

SUPREME COURT OF INDIA

Bhilai Rerollers

Vs.

Madhya Pradesh Electricity Board

(S.R. Babu and Doraiswamy Raju JJ.)

19.08.2003

JUDGMENT

RAJENDRA BASU, J.

1. Leave granted.

2. The above batch of appeals involves identical questions of law for consideration on almost similar factual background and as such are dealt with together.

C.A. NO. /2003 [Arising out of S.L.P. (C) No. 2123/2000]

3. The appellant in this appeal has established a steel re-rolling Mill and is engaged in re-rolling of iron steel. Being a consumer of electric energy for the purpose, the appellant entered into an agreement dated 24.12.92 with the Madhya Pradesh Electricity Board (for short "Board") for supply of energy on a contracted load agreement of 150 H.P. Low Tension A/C 400 volts industrial power at the rate of Rs. 1.10 per unit in terms of the unit meter reading subject to the terms and conditions set out therein. It is stated that on 18.2.94 the tariff relating to the supply of Low Tension energy has been enhanced to Rs. 2.25 per unit for all units which consumed with minimum charges of 60 units per month or part thereof of the contracted load. A meter to measure and record the consumption was installed at the premises in terms of the requirement of Section 26 of the Indian Electricity Act, 1910 and the terms of the agreement entered into with the Board. The appellant claims that the bills prepared according to the meter readings in the unit meter located in the premises in question was being regularly paid without default and that the working of the meter was also being regularly checked from time to time by the officials of the Board and that at no time there was any complaint regarding the using of any machinery to exceed the contracted load of 150 H.P. The grievance of the appellant was with reference to the installation what is called as maximum demand indicator/meter for short (MDI meter), though there was no provision in the agreement enabling them to do so. The MDI meter is said to be a device to measure the maximum demand at a particular half an hour cycle of running the machinery in the factory, meaning thereby it measures the maximum demand of electric energy in a cycle of half an hour and not either the actual consumption of electricity or the horse power of motors or any other electrical equipment installed for use. According to the appellant though electricity actually consumed is recorded in the energy meter, the MDI meter showed higher amperage. It is further stated that though the total contracted load of machinery in the factory of the appellant has been certified to be 147.5 H.P. and not in excess of the contracted load capacity of 150 H.P, the Board, according to the appellant, on 12.8.94 arbitrarily worked out the working load capacity of the machinery as 236 B.H.P. on their own and on the basis of the MDI

meter reading for the months of March 94 to June 94 and on that basis demanded the payment of an additional sum of Rs. 75,625/-. On threat of disconnection of supply the said amount was said to have been paid to avoid any inconvenience resulting from such disconnection. When representations in this regard with the authorities did not bring forth any positive results, the appellant filed W.P.No.876 of 1995 before the High Court of Madhya Pradesh at Jabalpur, seeking to quash the bills raised for an additional demand of the nature noticed above and also prayed for restraining the Board from raising such bills in future on the basis of the MDI meter installed in the premises.

4. The Board opposed the claim contending not only that the installation of such a meter was permissible and the course of action taken by them on the basis of the results of the MDI meter reading raising further demand in respect of utilization of the excess load over and above the contracted load capacity were legal and proper and that the meter readings relating to ail these were said to be either in the presence of a responsible representative of the appellant and that no exception could be taken either to the correctness of the readings recorded or the legality and propriety of the additional demand raised on account or such consumption of energy in excess of the contracted load. The learned Single Judge who heard the Writ petition along with a batch of other similar writ petitions rejected the claims of appellant while accepting the stand taken for the respondent-Board, Aggrieved, LPA No. 311 of 1999 was filed before the Division Bench and by an order dated 5.10.99 the Division Bench concurred with the decision of the learned Single Judge and rejected the appeal. Not satisfied the appellants have approached this Court.

5. The sum and substance of the claim on behalf of the appellant is : (a) that, there is no provision for installation of MDI meter on the low tension connection in the premises of the appellant either in the statute or in the agreement executed between the parties and, therefore, it is unauthorized and illegal and cannot be used against the appellant; (b) that, merely on the basis of the working of the MDI meter which has a limited role, even if it be, the quantum of load capacity availed of for consumption could not either be safely or accurately determined and that the Board has to go only by the total capacity of the motors which was even said to have been certified by the officials of the Board themselves for purpose of determining the alleged excess utilization over and above the actual contracted load capacity; (c) that, such utilization is to be treated merely as the "thrust load" necessarily required by the motor/machinery only when the same is put in motion and thereafter what is actually consumed is said to be only the actual load capacity of the motor/machinery as permitted under the provisions of the Indian Electricity Rules, 1S56 and the conditions of supply relating to the supply of electrical energy; (d) that, the MDI meter could not be installed for the purpose of raising additional bills but may be only for determination of the power factor in the premises of the LT consumer and that in the actual working of the said meter, as in this case, it was said to have exceeded and even went as high as 236 HP. and consequently the same is said to be ex-facie, unrealistic and even impossible to be believed and cannot, therefore, be a creditworthy process for being countenanced, to raise any additional demand on the basis of such materials alone against the appellant.

