

Bihar State Electricity Board and Others

Vs

Allied Refractories (Pvt.) Ltd. and Others

Civil Appeal No. 2940 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

25.01.1996

ORDER

1. Leave granted.

2. Though the respondents have been served twice and Respondents 1, 2 and 6 were again served on 22-9-1995, they are not appearing either in person or through counsel. Acknowledgements from Respondents 3, 4 and 5 for the second occasion have not been received. We, therefore, declare that they are deemed to have been served.

3. The only question is : whether the respondents are entitled to the proportionate reduction of the minimum guaranteed amount for non-supply of electricity due to disruption by trippings, load sheddings and power cuts etc. ? Clause (13) of the contract entered into, provides that they are entitled to make an application in such a situation and the Board would consider and pass appropriate orders in that behalf. Admittedly, the respondents had not made such an application, but straight away approached the High Court for relief. The High Court in the impugned order dated 16-8-1988 in CWJC No. 1480 of 1988 directed the appellant to grant them proportionate reduction. The controversy is no longer res integra. This Court in Bihar SEB v. Dhanawat Rice & Oil Mills [(1989) 1 SCC 452], arising from the appellant-Board itself had held that under Section 49, an agreement had been entered into by the consumer with the appellant to pay minimum guarantee of charges to the Board. On failure to consume the minimum guaranteed level of electricity due to non-supply of electricity by tripping load sheddings or power cuts, the consumer would be entitled to make an application for proportionate reduction of the minimum guarantee. Since respondents had not made such an application, the High Court was not justified in straight away allowing the writ petitions and directing the grant of the proportionate reduction. The order is set aside. This order does not preclude the respondents from making application accordingly under Section 49 of the Electricity Supply Act and it would be open to the appellant-Board to consider and pass appropriate orders within a reasonable time from the date of making the application.

4. The appeal is accordingly allowed, but, in the circumstances, without costs.