IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5682 of 2020

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M/s Dadiji Steels Pvt. Ltd. a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 308, Narayan Plaza, Exhibition Road, P.S. Gandhi Maidan, District- Patna through one of its Directors, Ramesh Chandra Gupta, Male, (Aged about 61 Years), S/o late Shriram Gupta, Resident of 502,Santosha Complex, Bandar Bagicha, Fraser Road, P.S. Kotwali, District- Patna.

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Energy, Main Secretariat, Patna.
2. The Principal Secretary, Department of Industries, Government of Bihar, Vikash Bhavan, Bailey Road, Patna.
3. The Chairman cum Managing Director, Bihar State Power Holding Company Limited, Vidyut Bhavan, Bailey Road, Patna.
4. The Managing Director, South Bihar Power Distribution Company Ltd. 2nd Floor, Vidyut Bhavan, Bailey Road, Patna.
5. The Chief Engineer - Commercial, South Bihar Power Distribution Company Ltd., 2nd Floor, Vidyut Bhavan, Bailey Road, Patna.
6. The General Manager Finance and Accounts, South Bihar Power Distribution Company Ltd., 2nd Floor, Vidyut Bhavan, Bailey Road, Patna.
7. Union of India through the Secretary, Ministry of Power, New Delhi.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 5695 of 2020

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M/s Neelkamal Steels Pvt. Ltd. (Unit-II), a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 401-C, Narayan Plaza, Exhibition Road, P.S.-Gandhi Maidan, District-Patna through one of its Directors, Binay Kumar Singh, Male (Aged about 57 years), S/o Late Ram Kripal Singh, Resident of House No. 69, Patliputra Colony, Boring Road, P.S. Patliputra, District-Patna.

... ... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Main Secretariat, Patna.
2. The Principal Secretary, Department of Energy, Main Secretariat, Patna.
3. The Principal Secretary, Department of Industries, Government of Bihar, Vikash Bhavan, Bailey Road, Patna.
4. The Chairman cum Managing Director, Bihar State Power Holding Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The Managing Director, South Bihar Power Distribution Company Ltd. 2nd Floor, Vidyut Bhawan, Bailey Road, Patna.
6. The Chief Engineer-Commercial, South Bihar Power Distribution Company

Ltd. 2nd Floor, Vidyut Bhawan, Bailey Road, Patna.

7. The General Manager Finance and Accounts, South Bihar Power Distribution Company Ltd. 2nd Floor, Vidyut Bhawan, Bailey Road, Patna.
8. Union of India through the Secretary, Ministry of Power, New Delhi.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 6153 of 2020

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M/s Patwari Steels Pvt. Ltd. a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 6-A, Rajendra Nagar, P.S. Kadamkuan, Dist. Patna through its Directors, namely, Subhash Kumar Patwari, Male, (Aged about 65 Years), S/o Late Satya Narain Patwari, Resident of House No. 6-A, Rajendra Nagar, P.S. Kadamkuan, Town and District- Patna.

... ... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Main Secretariat, Patna.
2. The Principal Secretary, Department of Energy, Main Secretariat, Patna.
3. The Principal Secretary, Department of Industries, Government of Bihar, Vikash Bhavan, Bailey Road, Patna.
4. The Bihar State Power Holding Company Limited through its Chairman cum Managing Director, Vidyut Bhavan, Bailey Road, Patna.
5. The South Bihar Power Distribution Company Ltd., through its Managing Director, 2nd Floor, Vidyut Bhavan, Bailey Road, Patna.
6. The Chief Engineer-Commercial, South Bihar Power Distribution Company Ltd., 2nd Floor, Vidyut Bhavan, Bailey Road, Patna.
7. The General Manager Finance and Accounts, South Bihar Power Distribution Company Ltd., 2nd Floor, Vidyut Bhavan, Bailey Road, Patna.
8. Union of India Through the Secretary, Ministry of Power, New Delhi.

... ... Respondents

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Appearance :
In all Cases
For the petitioners : Mr. S.D. Sanjay, Senior Advocates
For the Union of India : Mr. Ratnesh Kumar, C.G.C.
For the Respondent Company : Mr. Umesh Prasad Singh, Senior Advocate
Mr. Vinay Kirti Singh, Senior Advocate
For the State
(In Civil Writ Jurisdiction Case No. 5682 of 2020)
: Mr. Manish Kumar, G.P.-4
Mr. Ravi Verma, AC to GP-4
(In Civil Writ Jurisdiction Case No. 5695 of 2020)
: Mr. Subhash Prasad Singh, G.A.-3
(In Civil Writ Jurisdiction Case No. 6153 of 2020)
: Mr. Y.P. Sinha, AAG-7

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 08-07-2020 All these three writ application raise identical issue as to whether the petitioners should be exempted from paying monthly fixed charge for supply of electricity by South Bihar Power Distribution Company Limited (SBPDCL) for the period during which the respective Industrial Units could not function because of nation wide lockdown declared in the wake of outbreak of COVID-19.

