

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18361 of 2013

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1. The North Bihar Power Distribution Company Ltd. through its Managing Director having its Head Office At Vidyut Bhawan, Bailey Road, Patna
 2. The Financial Controller Rev. , South Bihar Power Distribution Co Ltd. Having Its Office At Vidyut Bhawan, Bailey Road, Patna
 3. The Osd Rev. , South Bihar Power Distribution Co. Ltd., Having Its Office At Vidyut Bhawan, Baile Road, Patna
 4. The Electrical Superintending Engineer, Electrical Supply Circle, Samastipur

... .. Petitioner/s

Versus

1. The Consumer Grievance Redressal Forum, Vidyut Bhawan-II, Bailey Road, Patna through its President
2. M/S Jai Mata Di Metals Pvt. Ltd., Nh - 28, Fulwaria, P.S. Barauni Town, Distt. - Begusarai, Represented through its Director Sanjay Kumar, S/O Sri B.P. Singh Resident Of Sri Krishna Nagar, P.S. Distt. - Begusarai
3. Bihar Electricity Regulatory Commission, through its Secretary, Vidyut Bhawan -II, Bailey Road, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prakash Kumar
For the Respondent/s	:	M/s Suraj Samdarsi, Advocate
		Rohit Singh
		Avinash Shekhar
		Vijay Shanker Tiwari
		Rajani Kant Mishra
		L.L.Pandey, Advocates

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT
Date : 03-05-2024

The writ petition has been filed for quashing the order dated 30.08.2012 passed by the Respondent no. 1, the Consumer Grievance Redressal Forum, Patna (hereinafter referred to as 'the CGRF' in Registered Case No. 93 of 2011 (M/s Jai Mata Di Metals Ltd. Barauni Town Vs. The Electrical



Superintending Engineer, Samastipur).

2. The brief facts culled out of the petition is that the petitioner no. 1 is a Power Distribution Company, erstwhile known as Bihar State Electricity Board, indulging in selling of power as licensee. The respondent no. 1 is a forum established under Section 42(5) of the Electricity Act, 2003 and is statutory in nature.

3. The respondent no. 2 is a consumer of Petitioner Company under HTS-II Category tariff for a contract demand of 1000 KVA on 33 KVA for the agreement dated 29.01.1998. By order dated 3.12.2018, the Bihar Electricity Regulatory Commission has been made respondent no. 3 in the writ petition.

4. It is contended by the petitioner that according to the tariff provision, the demand charges are to be made subject to minimum contract demand as mentioned in Clause no. 15.2 of the Tariff which deals with minimum base charge for the HT/EHT & RT consumers and a consumer of HTS-II category cannot be billed less than 1000 KVA in respect of demand charges. It is further contended that it was noticed by the licensee i.e. present consumer which is HTS-II category has been wrongly charged for energy bill with respect to



demand charge, for the months February 1998 to April 2003 and during the above period the consumer has been billed less than minimum contract demand of 1000 KVA. The Electrical Executive Engineer (C & R) of the Circle issued a supplementary bill dated 20.06.2003 for the entire period starting from February 1998 to April 2003 for sum of Rs. 4,31,020/- which is as per clause no. 15.2(a) of the tariff. The respondent filed objection to the supplementary bill, which was replied by the petitioner – licensee vide letter no. 1592 dated 23.09.2003 that the energy bill has been raised as per Board's tariff in the light of the Board's letter no. 1199 dated 13.06.2003.

5. Respondent no. 2 herein filed writ petition bearing CWJC No. 14128 of 2003, before this Court for quashing the orders of the Board circulated vide letter No. USD/Rev/Com/2911-1199 dated 13.06.2003 of Financial Controller (Rev.) BSEB issued under the signature of OSD (Rev.), BSEB, Patna. Vide order dated 11.04.2008 and the aforesaid writ petition, was allowed by setting aside the orders of the Board.

