SUPREME COURT OF INDIA

Bihar State Electricity Board

Vs.

UMI Special Steel Ltd.

C.A.No.377 of 1992

(V. N. Khare and S. N. Variava, JJ.)

08.11.2000

JUDGEMENT

S. N. VARIAVA, J.:-

1. This Appeal is against an Order dated 14th August, 1991 passed in Letters Patent Appeal No. 69 of 1990, by which the Appeal has been dismissed in limine. The Letters Patent Appeal was against an Order dated 20th January, 1989 read with an Order dated 2nd May, 1990, wherein an Appeal filed by the respondent had been allowed.

2. Briefly stated the facts are as follows :

On 12th January, 1972 the appellants and the respondent entered into an agreement whereunder the appellants were to supply to the respondent High Tension electricity for a contract demand/load of 1500 KVA at 11000 volts. The relevant Clauses of the Agreement are 4(a), 8 and 9. They read as

under :

"4(a) The consumer shall pay to the Board for the energy so supplied and registered as aforesaid at the rates given in the Schedule, provided that the minimum charge as specified in the schedule appended hereto shall be paid irrespective of whether energy to that extent has been consumed or not.

xxxxxx xxx

xxxxxx xxx

8. The agreement shall be ordinarily in force for a period of not less than 3 years in the first instance except in exceptional cases in which written consent of the Board will be taken, from the date of commencement of supply i.e._____ and thereafter shall continue from year to year until the agreement is determined hereinafter provided.

9. The consumer shall not be at liberty to determine this agreement before the expiration of 3 years from the date of commencement of the supply of energy. The consumer may determine this agreement at any time after the said period on giving to the Board not less than twelve calendar month's previous notice in writing in that behalf and upon the expiration of the period of such notice this agreement shall cease and determined without prejudice to any right which may then have accrued to the Board hereunder provided always that the consumer may at any time with the previous consent of the Board transfer and assign this agreement to any other person and upon subscription of such transfer this agreement shall be binding on the transferee and Board and take effect in all respect as if the transferee had originally been a party hereto in place of the consumer who shall thenceforth be discharged from all liability under or in respect thereof. If a consumer, whose line has been disconnected does not apply for reconnection, in accordance with the law within the remainder period of the compulsorily availing of supply or that of notice whichever be longer, he will be deemed to have given a notice on the date of disconnection in terms of the aforesaid clause 9 for determination of the agreement."

Thus it is to be seen that even though energy may not be consumed minimum charges had to be paid. The agreement was to be for a period of 3 years and thereafter to continue from year to year until it was determined. Under Clause (9) the consumer could not determine before the expiration of 3 years but could determine, after the expiry of 3 years, on giving a 12 month's previous notice in writing. Also if the line has been disconnected, and the consumer did not apply for reconnection within the remainder period of compulsory availing of supply or of notice then the date of disconnection shall be deerned to be the date of notice for determination of agreement.

3. In 1973-74 the respondent addressed several letters to the appellants to reduce the contract demand from 1500 KVA to 1000 KVA. The respondent also requested the appellants to reduce the period of the agreement from 3 years to 2 years. Ultimately, by a letter dated 12th February, 1974 the Respondent requested that the agreement be determined with effect from 1st March, 1974 and that thereafter they be given a temporary supply of 500 KVA. The appellants did not agree to this. It is an admitted position that, in spite of respondent' letters, the agreement subsisted till February, 1975. On 24th February, 1975 the respondent addressed a Letter to the appellants, which reads as follows :

"This is for your kind information that from 1-3-75 we shall stop availing construction power being supplied to us at 33 KV 3 phase 50 c/s A.C. from your sub-station at Bhurkunda. Please therefore arrange to disconnect the supply from 1-3-75 and take charge of your metering equipment installed at our end."

Pursuant to this request the appellants disconnected the electricity. In May, 1975 the appellants submitted to the respondents a Bill which, inter alia, contained an amount towards the minimum charges for the period 1st March, 1975 to 28th February, 1976. As the amounts of the Bill were not paid a Notice dated 18th May, 1976 was addressed by the appellants to the respondent. As the payment was still not made a recovery certificate was issued on 2nd August, 1978.

4. The respondent then filed a suit claiming that with effect from 24th February, 1975 the agreement stood terminated. The respondent claimed that they were not liable to pay the minimum charges for the period from 1st March, 1975 to 28th February, 1976. The suit came to be dismissed by the trial Court on 31st March, 1980.

