

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18613 of 2011

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M/S BALMUKUND CONCAST LIMITED having its registered office at 108, Kalyani Complex, Exhibition Road, Patna-800001, Through Its Managing Director, Ajay Kumar Jhunjhunwala, S/O Late Lok Nath Jhunjhunwala

... .. Petitioner/s

Versus

1. The Bihar State Electricity Board having its office at Vidyut Bhawan, Baily Road, Patna Through Its Chairman
2. The Chairman Bihar State Electricity Board Having Its Office At Vidyut Bhawan, Baily Road, Patna
3. General Manager Cum Chief Engineer Central Electric Supply Area, 8, Serpentine Road, Patna, District- Patna
4. Chief Engineer Commercial Bihar State Electricity Board Having Its Office At Vidyut Bhawan, Baily Road, Patna
5. Electrical Superintending Engineer, Patna Electrical Circle, Patna
6. Electrical Executive Engineer Commercial and Revenue Patna Electrical Circle, Patna
7. Electrical Executive Engineer, Electric Supply Division, Bihta
8. Assistant Electrical Engineer, Electric Supply Division, Bihta

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Y.V.Giri, Sr. Advocate Raju Giri Harsh Vardhan, Advocates
For the Respondent/s	:	Mr. Anand Kumar Ojha, Advocate

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**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT
Date : 19-04-2024**

The petitioner has filed the present writ application for the following reliefs:

- (i) To issue an appropriate writ/order/direction in the nature of certiorari for quashing the monthly energy bills dated 5.8.2008, 5.9.2008 & 6.10.2008 for the month



of July, August and September 2008 issued to the petitioner company and to rectify and prepare the said monthly energy bills in terms of Clause-11.4(b) of the Bihar Electricity Supply Code- 2007 (here in after referred to as the 'Code') read with Clause 7 of the Chapter Terms and Conditions of HT Tariff of the Tariff order issued on 29.11.2006 by Bihar Electricity Regulatory Commission, applicable w.e.f. 1.11.2006 on the consumers of Bihar State Electricity Board, (hereinafter Referred to as the 'Board') treating the meter of the Petitioner factory as defective meter.

(ii) To further issue an appropriate writ/order/direction in the nature of certiorari for quashing the bill dated 9.7.2008 raised by the Board in terms of Clause 11.4 Read with Annexure-7 of the Code, wherein the Board without ascertaining the period under section 126(5) of the Electricity Act 2003, have wrongly raised the bill considering the number of days as 167 days whereas the number of days ought to have been only 41 days.

(iii) To issue an appropriate writ/order/direction in the nature of Mandamus commanding the respondents to refund or adjust the excess amount of monthly energy bills for the month of July, August & September 2008 and that of provisional bill raised under Clause 11.4 of the Code with



interest to the petitioner company.

(iv) To any other relief or reliefs
for which the petitioner is entitled.

2. The brief facts culled out of petition are that the petitioner is a company incorporated under the Indian Companies Act, and is engaged in the business of manufacture and sale of M.S.Ingots & Iron Rods and has its induction furnace and rolling Mill at Mahadeopur, Bihta, Patna. The petitioner has taken electrical connection from the Bihar State Electricity Board, which comes under HTSS Category of consumer having connection No. BT/3540 and having 12141 KVA contract demand at 33 KV. That on 17.1.2008 electronic energy meter of Secure make was installed in the factory of the petitioner, by the Board and from the installation and commissioning certificate dated 17.1.2008 it is transpired that the meter was in working position. It is further submitted that the Board officials tested the meter on 21.5.2008 before changing the software in the meter and the meter was found to be working properly, no abnormality was found during the said test, according to the Inspection report dated 21.5.2008 of the High Powered Team of the Board. After the change of software, the meter was again tested and was found in working condition



and till 21.5.2008. The petitioner after taking notice of news paper publication of the Board, in regard to voluntary declaration and apprehending unnecessary harassment by the Board officials, offered voluntary declaration in terms of Clause 11.4 of the Code vide letter dated 1.7.2008. Subsequent to the petitioner's voluntary declaration, the Board was to act in terms of Clause 11.4 of the Code and they were required to raise bills in terms of Annexure-7 of the Code.

