

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.663 of 2019
In
Civil Writ Jurisdiction Case No.4466 of 1999

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1. North Bihar Power Distribution Company Ltd., Bailey Road, Patna.
 2. The General Manager-cum-Chief Engineer Kosi Area Electricity Board Saharsa now Chief Engineer (Comm) North Bihar Power Distribution Company Ltd. Patna
 3. The Electrical Superintending Engineer Bihar State Electricity Board, Purnea now the Electric Supply Circle, Purnea
 4. The Electrical Executive Engineer Commercial and Revenue Electric Supply Circle, Bihar State Electricity Board, Purnea, now Electric Supply Circle Purnea

... .. Appellant/s

Versus

M/s Super Inducto Steels Limited A company incorporated under the Indian Companies Act, having its registered office at Sudama Palace, Kankarbagh, Patna through its director Shri Shaligram Jaiswal, Son of Late Bankey Bihari Jaiswal, Resident of 73 Narmada Apartment, Exhibition Road, Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vinay Kirti Singh, Sr. Advocate Mr. Akhileshwar Singh, Advocate Mr. Venkatesh Kirti, Advocate
For the Respondent/s	:	Mr. Suraj Samdarshi, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-10-2024

The North Bihar Power Distribution Company Ltd., having succeeded to Bihar State Electricity Board ('Board' in short) is the appellant, which is aggrieved with the judgment of the learned Single Judge who quashed the electricity bill dated 26.04.1999 issued to the writ petitioner; the first respondent



herein for the period from October-1998 to March-1999.

2. The writ petitioner, a company incorporated under the Companies Act, 1973 entered into a High-Tension supply agreement with the Board; the contract demand in relation to which stood enhanced to 3000 KVA during the subject period. The impugned electricity bill was issued based on an inspection carried out by the Board on 27.03.1999; in which one of the plastic seals were found to have no arrow head while another seal bit; affixed at the terminal cover, did not bear the signature. An FIR was instituted on 30.03.1999 (Annexure-2) under Sections 379 and 411 of the Indian Penal Code read with Sections 39 and 44 of the Indian Electricity Act for theft of electricity. The allegation was that the petitioner had used 9,17,000 units on the basis of reading of the meters at the Grid Sub-station; while the actual consumption recorded was 2,20,000 units. It was alleged that there was pilferage of 6,84,000 units per month causing a total loss of Rs. 18,88,000/- to the Board. The impugned energy bill demanded an amount of Rs. 4,38,79,501/- for theft of energy and causing a loss of Rs. 52,80,325/- in terms of Clause-16.9 of the 1993 Tariff.

3. Learned Single Judge relied on the provisional report of a Three Men Committee constituted by this Court, on consent



of both parties. The learned Single Judge found that there was no default alleged under Clause-16.9(A) of the Tariff Regulations and the allegation was with respect to Clause-16.9(B). It was found that just prior to the inspection carried out, a fault in the meter was rectified by the officials of the Electricity Board, in which no adverse observation was made regarding the Meter or the recording of consumption of power. The Board failed in furnishing the outflow of electrical energy from the Grid Sub-station through zero-mile feeder, to the Three Men Committee, which assumes relevance especially since the said feeder supplied electricity to three different consumers. The allegation of the writ petitioner having used electricity beyond the contract demand was found to be false based on the analysis made by the Committee. The connected load was also found to be within limits and the additional crucible found in the premises was a stand by crucible to be used on the other crucibles suffering a break down. It was categorically found that none of the contingencies stipulated in Clause-16.9(B) arise in the instant case. The missing of the arrow head and the signature does not call for an inference that there was tampering and theft of electricity. The Committee though had given a provisional report; a final report could not be made since the Board had



failed in furnishing the details. The Committee's report was relied on to set aside the bill raised on the writ petitioner.

