

General Manager-Cum-Chief Engineer, Bihar State Electricity Board and Others,

Vs

Rajeshwar Singh and Others

Civil Appeal No. 221 of 1987

(K. N. Saikia, Smt. M. S. Fathima Beevi JJ)

24.11.1989

JUDGMENT

K. N. SAIKIA, J. -

1. This appeal by special leave is from the judgment and order of the High Court of Judicature at Patna, dated March 10, 1983, in Civil Writ Jurisdiction Case No. 4581 of 1978 allowing the writ petition and quashing the electricity bills dated May 25, 1978 and the order dated May 24, 1978 refusing to apply the Incentive Scheme, and directing the Bihar State Electricity Board, hereinafter referred to as 'the Board' to restore electrical connections immediately on payment of fresh bills.

2. The Board entered into an agreement on August 12, 1974 with the respondents who are partners of M/s. Alakha Rubber Industry, hereinafter referred to as 'the firm', to supply 100 KVA electric energy to the firm. Clause 4(c) of the agreement reads thus :

"4(c) The maximum demand charge for the supply in any month will be based on actual maximum KVA demand for the month or 75 per cent of the contract of the demand whichever is higher subject to the provision of clause 13. For the first 12 months service the maximum demand charge for any month will however be based on actual monthly maximum demand for that month."

During the period from August 1974 to October 1975 as many as 15 monthly bills were submitted to the firm which, however, did not pay any of those bills. On September 6, 1975 the firm was intimated that a sum of Rs. 51,789 was outstanding against them. Consequently on October 16, 1975, after giving the statutory 7 days' notice the electric connection was disconnected. Thereafter, in terms of aforesaid clause 4(c) of the agreement the minimum demand charges continued to be charged from the firm on the basis of 75 per cent of the contract of demand. After the disconnection was effected, it appears, the firm also wrote to the Board asking for disconnection on the ground that floods had damaged their factory and they were not in need of electric energy. Notwithstanding the disconnection the firm was being charged the minimum demand charges on the basis of 75 per cent of the contract of demand, hereinafter referred to as the 'minimum guaranteed charges' and the outstanding rose to Rs. 92,213 by April 24, 1977. The electric connection was restored on June 15, 1977 on the firm's executing a fresh agreement dated May 30, 1977 and furnishing a fresh security deposit of Rs. 11,950. The firm submitted a representation to the Industries Department of the State Government to take up the question of remission of current charges as well as for granting benefit under the Incentive Scheme in terms of the Government Resolution No. 16808 dated September 29, 1973. The Board allowed remission of minimum guaranteed charges under clause 13 of the agreement for the financial year 1975-76 on account of flood damages caused to the firm, but

rejected the claim in respect of years 1974-75 and 1976-77 and after adjustment on the account the firm's outstanding stood at Rs. 59,369.15. The Government Resolution No. 16808 dated September 29, 1973 was amended in 1976 with effect from April 1, 1976 restricting the government subsidy in respect of minimum guaranteed charges to a maximum of Rs. 1000 only per year. The Electrical Executive Engineer of the Board wrote to the firm on May 23, 1978 demanding the arrear dues. On April 19, 1978 the supply line was again disconnected; and on May 23, 1978 the Board wrote to the firm that the Incentive Scheme could not be extended to it as the name of the Industry did not find mention in the list of registered small scale industries. On May 25, 1978 the firm was served with bill for Rs. 1,06,795 being the outstanding dues mainly for minimum guaranteed changes for the entire period minus the remission granted for 1975-76. The firm moved the High Court of Judicature at Patna for quashing the bills, for grant of the benefit under the Incentive Scheme and for restoration of the connection.

3. Before the High Court the Board contended that the disconnection on October 16, 1975 was on the firm's failure to pay the outstanding dues. The restoration thereafter was on execution of a fresh agreement and it was again disconnected on April 19, 1978 on the firm's failure to clear the outstanding dues. The High Court while considering the question as to whether the firm was liable to pay minimum guaranteed charges during the period of non-supply of electrical energy, took the view that the disconnection brought to an end the contract insofar as the minimum guaranteed charges were concerned and that both parties were discharged from further performance of the obligation under the contract and accordingly held that the firm was entitled to treat the contract as discharged. The High Court also held that the firm was not liable to pay minimum guaranteed charges for five years from August 12, 1974 till August 12, 1979 by virtue of the Incentive Scheme issued under Section 78-A of the Electricity Supply Act; that it had no liability to pay minimum guaranteed charges from August 12, 1979 till date as there had been no supply of electrical energy to the firm, but the firm was liable to pay the energy charges in arrears. Further it was held that the bills submitted by the Board were composite, i.e. comprising legal and illegal charges and non-payment thereof could not disentitle the firm to seek rebate in making timely payment. The writ petition was accordingly allowed and the bills and the order dated May 24, 1978 refusing benefit under the Intensive Scheme were quashed and the Board was directed to restore electrical connections immediately on payment of fresh bills presented within 15 days of judgment.