3. It is further submitted that in case of defective meter, as per Clause 7 of the Tariff, till defective meter is replaced the consumption will be assessed and billed on an average consumption of last 12 months, from the date of Meter being out of order. Such consumption shall be treated as actual consumption for all practical purposes including calculation of electricity duty until the meter is replaced/rectified. The case of the petitioner is that from 1.7.2008 to 3.09.2008, till the meter was replaced, the energy bill should have been sent as per the procedure for defective meters as specified in the Tariff Order in terms of Clause 11.4(b) of the Code. The Voluntary declaration was made by the petitioner on 1.7.2008, the Board issued provisional assessment bill under Clause 11.4 to the petitioner. The calculation was



made on the basis of Annexure-7 of the Code. It is stated that the Board While making the calculation, erroneously took into consideration the number of days as 167 and in fact the Electricity Board ought to have considered it from the date of installation of new secure meter i.e. on 17.1.2008 and calculate the days till 1.7.2008. The Board failed to appreciate that on 21.05.2008 the software of the meter was changed and the meter was inspected and no abnormality in the meter was found. Hence, the number of days could have been ascertained as 41 days i.e. from 21.05.2008 to 1.7.2008.

4. It is further submitted that the amount of provisional assessment bill has been paid by the petitioner under protest, to avoid disconnection of line and the Board ought to have raised the bill under Clause 11.4 of the Code taking 41 days into consideration and provisional assessment bill should have been rectified. It is submitted that the meter of the petitioner was replaced on 4.9.2008 and the Board issued monthly energy bill dated 5.8.2008 for the month of July 2008, the bill dated 5.9.2008 for the month of August 2008 and the bill dated 6.10.2008 for the month of September 2008 on an imaginary figures of units consumed without taking into consideration Clause 11.4(b) of the Code and Clause 7 of the



Tariff Order. It is further stated that after voluntary declaration, the meter was not replaced till 3.9.2008, hence from 1.7.2008 to 3.9.2008 the bills ought to have been raised in terms of Clause 11.4(b) of the Code read with Clause 7 of the Tariff order treating the meter to be defective. The respondent Electricity Board neither replaced the meter nor adopted the correct and legally admissible procedure for billing for the months of July, August and September, 2008 in accordance with the terms of the provision specified in Clause 11.4(b) of the Code and the energy bill for these months has been prepared on an unexplained arbitrarily fixed quantum of units. This procedure of assessing units when meter is damaged, is not in conformity with the provisions of Tariff of the Board. It is submitted by way of illustration that the petitioner is making calculation of the exact unit on the basis of the monthly energy bill, of July 2008 and August 2008, ought to have been charged and Energy Consumption for July and August, 2008, as per Clause 7 of the Tariff Order and the respondent Board has to assess the consumption for the month of July and August, 2008 on an average of 1,27,615.7 unit per day. Hence, the Board ought to have billed the petitioner for $127615.7 \times 31 = 39,56,087$ Kwh only per month in the month of July & August 2008 and on the



basis of actual power factor, the details of which is stated in the petition. It is submitted regarding Power Factor Rebate - the impugned bill for the month of July 2008 and August 2008 do not indicate the petitioner's power factor and even the energy consumption has been shown to be 47,98,262 Kwh, which is not based on any rule or regulation of the Board. Clause 7 of the Tariff Order also states that such average consumption "shall be treated as actual consumption for all practical purposes including calculation of Electricity duty until the meter is replaced/rectified". Therefore in view of the provision in the Tariff Order, the power factor of the petitioner may be determined on the average consumption of Kwh and Kvah of proceeding 12 months from the date the meter has been declared to be defective i.e. 01.07.2008 to 3.9.2008. Thus, the power factor for July & August,2008 would be 98% as computed in the petition. Therefore, the monthly bill for the month of July & August 2008 Should be Rs.1,39,75,353 per month and similarly the bill from 1.9.2008 to 3.9.2008 is required to be corrected by the Board.

