IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15623 of 2014

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The South Bihar Power Distribution Company Ltd., through its Law Officer, having its head office at Vidyut Bhawan, Bailey Road, Patna - 800001

... ... Petitioner/s

Versus

1. The State Of Bihar Deptt. Of Energy through its Principal Secretary, New Secretariat, P.S. Sachivalaya, District / Town Patna
2. M/s Dina Metals Ltd, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Abdul Rahmanpur Road, Didarganj, P.S. - Alamganj, District/Town - Patna through its Director, Anand Kumar Sinha, son of Late Sharda Nand Prasad, resident of NTPC Company East Ramkrishna Nagar, P.S. - Ramkrishna Nagar, Patna - 27.

... ... Respondent/s

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Appearance :

For the Petitioner/s : M/s Anand Kumar Ojha, Sr. Advocate
Prakash Kumar, Advocate

For the State : Ms. Neelam Kumar, AC to SC 3

Fro the Respondent No.2: M/s Suraj Samdarshi,
Vijay Shankar Tiwari
Avinash Shekhar,
Abhilasha Jha,
Simran Kumari, Advocates

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 25-03-2025

1. The Writ petition has been filed for quashing the order dated 26.02.2014 passed by the Consumer Grievance Redressal Forum, Patna (hereinafter referred to as 'the 'Consumer Grievance Redressal Forum') in Registered Case No. 83 of 2013 (M/s Dina Metal Ltd. Vs. The South Bihar Power Distribution Co. Ltd. & Ors) and to grant any other

relief / reliefs for which the petitioner is found entitled in law.

2. The brief facts extracted from the petition are that the petitioner is a Power Distribution Company engaged in selling electricity as a licensee. Respondent No. 2 is a consumer of the petitioner under the HTSS Category tariff for a steel ingot manufacturing unit that operates electric furnaces, located at Didarganj in the District of Patna.

3. It is contended by the petitioner that respondent No. 2 manufactures steel ingots using electric furnaces, which require a continuous power supply. The respondent No. 2 applied for supply power to its plant. Accordingly, the supply was commenced by the petitioner-licensee on 16.10.1990 for a contract load of 1450 KVA. As the production and furnace capacity increased, the respondent No. 2 enhanced its contract demand from time to time. It is further contended by the petitioner that the contract demand was enhanced on 16.02.1991 to 3000 KVA from 1450 KVA for which respondent No. 2 entered into an agreement. Similarly on 01.06.1994,

the contract demand was further enhanced to 4500 KVA, and on 07.08.1995 it was further enhanced to 6000 KVA due to enhancement in the capacity of furnaces.

4. It is further contended by the petitioner that in the year 1999, a new tariff schedule for induction furnace consumers was introduced under Section 49 of the Electricity (Supply) Act, 1948, effective from 01.09.1999. This re-categorized the consumers as High Tension Specified Service (HTSS) consumers. Clause 2 of the new tariff stipulated that the supply would only be provided if the sanctioned load was in accordance with the required tonnage of the furnace, with a minimum load of 600 KVA for every ton of furnace capacity. It was also made mandatory that no supply would be provided for loads below this norm.

5. It is further contended by the petitioner that the respondent No. 2 initially submitted an affidavit dated 04.09.1999 stating the furnace capacity as 13 MT. However, it was later discovered that through the report from the manufacturer and

the Excise Department, the furnace capacities were 17.38 MT and 14.5 MT, respectively. Consequently, the petitioner issued a show cause notice to the respondent No. 2 regarding the furnace's capacity. The respondent No. 2 disputed the claim and requested a neutral body to verify the capacity. Meanwhile, the respondent No. 2 agreed to provisional billing at 14.5 MT until the verification was completed. The measurement, was subsequently carried out by I.I.T. Kanpur which calculated the capacity of the furnace to be 16.4 MT. Based on this verified capacity, the petitioner requested the respondent No. 2 through a Letter dated 09.12.1999, to sign a new agreement by 11.12.1999, reflecting a contract demand of 9600 KVA, effective from 01.09.1999. The new agreement was eventually signed on 15.02.2000.

