted within a fortnight. Such order was passed on 09.02.2018 by the respondent no. 1 as contained in Annexure-4.

4. However, the petitioner was issued a bill of Rs. 23,82,497=80 dated 05.02.2018 for the month of January, 2018



which was to the utter surprise of the petitioner as against the outstanding amount of Rs. 11,17,993=00 as in January, 2016 and after payment of Rs. 4 lakhs the bills could not be exaggerated to the tune of Rs. 23-24 lakhs as contained in Annexure-5 to the writ application. Immediately thereafter vide Annexure-7 disconnection notice dated 28.02.2018 was served showing outstanding amount of Rs. 1267727=00 till January, 2018. The Petitioner represented to the authorities to adjust the amount of Rs. 2,18,519=00 which was a remission granted by the Managing Director by his order dated 09.02.2018. Failing to get any response the petitioner moved the Consumer Grievance Redressal Forum, Muzaffarpur constituted under Section 42(5) of the Electricity Act, 2003 as the issue involved was purely revision of bills. The said Complaint No. 23/2018 was filed on 21.03.2018 and an ad interim order of stay of disconnection was passed by the CGRF, Muzaffarpur dated 28.03.2018 directing the petitioner to deposit the outstanding dues as per the order of this court in CWJC No. 16600 of 2016 and adjourned the matter to 25.04.2018 for the respondents to file their reply. However, supply was disconnected on 24.04.2018 but restored on 26.04.2018. In spite of representation, the bills of the petitioner was not revised and again disconnection of electricity supply was made on 04.05.2018.



5. Learned counsel for the petitioner Mr. Suraj Samdarshi submits that in spite of the fact that outstanding dues till January, 2016 was Rs. 11,17,993=00 and in spite of the fact that Rs. 4 lakhs was deposited by the petitioner but respondent Franchisee has neither adjusted the amount of Rs. 2,18,519=00 which had to be adjusted as per the proceeding held by the respondent Managing Director and inflated bill of Rs. 23,82,497=00 till January, 2018 has been issued which included current charges even for the disconnection period. He submits that on 28.02.2018 a disconnection notice for outstanding amount of Rs. 12,67,727/- was issued (Annexure-7), which shows that the respondents themselves do not know as to what is the actual amount which is required for payment by the petitioner. He further submits that in spite of disconnection of electricity, charges for the disconnected period along with delayed payment surcharge has been levied which has been held to be bad in law by this Court in the case of *M/s Iceberg Industries Ltd. vs. The Bihar State Electricity Board and others* since reported in **2010(4) PLJR 574** and a recent order passed by this Court in CWJC No. 14279 of 2017 dated 31.07.2018. He submits that without adjustment of electricity duty exemption of Rs. 2,18,519=26, as directed by respondent no. 1 to be adjusted in the bill within a fortnight, no



such adjustment has been made, hence, disconnection is bad in law.

6. Learned counsel appearing for the NBPDC, respondent nos. 1 to 3, however, submits that the petitioner had raised his grievance before the Consumer Grievance Redressal Forum in Complaint Case No. 23/2018 for revision of the bill and issuance of fresh corrected bill and simultaneously has approached this Court for the same relief, hence, the writ is not maintainable.

7. Learned counsel for the Franchisee-respondent nos. 4 to 6, however, has filed its counter affidavit and supplementary counter affidavit stating therein that the petitioner had not honoured the earlier order dated 15.12.2016, passed by this Court in CWJC No. 16600 of 2016 by which he had to deposit Rs. 4 lakhs by 31st December, 2016 and another Rs. 3 lakhs by 31st January, 2017 along with current bills and arrears of Rs. 1 lakh in equal monthly installment with current bills which he failed to do. Rs. 4 lakhs was deposited on 30.12.2017. However, two cheques of Rs. 2 lakhs each for the month of March and April had bounced and the respondent Franchisee after payment of Rs. 4 lakhs had resumed supply immediately in January 2018, but since the petitioner did not pay the energy bill from January, 2018 to April, 2018 his energy supply was disconnected on 04.05.2018. He



