

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 4409 of 2007**

1. The Chief Engineer (Commercial), Chhattisgarh State Power Distribution Co. Ltd., Daganiya, Raipur, Chhattisgarh
2. The Superintending Engineer (City Division), Chhattisgarh State Power Distribution Co. Ltd, Daganiya, Raipur, Chhattisgarh
3. Chhattisgarh State Power Distribution Co. Ltd., through its Secretary, Chhattisgarh State Power Distribution Co. Ltd., Daganiya, Raipur, Chhattisgarh

---- Petitioners**Versus**

1. The Electricity Ombudsman, D-9 Electricity Board Complex, Gudhiyari, Raipur, Chhattisgarh
2. M/s Birmiwal Steels Pvt. Ltd., through its Director, Block No.6, Sarora, Ring Road No.2, Urla Industrial Estate, Raipur (CG)
3. The Chhattisgarh State Electricity Regulatory Commission, through its Secretary, G.E.Road, Civil Lines, Raipur (CG)

---- Respondents

For Petitioners	:	Shri Abhishek Sinha, Advocate
For Respondent No.2	:	Shri Pragalbh Sharma and Shri Trivikram Nayak, Advocate

S.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****27/11/2019**

This petition, under Article 226 of the Constitution of India, is preferred against order dated 29/05/2007 passed by the Electricity Ombudsman allowing application of the consumer and granting him benefit of relaxation / exemption as provided under Clause 23 (a) of the High-tension Agreement entered into between the parties in the matter of supply of electricity.

2. Respondent No.2 / industrial unit, engaged in production of steel had entered into agreement for purchase of power from the petitioner / electricity board under agreement dated 05/07/2003, for supply of 800 KVA electricity, power for consumption in its manufacturing unit. In course of time, respondent No.2 required higher supply of energy, in respect of which, it made an application to the petitioner for increasing electricity supply for additional load of 3800 KVA electricity, on 05/03/2004. The request of the industrial unit was accepted and Electricity board / petitioner agreed to supply additional load of 3800 KVA. A supplementary agreement for additional supply with change of tariff was accordingly executed on 27/05/2004. The petitioner, thereafter, served a notice on 17/01/2005 to the manufacturing unit informing that the additional power is available for being supplied and therefore, the unit was requested to avail additional power within 15 days from the issue of letter. It was also stated that the consumer shall be liable to pay to the board, minimum charges from the 1st day of availability of supply referred to in the notice. In response thereto, the consumer, vide letter dated 31/01/2005 stated that the work of extension of 0.45 Kms 33 KV line was not completed by the petitioner due to which, the erection work could not be completed. The consumer, therefore, requested to withdraw 15 days notice, complete extension work of 0.45 Kms 33 KV line. It was further stated that after installation of CTPT unit of correct loading, a fresh 15 days notice may be issued so that the consumer may be able to avail the supply.

3. The petitioner / Board completed the balance work of extension of 33 KV line and then again issued notice to respondent No.2 on 15/04/2005 stating that the additional load is available and the consumer may avail additional power within 15 days of the notice. Consequences that may flow, as stated in the earlier notice, were again repeated. The consumer, however, vide its letter dated 04/05/2005 informed the competent authority of the petitioner that the employees have gone on

an indefinite strike from 03/05/2005 resulting in complete shut down of the plant. It was also stated that, though, negotiations are going on, but it is uncertain as to when the plant will resume its production and in these circumstances, the consumer may not be able to use the power till the strike is on. On such statement of fact, the consumer requested the authority to extend the benefit of reducing the load as per clause 23 (a) of the High Tension Agreement and requested to again get a meter reading and reduce the load minimum to light and fan only. The petitioner, however, partly accepted the request. Vide letter dated 27/06/2005, the Additional Chief Engineer – II (Commercial) in the office of the Chief Engineer (Commercial), CG Electricity Board addressed to Chief Engineer (RR) C.S. Electricity Board, Raipur informed that request of the consumer has been considered by the competent authority and though, it has been found that there was labour strike in the plant from 03/05/2005 to 29/07/2005, the consumer nevertheless, could not avoid liability for payment of tariff minimum charges for additional 3600 KVA from 04/05/2005 because the consumer restricted itself from availing additional load by not submitting required provisional permission from the Electrical Inspector which ultimately was submitted on 30/08/2005. However, the request for relaxation in terms of clause 23 (a), in so far as supply of load of 800 KVA is concerned, the same was accepted.

4. The consumer, feeling aggrieved by the part of the order, by which, his request for grant of relaxation / exemption under clause 23 (a) in respect of additional load of 36 KVA was rejected, moved an application before the Electricity Consumers' Grievances Redressal Forum. The Forum also recorded that as the Consumer was issued provisional permission only on 30/08/2005 by the Chief Electrical Inspector, State of Chhattisgarh, notwithstanding the fact that the plant was closed down on account of strike from the period from 03/05/2005 to 29/05/2005, the benefit of relaxation as provided under Clause 23 (a) would not be

available to the consumer.