6. It is further contended by the petitioner that in partial modification of earlier notification dated 15.03.2000 (Annexure-2), a revised tariff for the consumers of under HTSS service was introduced, effective from 1st April 2001 vide Tariff

Notification No. COM/TAR-1F- 903/2000/166/2000 dated 28.05.2001. The Clause 3 of the revised Tariff Notification dated 28.05.2001 included a demand charge of Rs 700 per KVA per month and an energy charge of 120 paise per unit for HTSS consumers. Clause 4 of the said tariff also prescribed a minimum monthly charge of Rs 1012 per KVA of contract demand, payable on a monthly basis, with a guaranteed minimum supply of 630 hours per month. If the actual supply hours were lower, the monthly charges were adjusted, based on the actual hours of consumption. As per clause 5 of the said revised tariff, the demand charge as per clause-3 was to be levied on actual maximum demand recorded in the meter during the month or 100% of the contract demand whichever is higher. It is contended by the petitioner that in the light of the revised tariff, the petitioner along with all similarly situated consumers including Respondent No. 2 are bound to pay the energy bill as per the HTSS tariff prepared in accordance with clauses 2, 3, 4 & 5 of the HTSS tariff as revised effective from 01.04.2001.

7. It is further contended by the petitioner that it is the case of the respondent-consumer that although the contract demand was enhanced from 6000 KVA to 9600 KVA, still the actual maximum demand of the respondent-consumer did not undergo change in the past several years. However, the petitioner-erstwhile-Board continued to bill on the basis of minimum monthly charges instead of actual meter readings taken every month by the Board officers. As such in this way, the respondent was forced to pay 30% more than its actual demand charge every month. It is further the case of the respondent consumer that during the months of April and May 2002, the petitioner as per official announcement imposed heavy load restriction on the petitioner's factory continuously from 14.04.2002 to 23.05.2002, but the energy bills for the month of April and May 2002 were served on the basis of minimum monthly charge based on 9600 KVA.

8. It is submitted by the petitioner that the respondent-consumer's claim was examined in Letter No. 4633 dated 14.11.2002, issued by the GM-

cum-Chief Engineer, Patna Electric Supply Undertaking. It was stated therein that regular power supply was not possible due to the outage of a 100 MVA transformer at the Fatwa grid sub-station from 22.04.2002 to 17.05.2002. As a result, the power supply to the respondent was severely restricted, with the available power dropping from the required 20-25 MVA to only 11.5 to 13.5 MVA. M/s Dina Metal Ltd.'s supply was limited to 1.5 to 3.5 MVA, against their contract demand of 9.6 MVA. The Letter No. 4633 dated 14.11.2002 also referred Clause 4 of the HTSS tariff, which stipulates that minimum monthly charges are subject to minimum assured hours of supply of 630 hours per month. The Clause had the provision for allowing proportionate relief to the consumers if power supply is less than 630 hrs in a month. However, the total hours of supply in the month of April and May 2002 were 691.5 and 681.5 hours, respectively, exceeding the minimum stipulated hours. It is submitted that this clause does not allow relief for restricted power supply or to unmeet full load requirements.

Nevertheless, the GM-cum-Chief Engineer, Patna Electric Supply Undertaking considered one part of the tariff notification and suggested that the respondent's claim for relief during this period might be justified, without fully applying the tariff provisions.

9. It is further submitted by the petitioner that respondent No. 2 approached the Hon'ble Patna High Court by filing CWJC No. 5783/2005 and claimed that the aforesaid energy bill for the month of April 2002 and May 2002 were not justified in view of the acceptance by the authority such as GM-cum-Chief Engineer, Patna Electric Supply Undertaking that the load was restricted and the petitioner was supplied energy between 1.5 MVA to 3.5 MVA. The Writ application dismissed vide order dated 27.06.2012 passed in CWJC No-5783/2005. The respondent No. 2 filed LPA No. 74/2013 against the order of the Learned Single Judge. The appellate court after some argument permitted the respondent No. 2 to withdraw CWJC No. 5783/2005 with liberty to approach the Consumer Grievance Redressal Forum ,

under Section 42 (5) of the Electricity Act, 2003 who was directed to decide the matter in accordance with law, without being prejudiced or influenced by the order dated 27.06.2012. Accordingly, the the respondent No. 2 moved before the Consumer Grievance Redressal Forum.