5. It is submitted by the petitioner that initially the petitioner appeared before the Board for correction of the monthly energy bill of July 2008 and when no action was



taken, then the petitioner was constrained to file a case, which was registered vide Case No. 110/08 on 27.08.2008 before the Consumer Grievance Redressal Forum (hereinafter referred to as the "Forum"), Vidyut Bhawan-II, Patna. Since the case was filed in August 2008, the issue of the monthly energy bill for July was raised. The Petition was filed seeking directions to the respondents to rectify the monthly energy bill issued for the month of July, 2008, in which average units were wrongly calculated/charged and to take the average of past twelve months for billing for the said period, when the meter was not installed, as provided in Clause 11.4 of the Code and to allow power factor rebate as per Board's Tariff Schedule. It is submitted that the Forum after hearing the parties, passed an interim order dated 9.9.2008 as follows:-

"After examination of all the points raised in the filed petition with different annexed enclosures, it has been found that the petitioner have been served with incorrect monthly energy bill of July 08, which requires revision, In the light of provisions of Bihar Electricity Supply Code 2007 and tariff order (applicable from 01.11.2006)

As such, for an "Interim-Relief-Measure", the average monthly consumption charged for the month of July' 08 as "4798262" units is being declared as incorrect; which should be



recalculated by taking average of 12 months i.e. from July' 07 to June' 08, for revision of served bill of July' 08.

The power factor rebate is also to be allowed, by calculating it as average of twelve months i.e. from July' 07 to June' 08; which comes as 98% on the basis of served bills for twelve months

The meter rent charged for Rs.3000.00 for the month of July' 08 is also to be withdrawn; as the concerned meter is declared "tampered", and this should not be charged for the subsequent months till the instant "tampered-meter" is replaced.

If the amount of this bill of July' 08 has been paid, the extra charged amount, should be adjusted in the subsequent monthly energy bills to be served.

The required revisions, should be done within seven days of this decision.

It is also being directed that no any coercive action for disconnection of the instant electric line should be taken, on failure of payment of the amount of Rs. 1,59,14,636.00 of monthly energy bill of July' 08, as per disconnection notice served Vide ESE/PESC(E), letter No.4811 dated 22.08.2008, till the revision, as per this order Of "Interim-Relief-Measure".



6. The petitioner filed a representation on 25.11.2008 before the Chairman of the Board along with the interim Order dated 9.9.2008 passed by the Forum with a request that the Extra amount charged in the monthly energy bills of July, August and September, 2008 to be adjusted in the subsequent monthly energy bills. As per the calculation of the petitioner the extra amount charged in the month of July' 08 was Rs.19,42,283/-, in the month of August' 08 was Rs.22,41,452/- and in the month of September' 08 was Rs.5,44,672/- However the Board did not acted upon the interim order Passed by the Forum. It is further contended that on point of Jurisdiction the Forum refused to entertain the aforesaid case by its order dated 27.08.2010 and the interim order dated 9.9.2008 got terminated. Since the name of the respondents were wrongly mentioned in the order dated 22.8.2010, a corrigendum dated 22.9.2010, amending the name of the respondents was done.

7. It is contended by the petitioner that he made an objection, vide letter dated 8.11.2010 with regard to wrong issuance of provisional bill dated 9.7.2008, by the Board under Clause 11.4 of the Code. According to the petitioner the said bill ought to have been raised taking into consideration 41 days



only. The petitioner has also filed a representation dated 17.3.2011 and 19.5.2011 for reassessment of monthly energy bills for the month of July' 08 to September' 08 and of provisional bill dated 9.7.2008. In order to avoid disconnection of line the petitioner had made payments of the impugned bills, under protest. It is contended that the monthly energy bill of July, August and September 2008 raised by the respondent Board are illegal as the same has not been raised treating the meter of the petitioner company to be defective during the period, and the meter was not replaced even after declaration made by the petitioner company under Clause 11.4 of the Code.

8. It is contended that pursuant to the declaration made by the petitioner, the period during which the meter was not replaced has to be treated as 'defective meter period' as per terms of Clause 11.4(b) of the Code r/w Clause 7 of the Tariff Order and the monthly energy bills of the period in question should have been issued. It is also submitted that 41 days has to be considered instead of 167 days, while issuing bill under Clause 11.4 of the Code as the period can be ascertained in view of the facts that the meter of the petitioner was inspected on 21.5.2008 by the High Powered Team of the Board and the meter was found to be in order. Further from 21.5.2008 to



1.7.2008, the petitioner had made declaration, under Clause 11.4 of the Code and therefore, the period comes to 41 days only. It is contended that the action of the respondent Board is illegal, violative of the provisions of the Code and the Tariff order, and is against the Principles of Natural Justice and is also violative of Article 14 of the Constitution of India.

9. Counter affidavit has been filed on behalf of the respondents Electricity Board.

10. The counter affidavit disclose that the Clause 11.4 (b) of the Bihar Electric Supply Code 2007 states that "The energy bill for the period, the meter is not replaced shall be sent as per procedure for defective meter". So far as the billing under defective meter is concerned it has to be dealt under Clause 7 of terms and conditions of HT Tariff effect from 01.11.2006, which states as below: -

"In case of meter being defective / damage/ burnt the Board or the Consumer as the case may be shall replace the same within the period specified in "Standards of performance for Distribution Licensee. "Regulations issued by the Commission. Till defective meter is replaced the consumption will be assessed and billed on an average consumption of last 12 months from the date of meter being out of order. Such consumption shall be treated as actual consumption for all practical purposes including calculation of electricity duty until the meter is replaced / rectified."



11. It is further submitted by respondents that the petitioner consumer has made voluntary- declaration on 01.07.2008 under Clause 11.4 of Bihar Electric Supply Code 2007 i.e. declaration of tampered meter in question which was installed on 17.01.2008. Accordingly bill as per the provision of Clause 11.4 read with Annexure -7 of Bihar Electric Supply Code, 2007 was raised considering number of days as 167 days. The Consumer had accepted the punitive bill and also made payment so the question of quashing the bill dated 09.07.2008 does not arise. The meter in question was replaced on 04.09.2008. As per Clause 11.4 (b) of Bihar Electricity Supply Code, 2002, the energy bill for the period of which meter is not replaced, shall be sent as per the procedure for defective meter, as per the terms of Clause 7 of the Tariff, under the head of defective / damage / burnt meter till the defective meter is out of order. Accordingly the 12 months average consumption was calculated as below:-

(A) Actual Consumption from 07/07 to 12/07 :
2,24,32,956 unit

(B) The actual Consumption from 01.01.08 to
16.01.08 :23,27,292 unit

(C) As consumer voluntary decelerated on



01.07.08 : 3,28,18,890 unit

Total : 5,75,79,138 unit

As such the average consumption of 12 months became $5,75,79,138/12 = 4798261.5$ Say monthly average consumption became 4798262 units and the bill during the defective meter i.e. for the month of July 2008, August 2008, and September 2008 had been raised on monthly average consumption of 4798262 units.

12. It is further stated in counter affidavit that the petitioner consumer has self-declared voluntary declaration on 01.07.2008 under clause 11.4 of Bihar Electric Supply Code, 2007 for declaration of tampered meter. The date of installation of the meter in question was 17.01.2008. As such the calculation of number of days as per the provisions of Clause 11.4 read with Annexure 7 of Bihar Electric Supply Code 2007 comes 167 days and as per provisions of Bihar Electric Supply Code 2007 and Tariff, the bill had been raised, therefore, prayed to dismiss the writ petition.

13. The petitioner has filed rejoinder denying the contents of the counter affidavit

14. It is averred in the rejoinder that the inspection report dated 21.05.2008 of the High Power Team of



the Board (Annexure-2 of the writ petition), transpires that the Board officials tested the meter on 21.05.2008 before changing the software of the meter. The meter was found to be working properly. The report of the Board itself shows that till 21.05.2008, the meter was working properly. After voluntary declaration made by the petitioner on 01.07.2008 the Board issued provisional assessment bill as per Clause 11.4, to the petitioner. The Board while making the calculation erroneously took into consideration the number of days as 167. In fact the Board from the date of installation of new secure meter on 17.01.2008 calculated the days till 01.07.2008, the date when voluntary declaration was made. The Board failed to appreciate that on 21.05.2008, the software of the meter was changed and the meter was inspected and no abnormality in the meter was found. Hence, the number of day could be only 41 days i.e. from 21.05.2008 to 01.07.2008. The amount of provisional assessment bill has been paid by the petitioner under protest in order to avoid disconnection of electric line. The Board ought to have raised the bill under Clause 11.4 of the Code taking 41 days into consideration. It is in this background the provisional assessment bill should be rectified.

