IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1773 of 2009

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M/s Gangotri Iron and Steel Co. Ltd. a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office situated at 307, Ashiana Tower, Exhibition Road, Patna through its Director, Sanjiv Kumar Choudhary, S/o Late Shiv Bhagwan Choudhary, Resident of Kataruka Niwas, South Gandhi Maidan, P.S.-Gandhi Maidan, District-Patna.

... ... Petitioner/s

Versus

1. Bihar State Power Holding Company Limited through its Chairman-cum-Managing Director.
2. The General Manager cum Chief Engineer, Patna Electric Supply Undertaking, Mangles Road, Patna.
3. The Superintending Engineer, Patna Electric Supply Undertaking (West), Mangles Road, Patna.
4. The Electrical Executive Engineer, Patna Electric Supply Undertaking (West), Khajpura, Bailey Road, Patna.
5. The Assistant Electrical Engineer (H T Billing), West Circle, Patna Electric Supply Undertaking, Mangles Road, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s	:	M/s Vinay Kirti Singh, Sr. Advocate Venkatesh Kirti Singh Akhileshwar Singh, Advocates

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 20-01-2025

1. The petitioner has filed the Writ petition for the following reliefs:

> *"1) For quashing of that part of the Provisional Bill for the month October issued on 4th November 2008 (Annexure-11) by which the Respondents have*

arbitrarily raised a demand of arrears of Delayed Payment Surcharge [Delayed Payment Surcharge] from the Petitioner as being wholly illegal, without jurisdiction;

ii) For restraining the Respondents from taking any coercive measure including the connection of Electricity Line of the Petitioner for recovery of the arrears of payment of Delayed Payment Surcharge as the demand was neither legal nor justified;

iii) For a direction to the Respondents to accept the Current Monthly Bill and not to insist for payment of any further installment of the Delayed Payment Surcharge as demanded by the Respondents;

iv) For a direction to the Respondents to rectify the Bill of Delayed Payment Surcharge [Delayed Payment Surcharge] on all the issue like Fuel Surcharge, Annual Minimum Guarantee etc. and to settle the matter on this issue without any further delay; and for any other relief(s) for which the Petitioner may legally be found entitled to in the facts & circumstances of the present case.

v) For quashing of the order dated

28.1.2013 passed by the Financial Controller - Revenue by which he has rejected the Representation for Waiver of Delayed Payment Surcharge charges on Fuel Surcharge, claim related to Delayed Payment Surcharge on AMG Bills and claim related to Waiver of Delayed Payment Surcharge under OTS Scheme, 2006, as being wholly illegal, arbitrary, discriminatory and hence liable to be quashed.

VI) For a direction to the Respondent Board to delete the Delayed Payment Surcharge charges on the A.M.G. bills as subsequently the AMG bills were found to be incorrect and rectified and, therefore, no Delayed Payment Surcharge could have been charged on that."

2. It is relevant to mention here that the petitioner had filed I.A. No. 1636 of 2013 for amendment in the main Writ application to amend the prayer portion in paragraph 1 by additional relief Nos. V and VI, which was allowed by this Court by order dated 14.03.2013.

3. The brief facts culled out of the petition are that the petitioner is a company

incorporated under the Companies Act, 1956 and is a consumer of Respondent Company bearing Consumer No. 182516 HT having a Contract Demand of 1000 KVA for Rolling Mill Unit at Phulwarisharif, Khagaul, Patna. Respondent No. 1 is a Power Distribution Company, erstwhile known as Bihar State Electricity Board, indulging in selling of power as licensee. At the outset the Learned counsel for the petitioner submits that in the present case only two issues are involved, i.e., (I) levy of Delayed Payment Surcharge on payment of Fuel Surcharge by way of interest and (ii) levy of Delayed Payment Surcharge on the amount of minimum guarantee bill which was subject matter of adjudication under Clause 13 of the Agreement.

4. The petitioner’s grievance is that the respondent company had increased the fuel surcharge by charging interest, which resulted in an enhanced fuel surcharge liability for the petitioner. The respondent company raised a fuel surcharge bill dated 21.09.2000 for Rs. 30,52,628/- for the period from April 1995 to July 2000.

5. It is submitted on behalf of the petitioner that the respondents allowed all Industrial Consumers to make the payment of the fuel surcharge in 10 installments, starting from November 2000 to September 2001. Each installment was for Rs. 3.05 lakhs, and the petitioner paid all the installments. It is further submitted on behalf of the petitioner that the petitioner did not pay the Delayed Payment Surcharge for the 10-month period, during which the payments were made in installments. The amount of Delayed Payment Surcharge was not specified by the respondent company, but was included in the regular bill and remained pending. Thereafter, considering the issue, the Board/Company decided that no compensation charge would be payable, if the payment had been made in installments by the consumer who was allowed to pay the amount in this manner. It is submitted that, from the perusal of the Circular (Annexure-3), it is evident that this matter had been pending before the Board, for a long time in

the interest of the consumers, and the benefit was to be extended to those who had not paid the compensation charges. Para 5 of the Circular further clarify that in cases where consumers had paid part of the compensation charge on the unpaid balance of the installments of the fuel surcharge levied, they would not be required to pay any further compensation charge. This clearly proves that the petitioner was covered by the Circular and the Board's decision. Therefore, the petitioner is entitled to the relief that it is not liable to pay any Delayed Payment Surcharge on the fuel surcharge amount paid in 10 installments. However, it is not disputed that for those months in which there was a delay of a few days in making the installment payment, the petitioner may be asked to pay the pro-rata amount for the delayed days.

6. It is further submitted on behalf of the petitioner that the second point for consideration is the levy of Delayed Payment Surcharge, on the amount of Minimum Guarantee

Bills, which was the subject matter of adjudication under Clause 13 of the Agreement before the General Manager. The General Managers are required to dispose of the claims regarding the proportionate reduction on the AMG bills within four months from the date of filing the claim. However, in the present case, for the periods 1993-94, 1995-96, 1996-97, and 1997-98, the petitioner had lodged its claim along with the payment of 50% of the said amount. The total amount of the AMG Bill, which was Rs. 11,12,502/-, was kept in abeyance, and a decision was taken. For the first time, after adjudication, a bill was raised on 27.05.2005, wherein substantial remission was granted on the Minimum Guarantee Charges. However, while issuing the bill for Rs. 6,03,714/-, the respondent, the erstwhile Board, also added a sum of Rs. 11,61,905/- as Delayed Payment Surcharge for the period during which the official of the Board (General Manager) had kept the proceedings pending. It is further submitted that the bill dated 27.05.2005 (Annexure-4/A) contradicts the law that once any bill is rectified after adjudication or correction, Delayed Payment Surcharge cannot be levied for the past period. Only after the rectified bill is raised and remains unpaid by the consumer, may the Delayed Payment Surcharge be applicable, starting from the due date of the rectified bill. In the present case, upon receiving the said bill, the petitioner immediately raised a protest to rectify the bill and delete the Delayed Payment Surcharge charges, but this was not done. However, the petitioner thereafter paid the amount of Rs. 6,03,714/- by Demand Draft, along with a forwarding letter dated 31.05.2006, along with the payment of the current bill for energy charges for the month of March 2006.

7. It is submitted by the Learned counsel for the petitioner that, on the aforesaid two points, the petitioner has approached this Court seeking relief, asserting that it is not liable to pay the Delayed Payment Surcharge. To that extent, the petitioner requests that the

respondents be restrained and directed to settle the petitioner's account by raising a revised bill, taking into account the payments already made by the petitioner.

8. It is submitted by the Learned counsel for the petitioner that the representation of the petitioner was rejected by the Financial Controller – Revenue vide order dated 28.01.2013, which is wholly illegal and suffers from a complete non-application of mind. Furthermore, with regard to the claim for the waiver, of the Delayed Payment Surcharge on the AMG bill, as stated above, no Delayed Payment Surcharge was payable. It is further submitted that the Financial Controller – Revenue, in a most mechanical manner, upheld the bill containing the Delayed Payment Surcharge charges, even though a fresh bill, after rectification, was prepared by the respondent Board, which is not sustainable and is hence liable to be quashed.

9. In support of its contention, the Learned counsel for the petitioner placed reliance

on the decisions passed in the case of **Gaya Roller Flour Mills Private Ltd. Vs Bihar State Electricity Board** reported in **1995 (2) PLJR 715** in which it has been held that: "*I, however, find that the Superintending Engineer has also included the delayed payment surcharge as part of the dues payable by the petitioner. It is to be noted that the Superintending Engineer found that the bill earlier given to the petitioner was raised, on the basis of a defective meter and, therefore, did not reflect the correct demand. He himself set aside that bill and made a fresh calculation of the charges payable by the petitioner. The earlier bill not having been prepared lawfully, I am unable to see how any delayed payment surcharge can be levied for non-payment of that bill. I am, therefore, of the view that the computation made by the Superintending Engineer is not correct in so far as it includes the delayed payment surcharge and to that extent it requires correction. It is accordingly held that the petitioner is not liable to pay any delayed payment surcharge as shown in the* *computation made in the impugned order contained in Annexure 10.*".

10. It is further submitted by the Learned counsel for the petitioner that the above contention was also affirmed in the case of **M/s Iceberg Industries Ltd vs. BSEB (2010) 4 PLJR 574**. The Hon'ble Court held that "*As this Court has found that the amounts as claimed were incorrectly claimed, then the bills being revised would not contain delayed payment charges for balance due in view of Division Bench judgement of this Court in the case of **Gaya Roller Flour Mills Private Ltd. v. Bihar State Electricity Board** reported in **1995 (2) PLJR 715**.*"

11. A counter affidavit was filed on behalf of the respondents, contending that a provisional bill for the month of October 2008, amounting to Rs. 84,10,983/-, was issued to the petitioner. This bill included a sum of Rs. 13,64,229.60 as the consumption charge for October 2008, an arrear of Rs. 68,70,845.34, and a sum of Rs. 1,75,907.86 as Delayed Payment

Surcharge. The bill was issued on 04.11.2008, with a due date of 19.11.2008. After the issuance of the bill, the petitioner filed a representation on 03.12.2008, requesting the grant of installments for the energy bill, as due to the non-payment of the bill dated 04.11.2008, the petitioner's supply line was disconnected on 02.12.2008.

12. It is further contended on behalf of the respondents that, upon perusal of the letter dated 03.12.2008, it is quite apparent that the petitioner admits to not having made the payment for the consumption bill, for the month of September 2008 in due time. The petitioner also requested the grant of three installments for the payment of the bill, for October 2008. In response to the request dated 03.12.2008, the respondents, through their order contained in memo no. 2623 dated 05.12.2008, allowed the petitioner to pay the energy bill for October 2008, amounting to Rs. 84,10,983/-, in three equal monthly installments. Thereafter, on 06.12.2008, the petitioner entered into an agreement with the Bihar State Electricity

Board for the payment of Rs. 84,10,983/- (Annexure-D) in three equal monthly installments of Rs. 28,03,661/- each. Pursuant to this agreement, the petitioner deposited the amount of the first installment, Rs. 28,03,661/-, on 06.12.2008, along with the R.C/D.C charge. The second installment, amounting to Rs. 28,03,661/-, was also paid by the petitioner on 13.01.2009. It is further contended on behalf of the petitioner that on 20.12.2008, the petitioner filed a representation before the Chairman of the Board, raising a dispute regarding the Delayed Payment Surcharge on the fuel surcharge and AMG bill.

13. With reference to the levying of the fuel surcharge on the bill raised by the Board, it is stated that the bill for the payment of the fuel surcharge, covering the period from April 1995 to July 2000, was issued in September 2000, with a due date of 11.10.2000. Upon the request of the petitioner, he was allowed to pay the amount in ten equal monthly installments. It is also the contention of the Learned counsel for the

respondents that, as per Clause 16.2(b) of the 1993 tariff of the Board, the Board charges a uniform rate of 2% per month or part thereof on all types of consumers who are allowed to pay arrears in installments. Accordingly, a Delayed Payment Surcharge (Delayed Payment Surcharge) amounting to Rs. 3,23,445/- has been levied on the unpaid balance of the fuel surcharge installments.

14. It has been contended by the Learned counsel for the respondents that once the petitioner entered into an agreement to pay the outstanding amount of the bill, as contained in Annexure 11, in three equal monthly installments, and admittedly deposited the first two installments on 06.12.2008 and 13.01.2009, the petitioner is estopped from challenging any part of the bill dated 04.11.2008. The third installment, which became due on 06.02.2009, was also covered by the agreement. In this connection, the respondents relied upon the judgment of the Hon'ble Supreme Court, reported in 1**952 SC 145 (Dhiyan Singh & Another v. Jugal Kishore & Another)**,

paragraph 11, in which their Lordships explained the Principle of Estoppel..

15. It is submitted by the Learned counsel for the respondents that the petitioner, in the present writ application, is attempting to raise a dispute regarding the bill raised for the payment of arrears of the fuel surcharge in September 2000. The charging of Delayed Payment Surcharge, pursuant to the bill of AMG communicated to the petitioner via the letter dated 27.05.2005, was never challenged by the petitioner earlier before this Hon'ble Court. Therefore, the petitioner cannot be allowed to challenge it in the present writ application, especially after entering into an agreement to pay the amount in installments and having already paid two installments..

16. It is further submitted by the Learned counsel for the respondents that the petitioner’s third claim for allowing the OTS Scheme is also not applicable, as under the OTS scheme, one is required to receive remission on outstanding Delayed Payment Surcharge charges.

In the case of the petitioner, since he deposited his outstanding dues in part, the Board's circular stipulates that any amount deposited in part will first be adjusted against the Delayed Payment Surcharge amount and thereafter against the current dues. This is clearly evident from the order contained in Annexure-18 of the writ application, which dates back to the year 2006. Such a claim cannot be raised in 2013. Therefore, the respondents pray that the writ petition be dismissed..

17. Heard Learned counsel for the petitioner as well as the respondents and perused the record.

18. Upon perusal of the entire record, it appears that the petitioner did not pay the Delayed Payment Surcharge for a period of 10 months, during which payments were made in installments. The amount of Delayed Payment Surcharge was not specified by the respondent company but was included in the regular bill and remained pending. In light of this issue, a decision was taken by the

Board/Company that no compensation charge would be payable if the consumer had been allowed to pay the amount in installments. Further, from the perusal of Circular (Annexure-3), it becomes evident that this matter had been pending before the Board for a long time, with the intention of benefiting consumers who had not paid the compensation charges. Paragraph 5 of the Circular also clarified that if consumers had paid part of the compensation charge on the unpaid balance of the installments of the Fuel Surcharge, they would not be required to pay any further compensation charge. Lastly, the petitioner filed a representation, dated 22.12.2008, requesting the issuance of a revised bill excluding the amount of Delayed Payment Surcharge, as the petitioner was offering to pay a lump sum amount in light of the Board’s Office Order No. OSD/Rev./Misc./308/03/1280 dated 12.04.2006 (One Time Settlement Scheme 2006). This representation was forwarded to the Financial Controller (Revenue), Bihar State Power (Holding)

Co. Ltd., Patna. However, the Financial Controller (Revenue) passed an order on 28.01.2013 rejecting the representation. Further, the petitioner relied upon the judgment dated 24.08.2015 passed in **CWJC No. 9493 of 2013 (M/S Balajee Ingots India Pvt. Ltd. v. The Bihar State Electricity Board & Ors.**) by this Court, in which similar issues were raised. In that case, the order of the CGRF and the Learned Ombudsman were set aside, along with the bill.

19. Based on the facts and circumstances stated above as well as this matter is squarely covered under the judgment passed in **CWJC No. 9493 of 2013 (supra)**, this Court is of the opinion that part of the provisional bill, Annexure-11, demanded by the respondent from the petitioner is arbitrary and illegal. Furthermore, the order passed by the Financial Controller – Revenue, contained in Annexure-18, is also not sustainable in law.

20. Accordingly the Provisional Bill (Annexure-11) as well as order dated

28.01.2013(Annexure-18) are quashed and set aside.

21. As such, the writ petition 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	15.02.2025
Transmission Date	