10. It is submitted by the petitioner that the Consumer Grievance Redressal Forum vide order dated 26.02.2014 usurped the provisions of tariff and without appreciating the same in right perspective held the respondent-consumer was entitled for relief on the point of non supply of adequate power for the months of April 2002 and May 2002. It is further submitted that the Consumer Grievance Redressal Forum without any provision to grant remission in view of terms and condition of Clause Nos. 3, 4 & 5 of the Tariff Notification dated 28.05.2001 formulated an independent formula, for the grant of remission which is not sustainable either in the light of provisions of tariff or the terms and condition of the agreement executed between the parties.

11. The Learned Senior counsel Sri Anand

Kumar Ojha for the petitioner submitted that the Consumer Grievance Redressal Forum has not considered Clause-4 of the Tariff Notification dated 28.05.2001, which states that a minimum monthly charge has to be levied in terms of the contract demand as reflected in Clause-4 of the notification and the Board is justified in raising demand at 9600 KVA from the respondent. It is further contended on behalf of the petitioner that the respondent No. 2 has also entered into an agreement making a commitment to pay the minimum contracted demand as well as monthly charges which is provided for not only in the tariff notified, but also in the obligation created under the agreement.

12. The Learned Senior counsel for the petitioner submitted that the Consumer Grievance Redressal Forum failed to appreciate in right perspective that the petitioner has an obligation to provide electricity for a minimum of 630 hours per month which has been provided and that during this period, the supply has been over and above 630 hours. Remissions are granted if the supplies fall

below the minimum supply hours agreed between the parties, but since in the present case there is no provisions of remission for supplies made above 630 minimum hours, there is no escape for the respondent from paying the liability created in the terms of the demand for the bills raised.

13. The Learned Senior counsel for the petitioner submitted that in view of the matter, the impugned order passed by the Consumer Grievance Redressal Forum in bad in law, as well as on the facts of this case, and it is in the interest of the justice that this Court may be pleased to allow this application and quash the impugned order dated 26.02.2014 as wholly without jurisdiction.

14. A detailed counter affidavit was filed by respondent No. 2. It is averred in counter affidavit that the respondent's electric supply began on 16.10.1990 with a contract demand of 1450 KVA, which was increased over time: to 3000 KVA on 16.2.1991, thereafter to 4500 KVA on 1.6.1994, and to 6000 KVA on 7.8.1995. It is further averred that during the disputed period, the contract demand was

9600 KVA, for which an agreement which was executed on 15.2.2000 (Annexure-4). It is contended on behalf of the respondent No. 2 that according to Clause 1(a) of the agreement, the licensee - petitioner was required to provide a constant supply of electrical energy at the specified contract demand. The applicable HTSS tariff mandates charges for both energy consumption and demand, based on the contract demand (Annexure-5).

15. The Learned counsel for the respondent No. 2 submits that it is an admitted fact that the Fatwa Grid Sub-station supplied limited power due to the outage of a 100 MVA power transformer. During the period from 22.4.2002 to 17.5.2002, when the transformer was out of service, the supply to the respondent No. 2 was severely restricted. The chart provided by the Electrical Superintending Engineer, PESU, clearly illustrates the date-wise availability of power in the 33 KVA Katra feeder, which supplies power to the respondent. While the Katra feeder required 20-25 MVA, only 11.5-13.5 MVA was available. Of this, the power

allocated to the respondent No. 2 was restricted from 1.5-3.5 MVA. It is contended that this fact is evident from Annexure-5 to the Writ application, specifically in the Letter dated 14.11.2002 issued by the General Manager-cum-Chief Engineer to the Financial Controller (Revenue), requesting for consideration of the respondent's case for proportionate remission in demand charges.

16. The the Learned counsel for respondent No. 2 submitted that the respondent No. 2 filed C.W.J.C. No. 5783 of 2005, challenging the energy bill for the month of April-May 2002 due to the reduced supply. However, the Writ was dismissed, as there was no provision for remission if the supply is not as per the contract. Respondent No. 2 then filed L.P.A. No. 74 of 2013. The Hon'ble Division Bench of this Court vide order dated 18.7.2013 (Annexure 8 to the Writ petition), considering the submissions made by the parties and the acceptance of the petitioner that it has no objection, if the respondent No. 2 was relegated to the alternative remedy of the Consumer Grievances

Redressal Forum, the Writ application was disposed of with a clear observation that the Forum constituted under Section 42(5) of the Electricity Act, 2003 will decide the matter in accordance with law without being prejudiced or influenced by the impugned judgment and order dated 27.6.2012. The appeal was disposed of as withdrawn, with the aforesaid liberty.

