IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20728 of 2021

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Magadh Sugar and Energy Ltd. Unit Bharat Sugar Mills having its local office at and P.O. Sidhwalia, District-Gopalganj, through its Executive Vice President namely Ashish Khanna, aged about 62 years (Male), son of Late Dr. R.N. Khanna, resident of Bharat Sugar Mill, P.O. and P.S. Sidhwalia, District-Gopalganj.

... ... Petitioner/s

Versus

1. The Bihar State Electricity Board represented through the Chief Engineer, Transmission, Operation and maintenance, Patna.
2. North Bihar Power Distribution Company Ltd., Patna represented through The Chief Engineer (Commercial) Bihar, Patna.
3. The South Bihar Power Distribution Company Ltd., Patna represented through The Chief Engineer (Commercial) Bihar, Patna.
4. The Chief Engineer, Transmission, Operation and maintenance of Bihar State Electricity Board, Patna.
5. The Chief Engineer (Commercial), North Bihar Power Distribution Company Ltd., Patna.
6. The Chief Engineer (Commercial), South Bihar Power Distribution Company Ltd., Patna.
7. The Electrical Superintending Engineer, Transmission P and P-II, Bihar State Electricity Board.
8. Electrical Executive Engineer, Transmission Division, Gopalganj, Bihar State Power Transmission Company Ltd.
9. Bihar State Power Transmission Commission Limited Through its Managing Director, Vidyut Bhawan, Bailey Road, Patna - 800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashish Giri, Adv.
For the Respondent/s	:	Mr. Vinay Kirti Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL JUDGMENT
Date : 18-11-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following relief(s):-

> *"i) To issue a writ/order/ direction in the nature of certiorari for quashing the letter no. 166 dated 11.10.2021 issued under the signature of the Chief Engineer (Commercial), South Bihar Power Distribution Company Ltd. addressed to the Electrical*

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Executive Engineer, Transmission Division Gopalganj and copy forwarded to the petitioner in terms of which relying upon the letter of the Chief Engineer (Commercial) NBPDCL no. 303 dated 14.10.2020 transmission loss has been directed to be calculated and deducted and that further direction given that till the bill meters are installed as the grid sub-station, the invoices from September onwards will be admitted only after adjustment of applicable transmission loss of 132 KV and even, all previous invoices to be readmitted taking account of transmission loss including the upcoming monthly bills to be verified only after adjustment of applicable transmission loss. (Annexure-5 Pg.118).

ii) To issue a writ/order/ direction in the nature of certiorari for quashing the letter no. 303 dated 14.10.2020 issued under the signature of the Chief Engineer (Commercial), North Bihar Power Distribution Company Ltd. addressed to the Electrical Executive Engineer, Transmission Division, Gopalganj, BSPTCL wherein, it has been directed to calculate the quantum and amount of transmission losses deductible ab-initio taking into account the transmission loss occurring between the grid station of BSPTCL/NBPDCL and the generator. (Annexure-4 Pg. 116).

iii) To hold and declare that no transmission loss in relation to the supply of energy provided by the petitioners i.e. the generators to the respondent BSPTCL/NBPDCL can be deducted from the invoice of the petitioner from the date of supply pursuant to the power purchase agreement dated 23.08.2011 till the date the meters remain installed in the premises of the petitioner and are not move to the grid station of BSPTCL /NBPDCL.

iv) To hold and declare that the action of the respondent in seeking recover the transmission loss from the invoice of the petitioner that too with retrospective effect is

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not only contrary to the terms of the purchase agreement but also becomes wholly without jurisdiction and violative of Article 14 & 19(1)(g) read with Article 300A of the Constitution of India.

v) To pass appropriate interim / ex-parte ad interim relief during the pendency of the writ application preventing the respondent from taking any coercive steps against the petitioner in relation to recovery of the transmission loss from the past and deduction of the same from the current bills pursuant to the impugned letter dated 14.10.2020 and 11.10.2021 and/or accordingly, the same may kindly be stayed.

vi) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case."

3. It is the case of the petitioner that it is a sugar industry having electricity generating unit. That the petitioner has entered into an agreement with the respondent the then Electricity Board for sale/ supply of the power from its captive power unit. That the bill meters were installed at the factory site of the petitioner by the respondents and the same continued to be used even after the subsequent power purchase agreement dated 23.08.2011 was entered between the parties. That right from the year 2007, the meters were situated at the power station of the petitioner's site and the meter readings were verified, bills generated and amounts adjusted/ paid accordingly. That vide letters dated 14.10.2020 & 11.10.2021, the authorities in a unilateral manner without putting the petitioner on prior notice have taken a decision to recover the transmission loss charges from the year 2007 till the current due.