6. Per contra, the respondent-Board contended that, the appellant had entered into an agreement for supply of electricity for re-rolling of iron or steel on a connected load agreement of 150 HP. Low Tension A/C 400 volts; that, an initial inspection disclosed use in excess of the contracted load, rendering the appellant liable to pay for units corresponding to the excess load at twice the normal tariff rate (inclusive of fuel charges and other charges paid as per tariff) as envisaged in the tariff notification dated 18.12.94 for the previous 3 months in which the existence of excess load was detected; that, this circumstance necessitated the installation of the MDI meter and the same was

within the competency and powers of the Board under the relevant provision of the statute as well as the very terms and conditions of the contract relating to supply of energy; that, the recording of the drawal of a load capacity at a particular point of time over a continuous duration of 30 minutes through the device of MDI meter is a technically approved method of certainty; that, having regard to Clause 31(f) of general conditions for supply which is part and parcel of the low tension agreement entered into between the parties, as well as Clause 15 (a) and (b) of the same the installation of the MDI meter is justified; that, if the actual consumption load exceeded the contracted load capacity without prior permission of the Board, action may be taken either to discontinue the supply and or if any tariff becomes further payable on account of such excess load consumption, the same has to be paid as supplementary charges based on such increase and consequently based on the MDI meter reading which records actually the maximum load availed of by the consumer along with actual energy consumed, the Board is entitled to re-rate the charges to be paid and such re-rating is binding on the consumer; that, the MDI meter was installed only in the presence of responsible member of the management itself; that, as regards the claim on behalf of the appellant based on the "thrust load" concept Board contends that the MDI meter records only the excess capacity drawn over a continuous period of 30 minutes duration at any time during a month; that, reference to the thrust load concept is nothing but an attempt to confuse the real issue, in as much as MDI meter does not record the thrust load experienced by the motor/machinery at the time of starting which hardly is set to take only a few seconds or higher load/maximum load experienced by the motor/machinery for a fraction of time; that, this method and system was being uniformly applied without making any discrimination among different consumers and said to be also a well recognised and widely accepted one and, therefore, the demand raised was legal proper and quite in accordance with law and cannot be avoided by the appellant.

7. The grounds raised in the petition and the contentions raised in the counter filed in this Court seems to have evoked further response in the form of rejoinder by the appellant and additional counter by the Board. By these pleadings the appellant disputes the accuracy of the recording by the device of MDI meter in its actual working of what is stated as drive needle in the MDI meter to which the Board replied stating that the MDI meter had 2 needles, one called the pointer needle which shows the load utilized in kilowatts and this pointer is always said to be moved by carrier needle or drive needle and after completion of 30 minutes cycle of continuous drawal the carrier needle alone resets automatically to "0" position leaving the pointer needle to remain and retain its position as per the load recorded and new cycles per 30 minutes gets repeated by themselves from time to time recording any further fluctuations on the higher side. This method is claimed by the Board to be an appropriate and technically precise and proved one besides being a worldwide approved method of such measurement. It is also urged for the Board in traversing in the claim of the appellant to the contra, that the appellant was billed only as per single part tariff (Alternative - I of L.T. tariff F) on the basis of Kilowatt recorded by the MDI meter and that as in the case of low tension consumer (440 volt supply) MDI meter was being also utilized in HT connections (11000 volt or 33000 volt supply) in which also, it is stated that there is similar provision for single part and two part tariff and consequently it is claimed that the MDI meter can be utilised in single part opted tariff as well as two part opted tariff.

C.A. NO. /2003 [Arising out of S.L.P. (C) No. 2300/2000]

8. This appellant has a steel rolling mill in Raipur District and for purposes of the mill he obtained L.T. electrical power supply by entering into an agreement with the Madhya Pradesh Electricity Board with power load of less than 100 H.P. The agreed payment for consumption of energy was

said to be at Rs. 1.90 per unit upto 100 H.P. and rest at Rs. 2.25 pr unit. As in the other case, MDI meter has been installed in the mill premises in question and on the basis of the said meter recording for the consumption of energy availed in excess of the contracted load, additional demand Was said to have been raised, in addition to the regular consumption charges based on the ordinary meter fixed for recording unit of consumption of electrical energy. As in the other case, this appellatant also approached the Madhya Pradesh High Court at Jabalpur with W.P. No. 2996 of 1994, which came to be heard and disposed by a common order in a batch of cases, resulting in the dismissal of the writ petition. Thereupon the appellatant filed LPA No. 239 of 1999 and the Division Bench also confirmed the order of the Single Judge by rejecting the appeal. Hence, this appeal.