15. It is further averred in rejoinder that the



meter of the petitioner was replaced on 04.09.2008. The Board issued monthly energy bill dated 05.08.2015 for the month of July 2008; the bill dated 05.09.2008 for the month of August 2008; and the bill dated 06.10.2008 for the month of September 2008 on imaginary figures of units consumed without taking into consideration Clause 11.4(b) of the Code and Clause 7 of the Tariff order. It is stated that after voluntary declaration, the meter was not replaced till 03.09.2008. Hence, from 01.07.2008 to 03.09.2008 the bills ought to have been raised in terms of Clause 11.4(b) of the Code read with Clause 7 of the Tariff Order treating the meter as defective. The units should be assessed on the average consumption of last 12 months i.e. from 1st July, 2007 to 30th June, 2008. It is further stated that the respondent has calculated the average calculation of 12 months in the three heads A, B, and C. In this contest it is submitted that the petitioner agrees with the actual consumption worked out at 'A' from 01.07.2007 to 31.12.2007 and from 01.01.2008 to 16.01.2008 at SI 'B', but do not agree with the unit worked out at SL 'C', because it is not the consumption unit rather it is the assessed unit and it cannot form basis for average billing when meter remains non-functional. It is averred that if the respondent would have replaced the meter



immediately as per provision of Clause 11.4 (a) of the BESC 2007 the situation would had not been arisen for billing on average basis for such a long period from 01.07.2008 to 03.09.2008. It is further submitted that the bills served to the consumer by the respondent Board itself was for previous twelve months i.e. from July 2007 to June 2008 as fully described in para-9 of the petition. The petitioner's total consumption for twelve months comes to 4,67,07,348 KWH which comes into an average consumption of 38,92,279 units per month.

16. For better appreciation, Clause 11.4 of the Code is necessary to be quoted:

"11.4 Voluntary Declaration of Tampered Meters In case a consumer comes forward and voluntarily declares tampering of meter and/or seals:

a. The tampered meter shall be replaced with a new meter by the licensee/consumer, as the case may be, immediately and the licensee shall raise the assessment bill at normal tariff for the period of last 3 months for domestic and agriculture, and 6 Months for all other consumer reckoned from date of declaration.

b. The energy bill, for the period the meter is not replaced, shall be sent as per the procedure for defective meters.

c. No case shall be lodged in case a consumer Voluntarily declares the tampered meter and pays the requisite charges in time.

d. In case of default in payment, the procedure



for booking the case of consumer shall be followed. Clause 11.4(b) of the code is the relevant clause in the present case. According to Clause 11.4(b) the energy bill for the Period the meter is not replaced shall be sent as per the procedure for defective meter.”

17. Heard Mr. V.Y.Giri, Learned Senior Counsel for the petitioner as well as Mr. Anand Kumar Ojha, Learned counsel for the respondents and perused the entire records.

18. The crux of the dispute is that whether the bill has to be raised for 167 days i.e. from 17.01.2008 to 01.07.2008 or for 41 days i.e. from 21.05.2008 to 01.07.2008. Admittedly, new meter was installed on 04.09.2008. The bill has to be raised for the defective meter from 01.07.2008 to 04.07.2008 and average has to be taken from 01.07.2007 to 01.07.2008. Admittedly, the petitioner has approached the Consumer Redressal Forum and interim orders were passed in favour of the petitioner vide order dated 09.09.2008. However, the Consumer Redressal Forum has passed the final order on the point of jurisdiction on 27.08.2010, treating that the Consumer Redressal Forum has no jurisdiction to entertain the application with respect to the bill of the tariff. Admittedly, the respondent authorities have verified the meter and found it not tampered on 21.05.2008. It was mentioned that the meter reading was taken at the time of inspection before changing of



the software. Admittedly, the petitioner made voluntary declaration basing on the advertisement, therefore, the respondents Electricity Board ought to have calculated bill only for 41 days instead of 167 days.

19. Accordingly, the writ petition is allowed quashing the monthly energy bills dated 5.8.2008, 5.9.2008 & 6.10.2008 for the month of July, August and September 2008 respectively issued to the petitioner company and respondents Electricity Board is directed to rectify and prepare the said monthly energy bills only for 41 days instead of 167 days.

20. Respondents is directed to refund or adjust the excess amount of monthly energy bills for the months of July, August & September, 2008.

21. With the aforesaid observation this writ application is allowed.

22. Interlocutory Application(s), if any, shall stand disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2024
Transmission Date	