5. The consumer availed further remedy of filing of application before the Electricity Ombudsman. Petitioner's claim found favour as the Ombudsman recorded a finding that on account of lock out and strike in the plant from 03/05/2005 to 29/05/2005, the consumer, notwithstanding the fact that Electrical Inspector had not granted provisional permission during that period, was entitled to such relaxation. It is this order which is under challenge before this Court.

6. Learned counsel appearing for the petitioner contended before this Court that clause 23 (a) of the agreement in respect of the additional demand could be invoked only when consumer suffers from disability, impediment as stated in that clause. According to him, if the consumer suffers from more than one disability, one being as specified under clause 23 (a) and the other not included therein, benefit of relaxation would not be available. Applying the aforesaid interpretation to the facts of this case, he argued that even if there were no lock out and strike in the plant during that period, it could not have availed supply of additional load of 3600 KVA, because it was not possessed of required certificate / permission from the Electricity Inspector as required under Rule 63 of Indian Electricity Rules, 1956. His argument is that such disability is not covered under clause 23. Therefore, clause 23 (a) would be of no avail to the consumer. His further submission is that the relaxation clauses are required to be read as it is and it cannot be relaxed so as to include other eventualities which are not covered therein to seek exemption / relaxation. Learned counsel further added that unless the consumer is statutorily competent to receive supply, clause 23 (a) could not be invoked on any of the grounds stated therein.

7. Per contra, learned counsel for the respondent would submit that clause 23 (a) has rightly been held to be applicable to the case of the consumer because

even if the consumer would have obtained certification / permission from the Chief Electrical Inspector in terms of Rule 63 of the Rules of 1956, the fact remains that the plant was under lock out and strike between the period from 03/05/2005 to 29/07/2005. Therefore, it is contended, the relaxation clause is required has to be invoked in favour of the respondent / consumer.

8. I have heard learned counsel for the parties.

9. The decision on the issue arising for consideration on this case depends upon clause 23 (a) of the agreement which is reproduced herein below -

“23 (a) - If at any time the consumer is prevented from receiving or using the electrical energy supplied under this Agreement either in whole or in part through lock-out, strike, riot, insurrection, command of civil or military authority, fire, explosion act of God, other unavoidable cause or natural calamity (hereinafter call the “Break down”), then and in any such case, the consumer on giving notice in writing to the Board of such breakdown shall not be required to pay for a greater supply of electrical energy under this Agreement than the consumer may require (hereinafter referred to as “the reduced supply”) during such time as the said work and premises may be wholly or partially unfit for occupation or use. Provide nevertheless on the expiration of period of Agreement referred to in clause 28, hereof this Agreement shall continue to remain in force for a further period equal in lengthy to the period during which the “reduced supply” under this clause shall have continued and provided also that the Consumer shall pay for the said reduced supply at such rate as under the Board's tariff for the area for the time being in force the Consumer shall elect to be changed.”

10. The aforesaid clause is in the nature of relaxation clause. It relaxes the liability towards payment of minimum charges payable by consumer to the Board under Clause 21 (a).

11. The respondent has not disputed its liability for payment of minimum charges under the agreement but his case has been that he is entitled to relaxation as provided under Clause 23 (a).

12. On the last date of hearing, during the course of argument, it was found that the petitioner has placed on record supplementary agreement and proforma of the agreement for High-Tension power supply as Annexure P/10. A copy of the agreement which was entered into between the parties was not on record. This Court, therefore, granted both the parties, an opportunity to place on record, copy of agreement entered into between the parties. However, none of the parties are able to submit copy of agreement and expressed their inability to place it on record.

However, there is no dispute that Clause 23 (a) exists in the agreement between the parties. The dispute is only with regard to applicability of the said clause.

13. It is not in dispute that the factory of respondent No.2 had to remain shut down because of strike of the labours from 03/05/2005 to 29/07/2005. The petitioner, itself, in para 5.16 of its pleadings has stated this fact. In his order Annexure P/11, by which, the claim of the consumer was partly allowed, it has been clearly stated that according to the petitioner, in the plant, there was lock out from 03/05/2005 to 29/07/2005. This is clearly covered under clause 23 (a) of the agreement between the parties wherein it has been clearly provided that if the consumer is prevented from receiving or using the electrical energy supplied under the agreement either in whole or in part for such reason of lock out or strike, the relaxation clause would be invokable to ease the liability towards payment of minimum charges.

True it is that the respondent / consumer had also applied for grant of provisional certificate in terms of Rule 63 of the Rules of 1956 before the Chief Electrical Inspector which was ultimately granted to it only on 30/08/2005, but then,

even assuming that such certificate would have been issued in its favour earlier also, the fact remains that the plant remained closed from 03/05/2005 to 29/07/2005. Therefore, it could be a ground for seeking invocation of relaxation under Clause 23 (a) of the agreement.

14. The Ombudsman, after examining the agreement between the parties, has taken the view that on account of lock out and strike, clause 23 (a) was invoked notwithstanding the fact that certificate was issued by Chief Electrical Inspector only on 30/08/05. At best, the argument of learned counsel for the appellant can be said to be another possible view. The view which has been taken by the Ombudsman cannot be said to be so irrational, patently illegal or arbitrary that this Court, in exercise of powers under Article 226 of the Constitution of India, interfere with the same. Therefore, no case is made out for interference. The petition is, accordingly, dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge