

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5659 of 2021

1. General Manager East Central Railway, Hajipur.
2. Chief Electrical Engineer East Central Railway, Hajipur.
3. Chief Electrical Engineer (Distribution) East Central Railway, Hajipur.
4. Senior Divisional Electrical Engineer, (TR-D) East Central Railway, Dhanbad.
5. Divisional Electrical Engineer, (TR-D) East Central Railway, Dhanbad.

... .. Petitioners

Versus

1. Chief Managing Director (CMD) Bihar State Power Holding Company Limited (BSPHCL) Vidhut Bhawan Bailey Road, Patna.
2. Electrical Superintending Engineer (E.S.E.) (H.T. Cell) South Bihar Power Distribution Co. Ltd. (SBPDCL) Vidhut Bhawan Bailey Road, Patna.
3. Chief Engineer (Commercial) South Bihar Power Distribution Co. Ltd. (SBPDCL) Vidhut Bhawan Bailey Road, Patna.
4. Electrical Superintending Engineer (Electric Supply Circle), Gaya.
5. Electrical Executive Engineer (E.E.E.) (H.T. Cell) South Bihar Power Distribution Co. Ltd. (SBPDCL) Vidhut Bhawan Bailey Road, Patna.
6. Chairman Consumer Grievance Redressal Form Gaya.
7. Electricity Ombudsman Bihar Electricity Regulatory Commission Vidyut Bhawan, Patna.

... .. Respondents

Appearance :

For the Petitioners : Mr. D. K. Sinha, Sr. Adv. with
Mr. Abhinay Raj, Adv.

For the respondent
South Bihar Power
Distribution Company
Limited :

Mr. Vinay Kirti Singh, Sr. Adv.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 19-05-2022

The instant writ petition has been filed by the East Central Railway being aggrieved by certain bills raised in connection with the electricity consumption for the period April 1994 to July 1994.



2. For ensuring constant running of trains, the petitioners purchased High Tension (HT) power from various Power Distribution Companies. The electrical feed for running of the trains is provided through Traction Sub- Station ('TSS' for short) which are located beside the Railway tracks. The same derive power from the Grid Sub Station ('GSS' for short) of the Distribution Company.

3. There is one GSS located at Paharpur in Dhanbad division of the Railway, which receives power from Bihar State Power Holding Company Limited ('BSPHCL' for short) and its subsidiaries, in this case from South Bihar Power Distribution Company Limited based on an agreement dated 10-06-1992 between the erstwhile Bihar State Electricity Board and the petitioners. Under the agreement, the respondent-company, being the successor in interest of the Bihar State Electricity Board, is under an obligation to ensure a constant supply of electrical energy at the pressure of 132 KV subject to the terms and conditions of the agreement. The petitioners (consumers) were under a corresponding obligation to take the supply, as per the agreement, failing which, they were liable to certain charges of an amount being the minimum guarantee charges. The respondent-company, as per the agreement, was to provide and erect



switchgears and meters as considered necessary for ensuring control by the Board over the supply of electricity and to measure the supply being made.

4. The transformers switchgears and the equipments directly connected to the feeder by the consumer were to be as per the specification and design and maintenance of the same to the satisfaction of the respondent-company and subject to the Board's approval. This Court has taken note of the above noted brief terms and conditions of the Contract to which the parties are *Ad idem* in view of the nature of controversy arising in the instant writ proceedings.

5. During the course of electrical consumption, power factor surcharge was raised by the respondent company for the period April 1994 to July 1994 on account of low power factor. The total amount being Rs. 54,75,461/- which, as per the petitioners' own averment, in paragraph 11 of the writ petition, was duly paid by the petitioners in July 1994 itself. It is only six months later that the petitioners have alleged erroneous calculation of power factor for the period April 1994 to July 1994 under their communication dated 25.01.1995 to the then General Manager-cum- Chief Electrical Engineer, Bihar State Electricity Board, Transmission Zone, Gaya. The petitioners, under the said



communication, have requested for relooking into the penal charges for lower power factor, which was paid by the petitioners, for the period April 1994 to July 1994 and, for rectifying the bill accordingly. In their communication, the petitioners have raised an apprehension that calculation of power factor during the period in question (April 1994 to July 1994) appears to be erroneous and it appears that loading KVAR has been added to the loading KVAR (as recorded by your meter) arithmetically making the power factor inferior, leading to imposition of heavy penalty on the petitioners. The petitioners have stated that both these KVARs (Kilovolts Ampere Reactive) are vector quantities and, therefore, were required to be added as a vector- sum and not simple arithmetical-sum.