17. Further, respondent No. 2 submits that in furtherance of this, the answering respondent filed a case before the Consumer Grievances Redressal Forum under Section 42(5) of the Electricity Act, 2003, which was registered as Case No. 83 of 2013. The Consumer Grievances Redressal Forum, by order dated 26.2.2014, after considering the facts of the case and the relevant decisions rendered by this Hon'ble Court and the Hon'ble Supreme Court, held that the respondent No. 2 was entitled to remission due to the failure to supply electrical energy at the contracted demand. This conclusion was supported by the rulings in ***Raymond Limited vs. Madhya Pradesh***

Electricity Board **(2001 (1) SCC 534, paragraph 21)** and ***Tata Iron & Steel Company vs. Bihar State Electricity Board*** **(AIR 1989 Patna 119, paragraph 12)**. The order passed by the Forum, which is under challenge, is contained in Annexure-1 of the Writ application.

18. The the Learned counsel for the respondent No. 2 submits that the petitioner’s argument that the consumer cannot claim further remission once the supply is made for 630 hours , which is entirely misconceived, in view of the law established by the Hon'ble Apex Court was well as this Hon'ble Court as the two component are distinct in nature. Supplying energy for 24 hours and supplying energy as per the consumer's contract demand both are distinct. For instance, if an industrial consumer has executed an agreement for 100 KVA to operate its industry, and the licensee fails to supply energy at the contract demand of 100 KVA but supplies energy for 24 hours for 30 days, at 1 kilowatt which is sufficient for lighting fan and light, such supply this cannot be considered a supply of

energy in accordance with the agreement. The very purpose of the agreement, which was to run the industry, would be defeated. Furthermore, the tariff clearly states that demand charges are levied at Rs. 700 per KVA, in addition to the energy charge at the prescribed rates. More importantly, Rs. 700 per KVA is to be applied for the actual consumption of 100% of the contracted demand, whichever is higher. Therefore, the tariff assumes that energy will be supplied to the extent of 100% and even if the consumer fails to avail energy at the contracted load, the charges would be levied for 100%.

19. The Learned counsel for the respondent No. 2 submits that permitting the licensee to charge 100% of the demand, despite the acknowledgment that the licensee failed to supply energy at the contracted load, would result in unjust enrichment on the part of the licensee.

20. The Learned counsel for respondent No. 2 submits that the Consumer Grievances Redressal Forum's reliance on Clause 4 of the agreement, which clearly specifies that the

consumer's liability to pay charges is subject to the minimum contract demand applicable for each category, thus, the charges payable under the "demand charge" category are contingent upon the licensee supplying the agreed contract demand. Furthermore, the submission in paragraph 24 of the Writ application, which claims there is no provision for remission, is therefore misconceived. The Forum has addressed this issue in detail, relying on the decisions of both the Hon'ble Apex Court and this Hon'ble Court. Hence, the Writ petition is liable to be dismissed on this ground alone, affirming the order of the Consumer Grievance Redressal Forum.

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

22. The main cause of the dispute between the parties since April 2002 is the mode of billing demand raised by the petitioner for the period from 14.04.2002 to 23.05.2002, according to respondent No. 2. However, according to the petitioner, the period is from 22.04.2002 to

17.05.2002. During this intervening period, the power supply to the petitioner was severely restricted, ranging from 1.5 MVA to 3.5 MVA, against the contracted demand of 9.6 MVA. This restriction occurred due to the outage of the 100 MVA transformer unit installed at the 220/132/33 KV Fatuwaha Grid Power Substation, through which the 33 KV Katra Meena Bazar feeder, supplying power to respondent No. 2, emanates. The respondent-consumer's feeder depends on the said Fatuwaha Grid Substation.

23. Upon perusal of the order of the Consumer Grievances Redressal Forum, this Court finds that the Forum has carefully addressed the issue in question and passed a reasoned and well-versed order, after considering all the pleas of the parties. The Forum has also duly examined the decisions rendered by this Hon'ble Court, as well as by the Hon'ble Supreme Court of India. After careful examination of the order, this Court is of the opinion that the Forum rightly held that respondent No. 2 is entitled to remission due to the non-supply of

electrical energy at the contracted demand.