4. Mr. Vinay Kirti Singh, learned Senior Counsel appearing for the respondent-Board first pointed out that the Three Men Committee made only a provisional report and there was no submission of a final report; which alone can be said to be binding on the parties. It is also argued that the broken arrow head and the absence of the signature would clearly indicate an instance of tampering which would lead to a presumption of theft of electricity.

5. Mr. Suraj Samdarshi, learned Counsel appearing for the writ petitioner/1st respondent argued that the petitioner did not have connected load beyond that permitted. The FIR lodged did not lead to a criminal prosecution for reason of the final report filed. The Three Men Committee was constituted on consent of both parties and on the basis of the order passed by this Court in the very same writ petition, which cannot be now challenged by the Board.

6. From the records of the writ petition, we see that on 21.05.1999 an order was passed in the writ petition with consent of both the parties that a Committee of three persons would be constituted comprising of a nominee of the Board, a nominee of



the petitioner and an expert from an outside agency to head the Three Men Committee. The Committee was so constituted with the Asst. General Manager, Electrical Division, MECON Ltd., Ranchi being designated as the independent person to head the Committee. The operative portion of the Committee's report is extracted in the judgment dated 02.08.2018 which indicates that the electricity bill is computed on two parameters; the recorded maximum demand (KVA) and the energy consumption (kWh) in addition to certain duties, fuel charge etc.

7. The maximum demand recorded during the simultaneous operation of the Induction furnace and the Rolling Mill was 2595 KVA; which falls within the sanctioned contract demand of 3000 KVA. The energy consumption has also been observed to be in direct proportion to the reported production of the plant. The penal provision would be applicable only if the power factor is not maintained within the permissible values. Finding the consumption pattern in the writ petitioner's unit to be consistent with the production figures analyzed; the variations were also found to be within acceptable limits. The inference so drawn was recorded as provisional, till details of outflow and consumption of electrical energy through zero-mile feeder was made available and analyzed; which was never made



available by the Board.

8. Admittedly, there were three consumers, including the writ petitioner who were supplied with electrical energy from the Grid Sub-station through zero-mile feeder. There was no break up provided or the details of the outflow and consumption furnished to the Three Men Committee; which as held by the learned Single Judge was a default on the part of the Board.

9. Insofar as the allegations raised with respect to tampering of the Meter, as is available under Clause-16.9(B); it is not a detection of unauthorized load as available in Clause-16.9(A). Clause 16.9(B) which also has been extracted in the impugned judgment, speaks of two contingencies. *“(i) If one wire is found removed from the CT or the connection is reversed in which event the energy consumption shall be assessed as three times the recorded energy consumption during the period of pilferage or for a period of six months, whichever is less. (ii) The next contingency is when the CT is found to be tampered in case of multiple CT ratio, in which contingency the highest ratio shall be considered for assessing energy consumption. (iii) Such assessed units shall also be charged at three times the tariff applicable to the consumer.”* None of these contingencies exist in the present case.



10. In addition, it has to be noticed that the petitioner's Unit suffered an oil leakage from the terminal box of the CT/PT; on which an inspection was carried out by the officials of the Board as per Annexure-3 dated 01.12.1998. The terminal connections were found intact and so were the seal bits. A combined meter replacement report dated 18.01.1999 was also submitted, after which by Annexure-14 yet another inspection was conducted on 27.03.1999, which led to the instant penal proceedings. Hence, there can be no demand raised for six months prior to the detection, even if pilferage is proved, since it was on 18.01.1999 that the combined meter replacement report was submitted to the Board by its own officials.

11. The report after inspection as per Annexure-14 is that the Meter Box plastic seal bit No. 003740S has no arrow head outside the cavity. There is no reference to the absence of signature in the other seal bit. In fact Annexure-15 a H.T Meter Reading as on 19.06.1999 indicates that the Meter Box and the seal bits were found intact. The absence of signature was also found to be due to rain and heat. There is hence no case of tampering, as brought out from the allegations raised.