submits that the balance arrear bills, as it existed on the date of the order dated 15.12.2016, had to be paid by the petitioner as directed by this Court in CWJC No. 16600 of 2016 and the bills served to the petitioner is correct and not exaggerated. The respondent Franchisee has enclosed a chart as contained in Annexure- R/5 stating therein that the electricity supply was disconnected on account of non-payment of arrears as well as the current bills and that the bill of Rs. 23,82,497=00 is not an exaggerated bill. He submits that the petitioner did not honour the earlier order of this Court which was a conditional order and has not adhered to the schedule of payment as envisaged in the earlier writ application. He submits that the bill has already been revised in pursuance to the order passed by the Managing Director granting electricity duty exemption of Rs. 2,18,519=26 on 21st January, 2018 and 5th April, 2018 as is evident from the chart annexed as Annexure-R/5. Counsel for the respondent Franchisee also then refers to Chapter 9 of the Bihar Electricity Supply Code, 2007, Clause 9.20 (h)(s)(t) (w), which is related to billing. Clause 9.20 (h) is the tariff category. Clause 9.20(s) is the current month charge and energy charges, fixed/demand charge, Minimum Charges, Fuel Price and Power Cost Adjustment (FPPCA) Charges, Electricity Duty, Cess, meter rent, Capacitor surcharge, security deposit instalment,



Rebate allowed, others, if any. Clause 9.20(t) relates to arrear electricity charges, delayed payment surcharge arrears and Clause 9.20(w) relates to delay payment surcharge. Learned counsel then refers to chapter-7 Clause 7.3, 7.4, 7.5(a), 7.7 and 7.14 (2) that after connection is temporarily disconnected, a consumer is billed on minimum charges and the consumer shall be liable to pay the demand charges or minimum charges applicable. He then refers to clause 10.14 (e), 10.16, 10.17 and 10.20 stating therein that after temporary disconnection the supply shall be restored only after the consumer pays the outstanding charges/dues/amount of instalment fixed along with disconnection/reconnection charges as applicable, hence, it is not a case of exaggerated bills, fair payment by the petitioner and the writ application ought to be dismissed with heavy costs.

8. Learned counsel for the petitioner, however, in reply, submits that both parties have waived their rights with regard to compliance of order dated 15.12.2016, passed in C.W.J.C. No. 16600 of 2016 as when the petitioner offered payment of Rs. 4 lacs, which ought to have been paid by 31st December, 2016 as first installment, the respondent Franchisee had accepted payment on 30.12.2017 and had reconnected the electricity supply on such payment, hence, on the principle of waiver, the Franchisee



Company has waived its right. He then refers to the case of *M/s Gaya Roller Flour Mills Pvt. Ltd. Vs. Bihar State Electricity Board & Ors.* since reported in *1995 (2) PLJR 715 paragraphs-9 and 10* stating therein that delayed payment surcharge would apply only after revision of the outstanding dues after giving remission and adjustment. For the similar proposition, the petitioner has also relied on the case of *Manvendra Narain Agrawal Vs. The Bihar State Electricity Board & Ors.* since reported in *2002 (3) PLJR 510 paragraphs-8 and 9* stating therein that minimum guarantee charge could be levied after disconnection but would not apply to cases where disconnection has unlawfully been made by the Board and refers to the case of *M/s Electric (Patliputra) Power Equipment Pvt. Ltd. Vs. The Bihar State Electricity Board & Ors.* since reported in *1992 (2) PLJR 62 (DB) paragraph-3 and 4* followed in the case of *M/s Iceberg Industries Ltd.* (supra), paragraph 29. Petitioner also refers to the order dated 08.09.2016, passed in Civil Review No. 110 of 2016 (*M/s J.M.D. Alloys Limited Vs. The Bihar State Electricity Board & Ors.*), reference being made to paragraph-64, stating that if the electricity bills are raised wrongly, the bill on being revised would not contain delayed surcharge on the balance due in view of the Division Bench judgment of this Court in the case of *Gaya Roller Flour*



Mills Pvt. Lid. (supra), hence, the petitioner prays that the electric bills be revised in accordance with law.