2. When CWJC No. 5682 of 2020 was taken up by this Court through virtual Court proceeding on 27.05.2020, following order was passed:-

> **"I have heard Mr. Gautam Kejriwal, assisted by Mr. Parul Prasad and Ms. Suishila Agarwal, learned counsels for the petitioner. I have also heard Mr. Vinay Kiriti Singh, learned counsel, representing respondent Nos. 3 to 6 and Mr. Ravi Kumar, learned JC to GP-4.**
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> **2. This writ application has been filed seeking following reliefs:-**
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> > ***"i) For issuance of appropriate Writ(s) for quashing the Electricity Bill No. 10078903140 dt. 04.05.2020 as being wholly arbitrary and illegal and for direction to issue fresh bill for no charges as during the month of April, 2020 the electricity was not consumed as the factory did not run;***
> >
> > ***ii) For issuance of appropriate writ/direction to review the Bill No. 100669917 dt. 03.04.2020 for the month of March, 2020 by granting proportionate reduction in the demand charges for***

the period of actual consumption of energy by the petitioner;

iii) For a direction upon the Respondents restraining from taking any coercive measures for non payment of the bill for the month of April, 2020;

iv) For a direction upon the Respondents to grant adjustment after revising the bill for the month of March, 2020 to the extent of excess amount realized from the petitioner by the respondents even though the unit was closed due to lock down;"

3. It is the petitioner's case that the petitioner is a Company incorporated under the provisions of the Indian Companies Act, engaged in manufacturing of MS Ingot and Ms. Billets in its Furnace and TMT Bar in the Rolling Mill and for the said purpose, it has obtained electricity connection under HTSS Category for a Contract Demand of 14701 KVA. According to the petitioner, the last agreement for supply of electricity with the respondents South Bihar Power Holding Company was entered into on 29.12.2012 for the said Contract Demand of 14701 KVA.

4. The manufacturing Unit was running smoothly till, amid outbreak of pandemic COVID-19, the Health Department, Government of Bihar came out with an order dated 22.03.2020 in exercise of the powers under Section 2 of the Epidemic Diseases Act, 1897, whereby all Industrial Units except those exempted were prevented from operating. The National Disaster Management Authority, exercising powers under Section 6(2) (i) of the Disaster Management Act, 2005 also issued an order dated 24.03.2020 to take measures for ensuring social distancing so as to prevent spread of COVID-19 in the country.

5. The Government of India also came out with an order consequent upon the decision of the National

Disaster Management Authority, the effect of which was a nationwide lock down except operation of exempted activities. It is the petitioner's case that the Company has been regularly depositing the electricity charges but because of the lock down under the orders passed by the State Government, it had to stop the operation of its Industrial Unit with effect from 23.03.2020. It is specific case of the petitioner that the Industrial Unit remained non operational till 03.05.2020. It is the petitioner's case that the Unit did not function for the whole of the month of April, 2020 and for the period 23.03.2020 to 31.03.2020, due to the statutory orders of the lock down, which were beyond the control of the petitioner.

6. In the aforesaid background, the petitioner has sought for quashing of the bill for March, 2020 and April, 2020 on the ground that bills should not have incorporated maximum demand charge fixed in terms of the agreement between the Bihar State Power Holding Company and the petitioner- Company. It is the petitioner's case that it was because of unforeseen unprecedented situation that the manufacturing Unit could not function, that, too, because of the statutory orders issued by the Central Government and the State Government, and, therefore, demand of maximum demand charge is unjustified.

7. Mr. Vinay Kiriti Singh, learned counsel appearing on behalf of the South Bihar Holding Distribution Company has sought for an adjournment to file a counter affidavit and has submitted that in case it is found that the petitioner's manufacturing Unit was working even during the period of lock down, the petitioner cannot be granted any relief.

8. Mr. Ravi Verma learned counsel, representing the State of Bihar has submitted that the State Government in consultation with the Central Government is likely to take a policy decision to be applied uniformally in respect of all

such establishments on the question of payment of maximum demand charge.