12. The learned Senior Counsel appearing for the Board had relied on a judgment of another Division Bench in *M/s*



J.M.D. Alloys Limited vs. the Bihar State Electricity Board;
(2002) 1 PLJR 21, which, according to the learned Senior Counsel is on identical facts. Having gone through the judgment, we are unable to agree that it was on identical facts that ***J.M.D. Alloys Limited (supra)*** was decided.

13. The decision in ***Ram Chander Prasad Sharma vs. State of Bihar; AIR 1967 SC 349***, which held that it was not sufficient to merely say that the Meter had been tampered with, because it was under the control of the accused and that it was further necessary to say that there was dishonest obstruction, consumption, or use of electrical energy by the accused, was found to be not applicable, since that decision was rendered in the context of a criminal prosecution; which is not relevant in deciding a civil liability since the standard of proof differs. We fully agree with the said reasoning of the Division bench in ***JMD Alloys Ltd. (supra)***. However, it is pertinent that, herein the FIR asserted to have been registered by the Board did not even end in a criminal prosecution. Annexure-25 is the order of the jurisdictional CJM at Purnea, who accepted the final report filed by the investigating agency. There is clear recording of the findings of the investigating agency that there was no tampering of the Meter which had led to the final report being filed.



14. Relevant also is the fact that even the inspection report does not find any tampering having been done of the Meter. At the risk of repetition, it has to be stated that the entire Meter unit was inspected and the fault rectified just two months prior to the inspection. There was no allegation of tampering levelled at that point of time. Even in the inspection conducted after two months, the only allegation is with respect to an arrow head missing on one seal bit and a signature missing on the other seal bit. There is no allegation that there was any tampering of the meter or that there was pilferage of electricity. This is coupled with the fact that the Board failed to supply the break up of the outflow of energy through the zero mile feeder; which caters to three consumers. Hence, there is no material available to substantiate the allegation of tampering and resultant pilferage; which alone can give rise to preponderance of probabilities; the standard of proof required to impose a civil liability as distinguished from that required to fix a criminal liability, which is proof beyond reasonable doubt. **JMD Alloys Ltd.** (*supra*) hence stands clearly distinguished on facts.

15. In **JMD Alloys Limited** (*supra*) the seal bit was found tampered with and the current transformer/potential transformer terminal box was found to be accessible when the



seals are removed. It was in that circumstance that the Division Bench held that where the CT/PT unit is found to be tampered with, a *prima facie* case of theft of electricity is made out, in which circumstance an assessment can be made under Clause 16.9(B). In the present case, no such allegation of tampering is found in Annexure-14.

16. We also reckon the trite principle reiterated in ***JMD Alloys Ltd.*** (*supra*) of judicial review of administrative or quasi-judicial decisions not enabling the High Court to sit as a Court of appeal while exercising writ jurisdiction. Therein, the allegation of tampering stood established and hence, the computation of penal charges, presuming pilferage of electricity was upheld by the Court. In the present case, a Three Men Committee was appointed by the Court, which found absolutely no reason to sustain the bill issued invoking Clause 16.9 (B) of the Tariff. In the present case, we are called upon to decide the sustainability of the Three Men Committee's report; constituted by orders of this Court, on consent of both parties and comprised of experts in the field of power supply. The Three Men Expert Committee had found that the allegation raised by the Board, of tampering, cannot be sustained. The consumption recorded and the production figures were also compared to find



no exceeding of the connected load or the contract demand;
consequently rubbing the allegation of pilferage.

17. We find absolutely no reason to interfere with the
judgment of the learned Single Judge.

18. The appeal stands dismissed.

19. It is seen from the interim order passed that this
Court while directing constitution of a Three Men Committee;
the petitioner was also directed to make deposit of Rs. 10 Lakhs.
If the amounts have been deposited, the same shall be refunded
to the petitioner with simple interest @ 5 per cent per annum.

20. Interlocutory application(s), if any, shall stand
disposed of.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree

(Partha Sarthy, J)

ranjan/-

AFR/NAFR	
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