4. Mr. Soli J. Sorabjee, the learned counsel for the appellant, submits that the first question involved in this appeal is that of minimum guaranteed charges which is the same as was in Civil Appeal No. 220 of 1987 : Bihar State Electricity Board, Patna v. Green Rubber Industries ((1990) 1 SCC 731), which has just been disposed of. The other question is as to whether the benefit of the Incentive Scheme declared by the Government of Bihar Resolution No. 16808 dated September 29, 1973 by which registered small scale industries were exempted from the payment of minimum guaranteed charges for a period of 5 years from the date of its commencing production and a subsidy of 9 paise per unit on electrical energy consumed was available to the respondent firm, and also the effect of amendment of that resolution by government notification dated May 19, 1976 restricting the exemption of minimum guaranteed charges up to a sum of Rs. 1,000 per year.

5. The first question, therefore, is whether the firm was liable to pay the minimum guaranteed charges for the period during which the supply remained disconnected. In Civil Appeal No. 220 of 1987 we have held that the firm would be liable to pay the minimum guaranteed charges unless it could be shown that the contract itself was terminated. The mere disconnection of the electricity supply would not amount to termination. If there was no application for restoration within 7 days of disconnection that would be deemed to be a notice for termination and the contract would be

terminated either at the end of this period of notice or the tenure of the agreement whichever was longer. In the instant case the fresh agreement was entered into on May 30, 1977 and connection was restored on June 15, 1977. Earlier the connection given on execution of the agreement was on August 12, 1974 and supply was disconnected on October 16, 1975. The earlier agreement must be deemed to have come to an end on execution of the fresh agreement and restoration of connection if it did not terminate earlier under the terms of the agreement. The firm's liability, has therefore to be determined on that basis in view of what has just been held in the judgment in Bihar SEB v. M/s. Green Rubber Industries ((1990) 1 SCC 731).

6. As regards the next question, the firm is said to have commenced into business as far back as on August 12, 1974 but they first applied to the Board for exemption through the Industries Department mainly on the ground that their factory was submerged in floods in 1975 and remission was granted by the Board for the year 1974-75 in terms of clause 13 of the agreement for vis major. The firm did not apply for registration with the Industries Department of the government as a small scale industry, and as such, it was not open for it to invoke the Incentive Scheme under the government notification. The High Court held that the firm had no liability to pay minimum guaranteed charges from August 12, 1974 till August 12, 1979 by virtue of the Incentive Scheme issued under Section 78-A of the Electricity (Supply) Act, 1948 without taking into consideration the fact that the firm did not apply under the Incentive Scheme without which they would not be entitled to claim any benefit under the scheme. The High Court found that the industry started its production on August 12, 1974. It was registered on October 21, 1975/October 31, 1975 with the Industries Department and its allotted registration number was 031901573 and by letter dated November 13, 1975 the Executive Engineer of the Board was informed about the registration. On December 22, 1975 the Executive Engineer asked the firm to communicate the registration number in order to enable him to obtain decision from the Board. The firm communicated as was asserted in paragraph 32 of the writ petition in the High Court that the firm through several letters informed the authorities that it had been registered as small scale industry and also communicated its registration number to the executive Engineer. The High Court observed that there was no denial of the aforesaid averments in the various counter-affidavits filed on behalf of the Board. What had been stated in paragraph 11 of the counter-affidavit before the High Court was that since the petitioner industry was not listed as registered small scale industry by the Industries Department, it was not possible to give any concession or remission of minimum guaranteed charges and the Board relied on the letter of the Electrical Executive Engineer dated May 23, 1978, in that connection. The High Court accordingly observed that the failure of the concerned authorities to carry out their duties in accordance with law, could not disentitle the firm of the admissibility of Incentive Scheme if lit was otherwise applicable and at least the Board having come to know that now the firm was registered small scale industry there should be no hesitation in withdrawing the demand for minimum guaranteed charges and restoring the electrical connection to the industry.

7. We are inclined to take the view that when firm was registered as a small scale industry on October 21/31, 1975 there could be no question of it being granted benefit under the Incentive Scheme prior to that date, unless the registration was with retrospective effect. On October 16, 1975 the supply stood disconnected. However, the minimum guaranteed charges were still payable by the firm and benefit to that extent would be available to the firm. Electric connection was restored on June 15, 1977. The Incentive Scheme was amended reducing benefit to a maximum of Rs. 1,000 only per year. Unless the resolution itself so provided, the new scheme will supersede the earlier one. From the date the benefit will accordingly be reduced until the firm completed five years of production. As we do not have materials to show that the firm was entitled to the exemption and the subsidy irrespective of its registration with the Industries Department, we are inclined to hold that it

would be entitled only since the date of its registration and till it completed five years of production. It will be exempted even if the electric energy supply was disconnected, provided it was still liable to pay the minimum guaranteed charges.

8. In the result we set aside the judgment of the High Court and allow the appeal only to the extent indicated above. The Board will now submit fresh bills on the basis stated hereinabove, if not already settled. We make no order as to costs.

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