

BIHAR STATE ELECTRICITY BOARD & ANR.

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DHANAWAT RICE AND OIL MILLS

JANUARY 17, 1989

[G.L. OZA AND K.N. SAIKIA, JJ.]

Electricity (Supply) Act, 1948: Sections 18, 26, 28, 29, 49, 54 & 60—Agreement to supply electrical energy—Clauses 1, 4 and 13 of the agreement—Provision for constant supply of electricity—Constant supply whether continuous supply—Minimum annual guarantee payment—Tripping, load-shedding and power cut—Failure to supply continuous electricity—Circumstances beyond control of Electricity Board—Consequent non-consumption by consumer upto the level of minimum guarantee—Consumer entitled to proportionate reduction.

Clause 1, of the agreement arrived at between the consumer-respondents and the appellant-Electricity Board, provided for constant supply of electrical energy to the consumers. Clause 4 provided that even if the consumer does not consume electricity above the minimum guarantee then it will be incumbent upon the consumer to pay annual minimum charges. Clause 13 provided for the contingency that if the consumer is prevented from receiving or using the electrical energy due to strikes, riots, fire, floods, explosions, act of God or any other case reasonably beyond the control of the Board or if the Board is prevented from supplying such electrical energy owing to any of the causes mentioned then the consumer was entitled to a proportionate reduction of the annual minimum guarantee bill as determined by the Chief Engineer.

The respondents were served with the bills for annual minimum guarantee for the years 1973-74 to 1982-83 by the Electricity Supply Division. The respondents filed their claims, under clause 13, with the Chief Engineer denying their liability to pay any such charges because the Board did not supply constant supply as provided in clause 1. It was alleged that during the period in question due to trippings, load-sheding and power-cut the respondents suffered a great loss. The Chief Engineer negated the claims of the respondents.

A batch of writ petitions was filed in the High Court, challenging the order of the Chief Engineer. Although in these petitions relief sought was proportionate reduction of the annual minimum guarantee

bills but in view of the interpretation of clauses 1, 4 and 13 the High Court quashed the demand made by the Electricity Board by holding that under clause 1 it was incumbent for the Electricity Board to supply constant electricity supply and that the consumers will be liable to pay annual minimum guarantee charges only if the Board supplies the power as provided in the agreement but the consumer does not utilise the power.

In these appeals by Special Leave, it was contended on behalf of the appellants that the 'constant supply' mentioned in clause 1 cannot mean 'continuous supply'. The respondent-consumers could not deny the liability to pay annual minimum guarantee bills if the Electricity Board could not supply power for all the 24 hours due to circumstances beyond the control of the Electricity Board. In case of shortage of supply due to circumstances beyond the control of the Board the consumers were entitled to a proportionate reduction under clause 13 of the agreement.

Allowing the appeals, the Court,

HELD: 1. The High Court was not right in coming to the conclusion that the respondents were not liable at all to pay the annual minimum guarantee charges. [175C]

1.1. The High Court in its judgment clearly stated the hours every year in dispute when the power was not supplied and on this basis the respondent-consumers will only be entitled to proportionate reduction as ordinarily the consumers are expected to have continuous power supply. Clause 13 clearly provides for the proportionate reduction of the annual minimum guarantee bills. [175D]

2. Clause 1 talks of constant supply of electrical energy providing for voltage, cycles, phases and wires. It does not talk of either of continuous or non-continuous or intermittent supply. [173E]

3. The Respondent consumers are entitled to a proportionate reduction of the minimum guarantee bill. The inability of the Electricity Board to supply electrical energy due to power cut or any other circumstance beyond its control as per the demand of the consumer according to the contract will be reflected in and considered as a circumstance beyond the control of the consumer which prevented it from consuming electricity as per the contract and to the extent it wanted to consume. [173G]

A *Northern India Iron & Steel Co. etc. v. State of Haryana & Anr.*,
[1976] 2 S.C.R. 677, followed.

4. The Chief Engineer of the Electricity Board shall accordingly assess the proportionate reduction of the annual minimum guarantee bills in respect of disputed years on the basis of non supply as indicated
B in the High Court Judgment. [175D-E]

4.1. Pending assessment, the power supply of the consumers will not be disconnected on the ground of failure to pay the annual minimum guarantee bills. [175E]

C 4.2. The Electricity Board will be entitled to take recourse to the normal procedure if the consumers fail to pay after the proportionate reduction is made and fresh demand is made. [175E-F]

Amalgamated Electricity Co. Ltd. v. Jalagaon Borough Municipality, [1976] 1 SCR 636; *M/s. Man Industrial Corporation v. Rajasthan State Electricity Board and others*, AIR 1986 Rajasthan 137
D and *Mukand Iron and Steel Works Ltd. v. Maharashtra State Electricity Board and another*, AIR 1982 Bombay 580, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 156-164 of 1989.