6. Pursuant to the said communication, a meeting was held between the Senior Divisional Electrical Engineer (TR) Eastern Railway and Electrical Superintending Engineer, Gaya on 02.02.1995. It is, in this meeting that, for the first time, the issue regarding a defective meter has been discussed and assurance has been given by the representative of the respondent that remedial measures would be taken by checking the power factor, arranging for installation of another meter; and that after checking, the necessary adjustments against the excess payment would be



made. The minutes record that he has assured to discuss the subject with the Chief Engineer, Commercial and other Board officials on his return to Patna and that he would advise the outcome and further course of action to be taken. A new meter was, thereafter, installed in July, 1995. The petitioners alleged that thereafter the power factor improved and increased above 0.85.

7. Nearly three years after the period in question i.e. by communications issued between January to April 1997, the petitioners have sought adjustment of earlier payment made towards low power factor surcharge levied for the period in question. The relevant communications are Annexure-8 series to the writ petition. The petitioners have unilaterally adjusted the amount of Rs. 54,75,461/- earlier paid by them in July 1994 on account of low power factor charge; from the bill of fuel surcharge for the period 01.07.1993 to 31.03.1997. Accordingly, they have made payment of an amount of Rs. 15,08,077/- against the amount of Rs. 69,83,538/- being the admitted dues for fuel surcharge. This has occasioned the non-payment of fuel surcharge for the period 01.07.1993 to 31.03.1997 of an amount (69,83,538-15,08,077=54,75,461/-). The respondents, therefore, started charging the prescribed penalty @ 2% per month on this unpaid



fuel surcharge amounts w.e.f. 25.04.1997.

8. On the advise of their own Chief Engineer, the petitioners have deducted the sum of Rs. 54,75,461/- from the arrear bill of fuel surcharge for the period 01.07.1993 to 31.03.1997 of Rs.69,83,538/- which dues along with the prescribed interest is being claimed by the respondent w.e.f. 25.04.1997. The petitioners deny this liability. It is their case that they have adjusted/deducted the amount (Rs. 54,75,461/-) which they had paid towards Low Power Factor charge in July 1994, which they were not liable to pay.

9. The petitioners earlier had approached this Court by filing a writ petition in respect of the same grievance that they are not liable for paying the amount of low power factor charge for the same period in question. The writ petition was registered as CWJC No. 1540 of 2014. This Court, vide order dated 12.03.2015, was not inclined to entertain the petitioners' writ petition due to passage of time as the dispute was being raised in connection with bill raised for the period April 1994 to July 1994. The writ petition was disposed of with liberty to the petitioners to take recourse to other remedy that may be available to them in law. The petitioners, under the circumstances, approached the Consumer Grievance Redressal Forum ('CGRF' for short)



constituted under Section 42(5) of the Electricity Act, 2003. The CGRF, under its order dated 11.10.2017 (Annexure-16), has held the petitioners liable to pay the impugned bill along with the arrears which were to be paid within 15 days.

10. The order of CGRF dated 11.10.2017 was assailed by the petitioners before the Electricity Ombudsman which also has found the petitioners to be liable for the charge on account of low power factor for the period in question. The order passed by the Ombudsman in Appeal Case No. 18 of 2017 is dated 25.11.2020.

11. In the instant writ proceedings the petitioners have sought quashing of the order dated 11.10.2017 passed by the CGRF as well as the order dated 25.11.2020 passed by the Electricity Ombudsman in Appeal Case No. 18 of 2017.