6. The petitioners herein have challenged the order of Learned Single Judge passed in CWJC No. 14128 of



2003 which is LPA No. 417 of 2008. The Division Bench of this Court vide order dated 01.07.2011 disposed of the appeal filed by the petitioner, directing “ the respondents to approach the Forum constituted under Sub-section 5 of Section 41 of Electricity Act, 2003 and the Forum shall dispose of the matter in accordance with law, after hearing both the parties within the statutory period without being influenced by any of the observation of the Learned Single Judge or this Court.”

7. It is further contended on behalf of the petitioner that in light of the order dated 01.07.2011 passed in LPA No. 417 of 2008, the respondent no. 2 herein moved before the CGRF, Patna vide Registered Case No. 93 of 2011 for setting aside supplementary bill dated 20.06.2003 of sum of Rs. 4,31,020/-.

8. It is contended by the petitioner that the CRGF, Patna quashed the letter no. 1199 dated 13.06.2003 by its order dated 30.8.2012 in Registered Case No. 93 of 2011 directing that the respondent No. 2 is liable to pay demand charge and energy charge bill based on the basis of 15.2 (a) and (b) of the tariff and according to the tariff the consumer is liable to pay the monthly maximum demand charges based on the actual maximum demand of the month of 75% of the contract



whichever is higher and holding that letter No. 1199 dated 13.06.2003 is illegal and invalid. Further the excess payment if any by the consumer be adjusted in the monthly energy bills. Therefore, the writ petitioners pray for quashing the impugned order dated 30.08.2012.

9. A detailed counter affidavit was filed by the 2nd respondent. It is averred in counter affidavit that a Single Bench of this Hon'ble Court vide its order dated 11.04.2008 in CWJC No. 14128 of 2003 has held as follows:-

“The Court, therefore, comes to a conclusion that the communication issued by the OSD (Revenue) giving a new interpretation to clause 15.2 (a) and thereby raising the demand charges to the level of minimum contract demand is a misplaced exercise of power, if not a misplaced interpretation. The communication contained in Memo no. 1200 dated 13.06.2003 as well as Memo No. 1199 date 13.06.2003 in the case of JMG Steel Pvt. Ltd. and Jai Mata Di Metals Pvt. Ltd. respectively are hereby quashed. The supplementary bills raised in pursuant to the said communications are also set aside. These are Annexure-2 and 4 in CWJC No. 6242 of 2003, Annexure-2 in CWJC No. 6241 of 2003 and supplementary bill dated 20.06.2003 in CWJC No. 14128 of 2003.”

It is contended that in the counter affidavit that



the petitioners are trying to restore what has been quashed and set aside by this Hon'ble Court on the same issues, is barred by Res judicata and, therefore the writ petition is liable to be dismissed on this ground alone.

10. It is further averred in the counter affidavit that in exercise of power conferred by Section 181 read with sub-sections (5), (6) and (7) of Section 42 of the Electricity Act, 2003, disclose that only consumer can approach the Consumer Grievances Redressal Forum and Electricity Ombudsman for redressal of their grievances. The CGRF is constituted by the licensee for redressal of grievances of the consumers. In other words, CGRF are the authority of the Distribution Licensee i.e. North Bihar Power Distribution Company. The Forum shall take up all kinds of grievances/complaints as defined / in Regulation 2(1(f)", which reads as follows:

“(f) complaint means any grievances made by the complainant in writing on

(i) Irrelevant

(ii) Irrelevant

(iii) Charging of price in excess of the price fixed by the commission for supply of electricity and allied services.

(iv) Errors in billing

(v) Irrelevant

(vi) Irrelevant



(vii) Any other grievance concerned with supply of Electricity by the Licencee to the consumer except grievances under Sections 126, 135 to 139, 143, 152 and 161 of the Act.”

11. It is further contended in the counter that the cause of action arose on 20.06.2003, when the regulatory Commission had not published its own tariff and conditions, and the Boards 1993 tariff was operative by then.