E From the Judgment and Order dated 24.7.1987 and 7.4.1988 of the Patna High Court in C.W. J.C. Nos. 253, 266, 262, 255, 260 265, 555, 254 of 1986 and C.W.J.C. No. 17 of 1988 respectively.

Dr. Y.S. Chitale and Pramod Swarup for the Appellants.

F N.R. Choudhary and L.R. Singh for the Respondents.

The Judgment of the Court was delivered by

OZA, J. Leave granted.

G These special leave petitions have been filed against the judgment of the High Court of Patna by which several writ petitions were disposed of. All these special leave petitions have been preferred in this Court aggrieved by that judgment. The common question which arises in all these SLPs is that under the agreement arrived at between
H the consumers and the Bihar State Electricity Board there is a clause

of payment of minimum guarantee which indicates that even if the consumer does not consume electricity above the minimum guarantee that it will be incumbent upon the consumer to pay charges for energy which is the annual minimum guarantee provided in the agreement pertaining to Industrial units.

The relevant facts are that for the years 1973-74 to 1982-83 the bills for annual minimum guarantee were served on the appellants by the Electricity Supply Division, Forbesganj and on receipt thereto the appellants filed their claims as provided under clause 13 of the agreement on the ground that appellant was not liable to pay any such charges because the appellant did not supply constant electricity as provided in the agreement during the period in question and there were tripping, load shedding, and power-cut which resulted in a great loss to the petitioners and as the supply was not in accordance with the agreement liability to pay annual minimum guarantee bills could not be fastened on the consumer. The Chief Engineer who was the authority under the agreement negated the claim and so they filed writ petitions in the High Court.

The High Court by the impugned judgment came to the conclusion that under clause 1 of the agreement it was incumbent for the Electricity Board to supply constant electricity and the consumer will be liable to pay annual minimum guarantee charges only if in spite of the fact that the Board supplies power as contemplated in the agreement and the consumer does not utilise the power then the liability to pay annual minimum guarantee charges will arise and on this basis the High Court quashed the demands made for these years on the basis of annual minimum guarantee as it found that power was not supplied according to the agreement.

Learned counsel appearing for the Electricity Board contended that clause 1 of the agreement does not in any manner mean that there should be a continuous supply. The term used in clause 1 of the agreement only talks of constant supply of electrical energy at the pressure of volts, cycles, 3 phase, 3 wire etc. but it does not talk of continuous supply without any break and it therefore could not be contended that if there was no supply for a few minutes it will amount to failure on the part of the Electricity Board to provide constant supply. It was contended that the constant supply cannot mean continuous supply. It was also contended that clause 4 of the agreement clearly talks of the payment of annual minimum guarantee charges and therefore it could not be said that because of the power cut or situations beyond the

- A control of the Electricity Board if the power could not be supplied for all the 24 hours every day the respondent consumer can deny the liability to pay annual minimum guarantee bills. It was also contended that in view of clause 13 of the agreement which provides that if there was shortage of supply and that shortage resulted in short supply then the consumer was entitled to a proportionate reduction of the annual
- B minimum guarantee bill as determined by the Chief Engineer, Bihar State Electricity Board and consequently the respondent in this case went to the Chief Engineer who ultimately decided on the basis of facts that respondents were not entitled to any proportionate reduction and it was because of this that the petitions were filed before the High Court. It was contended that the learned Judges of the High Court
- C have failed to appreciate clause 13 of the agreement. Learned counsel also placed reliance on the decisions in *Amalgamated Electricity Co. Ltd. v. Jalgaon Borough Municipality*, [1976] 1 SCR 636; *M/s Northern India Iron & Steel Co. etc. v. State of Haryana & Anr.*, [1976] 2 SCR 677; *M/s Man Industrial Corporation v. Rajasthan State Electricity Board and others*, AIR 1986 Rajasthan 137 and *Mukand Iron and Steel Works Ltd. v. Maharashtra State Electricity Board and another*, AIR 1982 Bombay 580.
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Learned counsel for the respondents on the other hand contended that clause 1 provides for constant supply of power, the variations permitted have been indicated in this clause itself and it is con-

E tended that it is only where the electricity Board discharges its duty to supply power as contemplated in clause 1 and the consumer because of his difficulties is not able to utilise power even upto the level of minimum guarantee that the liability to pay annual minimum guarantee bills could be fastened on the consumer but if the Board fails to discharge its responsibilities as contemplated in clause 1 of the agreement it could not compel the consumer to pay the annual

F minimum guarantee. It was frankly conceded that in the petition itself originally relief sought was proportionate reduction of the annual minimum guarantee bills but in view of the interpretation of clauses 1, 4 and 13 the High Court came to the conclusion that there is no liability on the consumer to pay annual minimum guarantee bills as the Elec-

G tricity Board has failed to supply power as contemplated in clause 1 of the agreement. Learned counsel however contended that the Chief Engineer in his order has misunderstood the whole situation but before the High Court the facts were not disputed and in each case average hours of supply per year during the disputed period have been stated which have not been disputed by the Electricity Board and if at all the

H High Court judgment is not maintained the respondents are entitled to

proportionate reduction of the annual minimum guarantee bills in the light of the hours of supply per year which have been stated in the High Court judgment and is not disputed.