12. The stand of the respondent company is that the petitioners have installed and commissioned shunt capacitor Banks at Paharpur TSS in the month of April 1994 whereafter their power factor became much lower than the agreed power factor by 0.85. The meter was never faulty and that the formula for calculation of the power factor was as per Clause 16.6 of the 1993 tariff which read as follows:-

“16.6. Power factor surcharge and installation of shunt capacitors- (a) No consumer shall allow the average power factor of the supply taken by him to fall- below 0.85 in any month, in the event



of the average power factor falling below 0.85 a surcharge at the rate of 1 percent for every fall of power factor of 0.01 will be leviable on the demand and energy charges including operational surcharge in case of H.T. service, Extra High Tension service and Railway Traction service. The fall in the power factor will be computed correct upto two places of decimal. The power factor will be calculated on the basis of KWH and KVAH readings:- Formula $PF = KWH/KVAH$.

(b) No new connection above 5 HP shall be given unless shunt capacitors of appropriate ratings are installed to the entire satisfaction of the Board. The consumer shall install shunt capacitors manufactured by the standard manufacturers and duly marked by ISI specifications.

(c) It will be obligatory on the part of the consumer to maintain the capacitors in healthy conditions and in the event of its becoming burnt/damaged, he shall have to inform the concerned Assistant Engineer immediately in writing. He shall also get the defect rectified within a maximum period of one month from the date the capacitor has gone defective and he shall give intimation in this regard also to the concerned Assistant Engineer.

(d) In case it is found that the capacitor has not been repaired/replaced within one month of its becoming defective, the consumer shall be charged a surcharge of 5 per cent on the billed amount per month, thereafter, till the same is got repaired/replaced by a healthy capacitor and got checked/ inspected by the concerned Assistant Engineer of the Board.

(e) In the case it is found on inspection that the capacitor has not been installed by the consumer and if installed are of not adequate capacity or not maintained in good and healthy condition, the consumer shall be charged a surcharge of 5 per cent of the billed amount per month commencing from the month of such inspection till such time the consumer installs the capacitors of adequate



capacity in good and healthy condition.

(f) For the existing consumers where the capacitors of adequate capacity in good and healthy condition have either been not installed or not being maintained, they shall also be charged a surcharge 5 per cent of the billed amount after the expiry of six months and shall continue to be charged till such time the consumers install the capacitors as stated above.

(g) The Board will have the right to take any other suitable action, including disconnection of supply even after the payment of said surcharge by the consumer in case the shunt capacitor of adequate rating is not maintained in healthy condition by the consumer for continuously six months.

(h) The amount of surcharge charge from the consumers as stated above shall not be accounted for towards the minimum/flat rate charges.”

13. Mr. Vinay Kirti Singh, learned senior counsel appearing on behalf of the respondent company has also argued that the relief claimed in respect of the low power factor surcharge is barred by acquiescence waiver and estoppel. It is also submitted that the petitioners have been taking oscillating stand to deny the amount of low factor surcharge for the period in question after having paid the same without any demur in July 1994.

14. In between January-April 1997, for the first time, they have raised a dispute regarding the said amount and unilaterally deducted the same from the admitted dues towards fuel surcharge for the period 01.07.1993 to 31.03.1997. In this connection, it is also worth noting that for denying the amount of low power factor



surcharge for the period in question they have stated in their communications (Annexure-8 series) that the low power factor surcharge was undue being based on reading from a defective meter which had been installed by the respondent company. The moment the new meter was installed, the power factor improved above 0.85 and, therefore, the petitioners could not be saddled with any liability on account of low power factor below 0.85 for the period in question being April 1994 to July 1994.

15. Such stand of the petitioners is inherently unsustainable due to the admitted fact that the meter was replaced in July 1995 on being found defective which is nearly one year after the period during which low power factor surcharge was levied on the petitioners, which they had paid in July 1994.

16. Prior thereto, the respondents in their communication dated 25.1.1995 (Annexure-5) had raised a dispute regarding error in calculation of low power factor surcharge for the period in question by alleging that loading KVAR had been added to the loading KVAR, (as recorded by your meter) arithmetic and thus, making the overall power factor inferior giving rise to lower power factor surcharge being levied on the petitioners. They alleged that both the KVARs were vector quantities and therefore, addition was required to be vector sum and not simple arithmetic



sum.

17. In the instant writ proceeding, the petitioners have assailed the imposition of low power factor surcharge again alleging that the same was occasioned on account of a faulty meter and defective meter reading.