9. Heard the parties.

10. Ordinarily, I would have rather remitted the matter to the Consumer Grievance Redressal Forum, Muzaffarpur, which is in seisin of the matter, as Complaint Case No. 23 of 2018 has been filed for revision of the bill and issuance of fresh corrected bill, but from perusal of the counter affidavit filed by respondent nos. 4 to 6 the Franchisee Company, it is evident that admittedly the dues were Rs. 11,17,993=46 as on 16.01.2016 but from the chart annexed by the Franchisee Company (Annexure-R/5), the said amount does not figure, rather on 05.01.2016 the bill segment shows current balance of Rs. 9,12,470=71. It is because of these discrepancies that this Court had directed the counsel for the Franchisee Company to produce the chart of outstanding dues vide order 08.08.2018, in pursuant to which supplementary counter affidavit has been filed showing the chart, which also does not show the said amount of Rs. 11,17,993=00 as on 16.01.2016, rather the said amount figures somewhere in the bill of June, 2016. The calculation by the Franchisee Company is totally amiss. More so, when in the bill of 05.02.2018, which was the calculation till January, 2018 a sum of about Rs. 24 lakhs and odd was shown, the



disconnection notice soon thereafter on 28.02.2018 was served showing an outstanding dues of Rs. 12,67,727=00. Such discrepancies and calculation shows the haphazard manner in which it was prepared. Further the adjustment of Rs. 2,18,519=26 as directed by Respondent No. 1 to be adjusted in the bills of the petitioner vide order dated 09.02.2018 within a fortnight also does not seem to be adjusted as per perusal of Annexure- R/5. Thus, the prayer for revision of electricity bill of the petitioner is disposed of in the peculiar facts and circumstances with the following directions:-

(i) The Franchisee Company, respondent nos. 4 to 6 would calculate the arrears for non-payment of energy charges to the tune of Rs. 11,17,993=00 as on 16.01.2016.

(ii) The Franchisee Company would calculate only DPS for the outstanding dues as on 16.01.2016 till the date of restoration of electric supply.

(iii) The Franchisee Company would give deduction of the amount of Rs. 4 lakhs deposited by the petitioner on 30.12.2017 and work out the outstanding as on 01.01.2018.

(iv) The Franchise Company would give an exemption against electricity duty as decided by the Managing Director,



respondent no. 1 dated 02.02.2018 in the bills of February, 2018 of an amount of Rs. 2,18,519=26.

(v) The Franchise Company would calculate the current charges between January, 2018 till the date of disconnection i.e. 04.05.2018 and the arrears outstanding with regard to calculation has to be done as stated above.

(vi) The Franchisee Company would then calculate the outstanding dues as on 04.05.2018 till 10th of October, 2018 and serve the copy of the bill to the petitioner.

(vii) The petitioner would make a deposit of Rs. 5 lakhs by 31st of October by account payee cheque, bank transfer or RTGS or any other mode and as soon as the amount is transferred, the electricity supply of the petitioner shall be restored within 48 hours of realization of Rs. 5 lakhs.

(viii) The petitioner shall deposit Rs. 3 lakhs by 30th November, 2018 together with payment of current charges, which should be deposited within the time stipulated in the bill.

(ix) The arrear bills outstanding, if any, would be deposited by the petitioner by 31st of December, 2018 together with payment of current charges, which should be deposited within the time stipulated in the bill.



(x) It goes without saying that any default on the part of the petitioner in making payment of either the instalments or the current bills would grant liberty to the Franchisee to disconnect the electricity supply.

11. The writ application is disposed of accordingly.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	31.08.2018
Uploading Date	10.10.2018
Transmission Date	NA