12. It is further contended that petitioners herein filed LPA No. 417 of 2008 against the order of Hon’ble Single Judge and the Hon’ble Division Bench relying in the law laid down by the Hon’ble Supreme Court in the case of **Maharashtra State Electricity Distribution Co. Ltd. Vs. Lloyds Steel Industries Ltd. Reported** reported in **2008 AIR SCW 624** has held that the respondents can avail remedy open to them before the above-mentioned Forum in accordance with law and it was under these instructions of the Hon’ble Division Bench of this Court, the respondent herein were directed to approach the Forum and the Forum shall dispose of the matter in accordance with law.

13. It is contended by 2nd respondent that in pursuant to the order of the Hon’ble Division Bench, he moved before the CGRF and learned CGRF has held as follows:



“On careful examination of CL-15.22(a)&(b) of the applicable tariff and CL-4(c) of the Ht agreement, We are of the considered view that the petitioner is liable to pay demand charge and energy charge bill based on the basis of 15.2(a)&(b) of the tariff and according to the tariff the consumer is liable to pay the monthly maximum demand charges based on the actual maximum demand of the month or 75% of the contract demand whichever is higher, thus letter no.1199 dated 13.06.2003 issued by OSD(Rev.), BSEB is beyond the provision of the prevalent tariff as well as not in accordance with definition of the CL4(c) of the Ht agreement, thus we hold as illegal and invalid.

Accordingly the impugned letter no. 1199 dated 13.06.2003 is quashed by this order. Excess payment, if any by the petitioner consumer be adjusted in the monthly energy bills.”

14. A counter affidavit has also been filed on behalf of the respondent no. 3 i.e. The Bihar Electricity Regulatory Commission.

15. It is contended by respondent no. 3 in the counter affidavit that the Commission makes only regulations including terms and condition of CGRF and the Commission is not appellate authority of CGRF and it never intervenes in the day to day functioning of the Forum, so the present writ petition is not maintainable against the respondent no. 3.

16. A supplementary affidavit was filed by the petitioner a letter issued under memo no. 474 dated 11.03.2023



by signature of Electrical Superintending Engineer, Electric Supply Circle Samastipur addressed to The Chief Engineer (Comm.) North Bihar Power Distribution Company Limited, Patna disclose that the statement of billing Ledger of respondent / Consumer for the period from February 1998 to April 2003 was enclosed.

17. Learned counsel for the petitioner has also brought on record the H.T. Agreement executed between the petitioner and the 2nd respondent.

18. Heard learned counsel for the petitioners as well as the respondents and perused the record.

19. On perusal of the entire record, it appears that the 2nd respondent has preferred CWJC No. 14128 of 2003 for quashing the letter No. 1199 dated 13.06.2003. The Learned single Judge of this Court has quashed letter no. 1199 dated 13.06.2003 vide order dated 11.04.2008. It further appears that petitioners herein preferred LPA No. 417 of 2008 against the aforesaid order of Single Judge and the Hon'ble Division Bench relying on the law laid down by the Hon'ble Supreme Court in the case of **Maharashtra State Electricity Distribution Co. Ltd. (Supra)** has held that the respondents can avail remedy open to them before the Forum in accordance with law. It was



under the directions of the Hon'ble Division Bench of this Court, the respondent approached the Forum for disposal of the matter in accordance with law. Accordingly, the CGRF has quashed the impugned letter no. 1199 dated 13.06.2003 and further held that excess payment, if any by the 2nd respondent-consumer be adjusted in the monthly energy bills.

20. From the facts and circumstances stated above and after perusal of the aforesaid order passed by learned Single Judge as well as order passed by the CGRF, this Court is of the considered view that there are no merits in the case of the petitioner. This Court did not find any error in the order dated 30.08.2012 passed by the CGRF. Admittedly Clause 15.2(a) & (b) of the applicable tariff and Clause 4(c) of the HT agreement disclose that respondent No. 2 is liable to pay demand charge and energy charge on the basis of the tariff specified under Clause 15.2(a) & (b). According to the said tariff, respondent no. 2 is liable to pay monthly maximum demand charges based on the actual maximum demand of the month of 75% of the contract demand whichever is higher. Therefore, the order of CGRF dated 30.08.2012 is hereby confirmed.

21. Accordingly, the writ petition is dismissed as devoid of merits.



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

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.05.2024
Transmission Date	