5. The respondent then filed an appeal. By a judgment dated 28th January, 1989, the High Court held that the parties had agreed that a period of 3 years be reduced to 2 years and that such a novatio was permissible in law. The High Court held that it was always open to the parties to change the Contract by mutual consent and that the appellants' act in disconnecting the electric supply and stopping supply of electricity amounted to bringing the agreement to an end by mutual consent. The High Court held that the appellants had, therefore, terminated the contract and could not have any legal right thereafter to ask for performance of the agreement. The High Court held that, in this view of the matter, Clause (9) of the agreement was not of much importance as it was merely an enabling provision which perished along with the contract. The High Court then referred the matter back to the trial Court for leading additional evidence and for calculating the amounts payable by the respondent to the Appellants for the period up to 1st March, 1975.

6. The trial Court merely held that respondent were bound to pay all charges prior to 24th February, 1975 and send the case back to the High Court. The High Court by a judgment dated 2nd May, 1990 directed the respondent to pay amounts payable up to 1st March, 1975 and directed the Certificate

Officer to refund the balance amount to the respondent.

7. Against this order the appellants filed Letters Patent Appeal which was dismissed by the impugned Order dated 14th August, 1991. Hence this Appeal before this Court.

8. As has been seen the agreement was to be for a period of 3 years and was to continue from year to year till determined in the manner provided under the agreement. During the subsistence of the agreement the minimum charges had to be paid. Clause (9) of the agreement clearly provided that during the first 3 years the agreement could not be determined. Thereafter the agreement could be determined only by giving a notice in writing of 12 months. Clause 9 also provided that though there was disconnection of electricity, still the agreement would subsist for a period of 12 months from the date of disconnection.

9. Before us it is admitted that the agreement subsisted till February, 1975. Therefore the finding of the High Court that there was novatio by mutual consent and the period was reduced to two years is clearly erroneous. The High Court has also seriously erred in not noting that disconnection of electricity is different from termination of agreement. Even during the subsistence of the agreement there could be disconnection of electricity. The agreement envisaged that the consumer may not consume electricity during the period of the agreement. Such non-consumption may be due to disconnection or for any other reason. It is because of the possibility of consumer not consuming electricity that a provision for an annual minimum charge has been made. Disconnection of electricity does not amount to termination of the agreement. This elementary principle has been completely lost sight of by the High Court.

10. We have set out above the letter dated 24th February, 1975. As seen there is no request for termination of the agreement as contemplated by Clause (9) of the agreement. In fact, there is no request for termination at all. By this letter all that the respondent are asking the appellants to do is to disconnect the supply. The appellants, pursuant to this request, had disconnected the supply. But this does not mean that the agreement stood terminated. The agreement would continue until it was determined by the parties. The only method of termination was Clause (9) of the agreement. As admittedly no notice in writing of 12 months was given, the agreement would terminate, as per Clause (9), after a period of 12 months after disconnection. Therefore, the agreement subsisted till 28th February, 1976. As the agreement subsisted till this date the appellants were entitled to claim the annual minimum charges for the period from 1st March, 1975 to 28th February, 1976. The High Court has seriously erred in holding otherwise.

11. In this view of the matter the judgments of the High Court dated 14th August, 1991, 20th January, 1989 and 2nd May, 1990 require to be and hereby set aside. It is held that the respondent are bound to pay to the appellants the annual minimum charges for the period 1st March, 1975 to 28th February, 1976.

12. It must be mentioned that this Court had by an interim Order dated 26th January, 1992, as clarified by an order dated 5th February, 1992 permitted the respondent to withdraw the amount of the annual minimum charges which had been recovered from them. The respondent were directed to furnish a Bank Guarantee of a Nationalised Bank to repay the amount with interest at the rate of 12 per cent per annum. The respondent have since recovered the amount. They are, therefore, bound to repay the amount with interest at rate of 12 per cent per annum, from the date of recovery of amount from the Recovery Officer, till payment.

13. Mr. Chowdhary request that the respondent be permitted to repay the amount in six installments. We, therefore, direct that the annual minimum charges for the period 1st March, 1975 to 28th February, 1976 with interest thereon at the rate of 12 per cent per annum from the date the amount was recovered by the respondent from the recovery officer till payment shall be paid by the respondent to the appellants in six equal monthly installments. The first installment to start with effect from 1st January, 2001. Each and every subsequent installment to be paid by the 1st day of each succeeding month. In the event of any installment not being paid within time, the entire balance amount, then remaining due and payable, shall become payable forthwith.

14. The Appeal stands disposed of accordingly. There will be no order as to costs.

Order accordingly.