18. It is submitted by learned senior counsel appearing for the respondent company that before the CGRF the petitioners admitted that they had commissioned the shunt capacitor in April 1994 and removed the shunt capacitor in July 1994. It is considered significant by this Court to note that the undisputed position is that from August 1994, after removal of the shunt capacitor, the power factor had improved and increased above 0.85. No dispute has been raised by the petitioners to any bill raised from August, 1994 onwards.

19. Having considered the rival submissions, this Court would find that when the bill was raised for low power factor charge for the period in question in July 1994, the petitioners had paid the amount without any demur. For the first time in 1995, they have raised an issue regarding discrepancy in billing by raising an apprehension in their letter dated 25.01.1995, which reads as follows:-

“ In fact, calculation of power factor during the months of April, May, June and July 1994



appears to be erroneous and it appears that loading AVAR has been added to the loading AVAR (as recorded by your meter) arithmetically and thus making the overall power factor inferior and forcing on heavy penalty on the Railways. Both these AVARs are vector quantities and therefore, addition should be vector-sum and not simple, arithmetical-sum.

May I, therefore, request you to kindly look into the matter and arrange for rectification in billing on traction sub-station, Paharpur.”

20. In April 1997, based on unilateral objection raised by the petitioners' own Chief Engineer, they have deducted the amount of low power factor charge, which had been levied for the period in question and paid by the petitioners way back in July 1994. This time they have alleged that the charge was undue and had arisen because of a faulty meter. Such stand of the respondents is based on the assertion that after change of the meter low power factor increased above 0.85 whereas the issue regarding faulty meter leading to replacement of the meter occurred in between 02.02.1995 to July 1995, much later in time after the period in question (April 1994 to July 1994) for which, low power factor charge has been levied and paid by the petitioners. This fact has been considered by the CGRF in its impugned order dated 11.10.2017. The order of the CGRF is correct to the extent that it records in para 12 that replacement of the meter in July 1995 cannot be the basis of a presumption that



the meter was defective during the period in question being April 1994 to July 1994.

21. The CGRF has also taken note of the case of the petitioners stated in para 4 of their petition filed before the CGRF that shunt capacitor was installed in April 1994 and it has also recorded submission of the petitioners' counsel that the shunt capacitor was removed in the end of July 1994. It is also an admitted position that from August 1994 onwards there is no dispute by the railway regarding the bills/charges raised by the respondent company for electricity supply to them. These admitted facts have been viewed with the stand of the respondent company in the background that the low power factor was on account of commissioning of shunt capacitor by the petitioners themselves in April 1994; without consent and information to the board/authority, as required under the terms of the agreement dated 10-06-1992, for which, the petitioners can only be held liable.

22. The CGRF has also taken note of the fact that the petitioners had the option of proceeding for testing of the accuracy of the meter as per Clause 6 of the agreement, however, without raising any issue, they have themselves, in July 1994 paid the dues on account of low power factor charge for the period in



question . Before the CGRF the petitioners did not raise any issue other than the faulty meter for denying the liability towards the low power factor surcharge for the period in question. The findings of the CGRF in relation to petitioners' allegation that faulty meter was installed by the respondent company, so as to justify the petitioners' unilateral adjustment of the amount earlier paid as charge for low power factor, for the period in question are thus found to be after due consideration, based on materials and cogent reasons and, therefore, do not require any interference by this Court exercising jurisdiction under Article 226 of the Constitution of India.

23. This Court, therefore, has no hesitation in observing that the concurrent findings in this regard by the Electricity Ombudsman in its order dated 25.11.2020, passed in Appeal Case No. 18 of 2017, as also in the decision of the CGRF requires no interference. The Electricity Ombudsman has affirmed the decision of the CGRF by a reasoned and speaking order. The Appellate Authority has also rightly rejected the claim of the petitioners for calculation of the low power factor charge by a formula/methodology of calculation, different from the revised tariff framed under Section 49 of the Electricity (Supply) Act, 1948 and notified in the Bihar Gazette Extraordinary dated June,



23, 1993.

24. This Court, therefore, does not find any infirmity in the order dated 11.10.2017 passed by the CGRF and the order dated 25.11.2020 passed by the Electricity Ombudsman.

25. The writ petition is, therefore, devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

I agree
Chakradhari Sharan Singh, J:-

(Chakradhari Sharan Singh, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	27-01-2022
Uploading Date	19-05-2022
Transmission Date	