9. Section 3 of the Indian Electricity Act, 2003 reads as under:-

"3. National Electricity Policy and plan.-(1) The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilisation of resources such as coal, natural gas, nuclear substances or materials, bydro and renewable sources of energy.

(2) The Central Government shall publish the National Electricity Policy and tariff policy from time to time.

(3) The Central Government may, from time to time, in consultation with the State Governments and the Authority, review or revise the National Electricity Police and tariff policy referred to in sub-section(1).

(4) The Authority shall prepare a National Electricity Plan in accordance with the National Electricity Policy and notify such plan once in five year:

Provided that the Authority while preparing the National Electricity plan shall publish the draft National Electricity Plan and invite suggestions and objections thereon from licensees, generating companies and the public within such time as may be prescribed:-

Provided further that the Authority shall-

(a) notify the plan after obtaining the approval of the Central government;

(b) revise the plan incorporating therein the directions, if any, given by the Central Government

while granting approval under clause(a).

(5) The Authority may review or revise the National Electricity Plan in accordance with the National Electricity Policy."

10. It is evident on reading of Section 3 that a National Electricity Policy and tariff policy is to be prepared by the Central Government in consultation with the State Government and the Central Electricity Authority for development of the power system based on optimal utilization of resources. Sub-section (3) of Section 3 empowers the Central Government to review or revise the National Electricity Policy and tariff policy referred to in sub-section (1).

11. In my view, therefore, the Union of India requires to be impleaded as party respondent in the present case. Let Union of India, through the Secretary, Ministry of Power, New Delhi be impleaded as party respondent No. 7. Let it be done.

12. List this matter under appropriate heading on 10.06.2020.

13. Till further orders, the respondents are restrained from taking any coercive measures for realization or the bills in question in any manner including by disconnecting electric supply on the ground of non-payment of electricty bill in question.

14. Let the present order and the petition be communicated to the learned Additional Solicitor General for India by the learned counsel for the petitioner.

15. On the next date of hearing, the Registry shall ensure that a link of hearing of the present matter is sent to the learned Additional Solicitor General for India."

3. It is evident from the order, which was passed on 27.05.2020 in C.W.J.C. No. 5682 of 2020, that this Court had considered it necessary to know as to whether any uniform policy decision had been taken in accordance with the provisions of Section 3 of the Indian Electricity Act, 2003.

4. When these cases were taken up on previous occasion, i.e. on 10.06.2020, this Court noted that till that date neither of the respondents had taken any uniform policy decision on compulsory payment of monthly fixed charge for the period during which the industrial units could not function because of the lock down. The Court had noted the submissions advanced on behalf of the petitioners that they were ready to pay the energy charges against actual consumption of energy during the period in question, if not already paid. The matter was adjourned for today so as to enable learned counsel for the Union of India to seek instructions and file counter affidavits. It is also to be noted that the petitioners were granted interim protection during the pendency of these applications by restraining the respondents from taking any coercive measure for realisation of the bills in question in any manner, including by disconnecting electricity supply on the ground of non-payment of electricity bills.

5. In compliance of the orders of this Court, supplementary counter affidavits have been filed on behalf of respondents No. 4 to 7 stating therein that in compliance of the orders passed by this Court, in a Cabinet meeting, held on 29.06.2020, a decision has been taken by the State Government to grant relief to the commercial and industrial units, which were ordered to be locked down from 23.03.2020, from paying maximum demand charge/fixed charge for the months of April and May, 2020. It has been stated that though the petitioners have been demanding exemption from payment of maximum demand charge/fixed charge for five weeks only, the State Government, through Department of Energy, has resolved to grant remission/rebate for two months. Further, in the light of the decision, the Energy Department, Government of Bihar, has issued a letter on 29.06.2020, which is addressed to the Accountant General, Bihar, a copy of which has been marked to the respondents No. 4 to 7. On receipt of the said letter dated 29.06.2020, in pursuance thereof, the respondents No. 5 have allowed remission in fixed charges to the petitioners and similarly situated units have also been allowed rebate in fixed charges for the months of April and May, 2020 irrespective of consumption made by them.

6. It has been specifically stated that rebate, so given, has been adjusted and reflected in the bills for the month of

June, 2020 raised in July, 2020.

7. In view of the categorical stand taken on behalf of respondents No. 4 to 6, in my opinion, these writ applications have become infructuous, as the grievances raised therein stand redressed.

8. The applications are disposed of accordingly.

(Chakradhari Sharan Singh, J)

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