24. The Hon'ble Apex Court in ***Raymond Limited (supra***) observed in paragraph 21 as follows:

> *"21**.** So far as the cases under consideration and the liability of the consumers relating to minimum guarantee are concerned, the relevant clause relating to minimum guarantee charges as well as the tariff notification relied upon, would go to show that what was guaranteed was not the payment of a flat sum or amount of money to be calculated with reference to a particular number or percentage of units, dehors the quantum of electrical energy distributed and supplied by the Board. In other words, the guarantee was of "... such minimum consumption as when calculated at the tariff..." will yield a particular monthly/annual sum to the Board. Even going by the tariff notification which prescribes also a minimum entitling the Board to collect it [vide clause 21(b)] it merely casts liability on the consumer to "guarantee a minimum monthly consumption equivalent to 40% load factor of the contract demand". Consequently, for the consumer to honour his/its commitment so undertaken to give a minimum consumption there should essentially be corresponding*

supply by the Board at least to that extent, without which the consumption of the agreed minimum is rendered impossible by the very lapse of the Board. The minimum guarantee, thus, appears to be not in terms of any fixed or stipulated amount but in terms of merely the energy to be consumed. The right, therefore, of the Board to demand the minimum guaranteed charges, by the very terms of the language in the contract as well as the one used in the tariff notification is made enforceable depending upon a corresponding duty, impliedly undertaken to supply electrical energy at least to that extent, and not otherwise. It is for this and only reason we find that the ultimate conclusion arrived at by the Full Bench of the High Court does not call for any interference in these appeals."

25. The Division Bench of this Court in ***Tata Iron & Steel Company (supra)*** observed in paragraph 12 as follows:

*"**12.** The words 'constant supply of electrical energy' must mean that continuous supply of electrical energy. That to us appears to be the plain meaning of the words used. In the modern context where even our day to day life is so much dependent upon supply of*

electricity, it is not too much to expect that the Board should supply electrical energy throughout the 24 hours. However, having regard to the fact that annual charges are payable by consumers who generally require electrical energy in larger quantities than any ordinary domestic consumer for carrying on his business or establishment, the annual charges payable by him have a direct relationship with the supply of electrical energy to him at a time when he can consume the supply. The minimum guaranteed consumption itself implies that the energy is supplied when it can be consumed. No doubt, even beyond his normal working hours, such a consumer requires electrical energy for other purposes, such as security lighting etc. However, the consumption for such purposes is so small as compared to the main purpose for which electrical energy is taken, that it may be ignored in the matter of determining the liability for annual charges. So viewed, 'constant supply' in the context of annual charges must mean continuous supply during the normal working hours of the consumer when the supply can be consumed. This to us appears to be a fair interpretation of the agreement having regard to its purpose, commercial nature and preacticability. We are of the view that when the Board wants a guarantee from the consumer about minimum *units it would consume, any prudent businessman would agree to pay that amount only if the Board fulfils its obligation. If in fact it is found that there had not been constant suppy of electricity at the contract demand during the period the factory of the petitioner was expected to work, the petitioner can certainly claim that it is entitled to a reduction in annual charges proportionate to the period for which there was no supply of electrical energy or supply as per the contract demand. The case of TISCO is that its units at Adityapur complex work 24 hours and electrical energy at the contract demand is required for all 24 hours. It was urged that in this case, constant supply must, therefore, mean constant supply for 24 hours. On behalf of the Board it was not stated that TISCO's units at Adityapur complex do not work for 24 hours."*

26. This conclusion aligns with the principles laid down by the Hon'ble Apex Court in ***Raymond Limited (supra***) and ***Tata Iron & Steel Company (supra*)**. Accordingly, this Court concurs with the order passed by the Forum and finds no lacuna in the same.

27. Based on the facts and circumstances

stated above, this Court is of the considered view that there is no merit in the case of the petitioner. The Court does not find any error in the order dated 26.02.2014 (Annexure-1) passed by the Consumer Grievance Redressal Forum. Therefore, the order of the Consumer Grievance Redressal Forum, dated 26.02.2014, is hereby confirmed.

28. Accordingly, the Writ petition is dismissed as devoid of merits.

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

Spd/- **(G. Anupama Chakravarthy, J)**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.04.2025
Transmission Date	