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4. Learned counsel appearing on behalf of the petitioner has stated that the authorities having entered into a power purchase agreement with the petitioner way back in the year 2007 and also subsequently in the year 2011 and having installed the meters at the site of the petitioner's factory cannot unilaterally try to recover the excess amounts paid to the petitioner on the ground that the transmission loss was not taken into consideration as the meters were put at the site of the petitioner's factory and not at the sub-station i.e., the grid sub-station. Though the petitioner has been making the rounds of the official respondents, the respondents are deducting varying amounts due the transmission loss from the bills of the petitioner. That the petitioner left with no other alternative remedy has approached this Hon'ble Court by way of the present writ petition. Learned counsel has relied on the following judgments passed by the Hon'ble Supreme Court.

i. Uttar Pradesh Power Transmission Corporation Limited & Anr. Vs. CG Power & Industrial Solutions Limited and Anr. reported in ***(2021) 6 SCC 15***

ii. Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharastra Ltd. and Anr. Vs. Shishir Realty Private Limited and Others reported in ***2021 SCC Online SC 1141***

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iii. Kanchan Udyog Limited Vs. United Spirits Limited reported in ***(2017) 8 SCC 237***

5. And the judgments passed by the Hon'ble Delhi High Court in the case of ***Kumar Industries Vs. Suresh Kumar Mittal*** reported in ***2018 SCC OnLine Del 11820*** & ***M/s Klg Systel Ltd. Vs. M/s Fujitsu Icim Ltd.*** reported in ***2001 SCC OnLine Del 440*** in support of his case.

6. *Per contra*, the learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that as per the terms and conditions of the power purchase agreement the meters were supposed to have been installed at the grid sub-station of the BSEB but the same were not done and the same were installed at the site of the petitioner i.e., where the generation of the electricity was being done. Learned counsel has stated that the distance between the unit of the petitioner and the grid sub-station is approximately twelve kilometers and there will be loss of power during transmission from the petitioner's site to the sub-station. That the respondents are bound to calculate the transmission loss and deduct the amount from the bills of the petitioner but due to the above mistake, the same was not done earlier. That the authorities on sealing the same have now installed the meters at

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the grid sub-station and after due verification are recovering the excess amount paid to the petitioner Learned counsel has stated that there is absolutely no legal embargo for recovering the excess amounts paid to the petitioner for the transmission loss. That the recovery of the transmission loss is in accordance with the provisions of the Electricity Act, 2002 and also the agreement entered between the parties. Learned counsel has therefore, prayed this Hon’ble Court to dismiss the present writ petition.

7. Admittedly in the present case, there is no denying the fact that the initial agreement between the parties is in the year 2007 and thereafter, subsequently another agreement was entered between the parties in the year 2011. No doubt it is true that in the agreement entered between the parties, the meters were supposed to have been installed at the grid sub-station and basing on the meter reading only, the bills of the petitioner ought to have been granted. However in this case, the meters have been installed at the place of generation by the department themselves. Further, it is to be seen that it is not the case of the authorities that the meters were installed by the petitioner himself. Irrespective of the fact whether the meters were installed at the place of generation or at the place of grid sub-station, the fact remains that the authorities have kept quite for a period of more than 13 years before they have taken a

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decision to recover the transmission loss, the authorities cannot blame the petitioner for the lapses committed by them at the time of installation of the meters.

8. The Hon'ble Supreme Court in the case of the ***Vice Chairman & Managing Director, City And Industrial Development Corporation Of Maharashtra Ltd.& Anr. V. Shishir Realty Private Limited & Ors.*** reported in ***2021 SCC Online SC 1141***.

> *"60. Before we delve into the aforesaid arguments, it is imperative for us to go to have a look at certain decisions of this Court. This Court in the case of Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh, (1979) 2 SCC 409 laid down the necessity of the government being bound by the principles of promissory estoppel in the following words:*
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> > *"24. ... The law may, therefore, now be taken to be settled as a result of this decision,* ***that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution****. ... It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel...* ***It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted***

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on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. *The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction.* ***But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government.*** *The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. ….****The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden."***

(emphasis supplied)"

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9. Having regard to the same, this Court is of the opinion that the act of the authorities in trying to recover the transmission losses from the petitioner from the year 2007 till the issuance of the letters dated 04.10.2020 & 11.10.2020 is illegally, contrary to the well established principles of law and the law laid by the Hon’ble Supreme Court. The authorities having kept quite cannot seek to recover the transmission losses after a lapse of more than 13 years.

10. Having regard to the same, the writ petition is allowed and the letters dated 04.10.2020 & 11.10.2020 are set quashed. If any amounts have been recovered from the petitioner by the authorities, they shall take necessary steps for refund of the same immediately not later than eight weeks from the date of receipt of a copy of this order. This order does not prevent the authorities from installing the meters at the grid sub-station, if not already installed.

11. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

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CAV DATE	NA
Uploading Date	25.04.2025.
Transmission Date	NA

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