Clause 1 of the agreement reads as under:

"1. (a) The Board shall furnish to the consumer and the consumer shall accept at the point of supply mentioned in the schedule hereto, on and from the date on which the said premises shall be connected with the supply Distributing mains and during the continuance of the agreement, a constant supply of electrical energy at the pressure of Volts, 50 cycles, 3 phases, 3 wires, alternating current system subject to standard variations as provided in Indian Electricity Rules, 1956 or any other statutory modification thereof as may be in force from time to time for the purpose and upto the maximum specified (hereinafter referred to as the contract demand) and under the conditions laid down in the Schedule."

This clause talks of constant supply of electrical energy providing for voltage, cycles, phases and wires. It is clear that it does not talk of continuous supply nor does it talk of non-continuous or intermittent supply. In fact this clause in our opinion is not very material for the decision of the case as the sole controversy pertains to interpretation of clause 13.

Clause 4 of the agreement provides for the minimum guarantee and there is no dispute that if the consumer is not able to utilise electricity even upto the level of minimum guarantee: This clause provides for payment of charges of minimum guarantee. The real controversy pertains to the interpretation of clause 13. In fact in *Northern India Iron & Steel Co. case*, [1976] 2 SCR 677 this Court had the occasion to consider a situation of this kind where this Court on this aspect of the matter has observed that where the Electricity Board fails to supply power because of shortage of energy, power cut or any other circumstances as per demand of the consumer according to the contract it will be considered as a circumstance beyond the control of the consumer which prevented it from consuming electricity as per the contract.

Their Lordships observed as under:

A “We are, therefore, of the view that the inability of the Board to supply electric energy due to power cut or any other circumstance beyond its control as per the demand of the consumer according to the contract will be reflected in and considered as a circumstance beyond the control of the consumer which prevented it from consuming electricity as per the contract and to the extent it wanted to consume. The monthly demand charge for a particular month will have to be assessed in accordance with sub-clause (b) of clause 4 of the tariff and therefore from a proportionate reduction will have to be made as per sub-clause (f). We hope, in the light of the judgment, there will be no difficulty in working out the figures of the proportionate reduction in any of the cases and for any period. In case of any difference or dispute as to the quantum of the demand charge or the proportionate reduction, parties will be at liberty to pursue their remedy as may be available to them in accordance with law.”

D It appears that reading clause 13 in the present case clearly provides for the contingency and it provides for the failure on the part of the supplier and also failure on the part of consumer in the circumstances like strike, riot, fire, flood, explosion or act of God or any other reason beyond the control of either of the parties. Clause 13 of the agreement reads:

F “If at any time the consumer is prevented from receiving or using the electrical energy to be supplied under this agreement either in whole, or in part due to strikes, riots, fire, floods, explosions, act of God or any other case reasonably beyond control or if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all of the causes mentioned above then the demand charge and guaranteed energy charge set out in the schedule shall be reduced in proportion to the ability of the consumer to take or the Board to supply such power and the decision of the Chief Engineer, Bihar State Electricity Board, in this respect shall be final.”

H In view of this language of the clause clearly providing for the proportionate reduction of the annual minimum guarantee bills it could not be doubted that the High Court was not right in coming to the conclusion that the respondents were not liable to pay annual minimum

guarantee bills at all. The judgment of this Court also clearly indicated that the respondents consumers are entitled to a proportionate reduction of the minimum guarantee bills. In clause 13 of the agreement this is clearly stated that the authority competent to determine the proportionate reduction is the Chief Engineer and it appears that it was because of this that the respondents consumers approached the Chief Engineer for consideration. But it appears that the learned Chief Engineer also did not clearly understand the meaning of clause 13. The judgment of the High Court on which reliance is placed have only followed the judgment referred to above.

In our opinion, therefore, the High Court was not right in coming to the conclusion that the respondents were not liable at all to pay annual minimum guarantee charges. In fact they are only entitled to the proportionate reduction. The judgment of the High Court clearly states the hours every year in dispute when the power was not supplied and on this basis the respondents consumers will be entitled to proportionate reduction as ordinarily the consumers are expected to have continuous power supply. It is therefore directed that the Chief Engineer of the Electricity Board on the basis of hours of non supply as indicated in the High Court judgment and not disputed in the High Court will assess the proportionate reduction of the annual minimum guarantee bills in respect of disputed years indicated above and it is also directed that until this is not done the power supply will not be disconnected on the basis of failure to pay the annual minimum guarantee bills for the periods stated above. However, after the proportionate reduction is made and fresh demand is made, Electricity Board will be entitled to take recourse to the normal procedure if the consumers fail to pay.

In the circumstances no order as to costs.

T.N.A.

Appeals allowed.