9. The contentions of the parties on either side are almost similar to the one noticed in the earlier appeal and therefore, it is unnecessary to advert to the same in great detail.

C.A.NO. /2003 [Arising out of S.L.P. (C) No. 2734/2000]

10. This appellatant also claims to have established a manufacturing unit in the name and style of M/s Kishan Steel, Rolling Mill at the Industrial Estate Urla, Raipur Distt and for purposes of his manufacturing activities availed supply of L.T. Electrical energy by entering into an agreement with the Madhya Pradesh Electricity Board with the sanctioned contract load of 100 HP. Aggrieved against the action taken by raising a demand for the excess drawl/consumption of energy than the contract/sanctioned load, on the basis of the reading recorded by the MDI meter at the premises, this appellatant also filed WP. No. 3043 of 1994, which also came to be dismissed on 20.7.99. Not satisfied, he filed LPA No. 238 of 1995 which also did not meet with success, resulting in the filing of this appeal, raising identical issues and contentions, as in the other appeals. One further, grievance of this appellatant is that though he sought for enhanced sanctioned load upto 150 HP., the same is not being considered favourably. The admitted position in this case seems to be that the inspecting authorities have found on different dates viz. 12.2.93 (excess connected load of 148 HP.), on 23.8.93 an excess connected load of 188 H.P.

C.A. NO. /2003 [Arising out of S.L.P. (C) No. 3079/2000]

11. This appellatant claims to have established M/s Shree Krishna Steels at Jawahar Nagar, Raipur (M.P.) and availed supply of L.T. electrical energy by entering into an agreement with the Madhya Pradesh Electricity Board for a contracted load capacity of 100 H.P.. On the basis of the recording of excess load capacity availed of by the appellatant as per the MDI meter reading, the appellatant has, also been called upon to pay for the excess load consumption over and above the contracted load. This appellatant also unsuccessfully filed WP.No. 3002 of 1994 seeking for relief as in the other cases and when the said petition came to be dismissed filed also LPA No. 241 of 1999 unsuccessfully. In this appeal identical contentions as have been raised in the other appeals are raised before this Court.

C.A. NO. /2003 [Arising out of S.L.P. (C) No. 3113 of 2000]

12. This appellatant also, has availed of supply of L.T. electrical energy for the steel mill in question by entering into an agreement with the Madhya Pradesh Electricity Board for the contracted load capacity of 98 HP. and when an action was taken on the basis of the recording of excess drawal of load of electrical energy than the actual permitted load capacity by the MDI meter installed in the premises in question resort to the High Court seems to have been made by filing W.P.No. 326 of 1995. When the same came to be dismissed along with the other group of writ petitions, the

appellant filed unsuccessfully LPA No. 240 of 1999, and thereafter filed this appeal, raising contentions identical and similar to those raised in the other appeals.

C.A. NO. /2003 [Arising out of S.L.P. (C) No. 3115 of 2000]

13. This appellant steel mills also availed of supply of L.T. electrical energy by entering into an agreement with the Madhya Pradesh Electricity Board for the contracted load supply of 150 H.P. When as in the other cases, on the basis of the recording by the MDI meter installed in the premises demand was raised for the excess load capacity of energy drawn, far in excess of the contracted load, this appellant also unsuccessfully filed W.P. No. 3372 of 1999 and when the further appeal filed before the Division Bench in LPA No. 239 of 1999 came to be dismissed, this appeal came to be filed raising almost identical and similar grounds as have been raised in the other appeals.

14. Shri Shanti Bhushan, learned senior counsel, while adverting to the definition of connected load/installed capacity to mean only the sum of the rated capacity of all the energy consuming devices and apparatus installed at the consumers premises connected to the installation including portable apparatus and of maximum demand, to mean, unless otherwise defined by the Board, twice the largest number of the kilowatt hours or kilo volt ampere hours supplied to the consumer during any consecutive 30 minutes during the relevant period contended that calculation of the connected load by the Board on the basis of the maximum demand reading shown in MDI meter is fallacious and the reading so recorded does not suggest or indicate and prove a connected load, incidentally, it was also urged that the maximum demand in any 30 minutes cycle may shoot up due to increase of load on the AC Motor or several other factors having no real connection with the connected load. It is the further contention on behalf of the appellant that under Alternative - I of Tariff F (single point tariff) there is no provision for billing on the basis of maximum demand reading recorded by MDI meter and that such a thing was permissible only under Alternative II of Tariff F, and if at all the choice left with the Board is to provide with the mills in question, by-vector meter with MDI indicator and meter their billing compulsory under Alternative II of Tariff F. Argued the learned senior counsel further that the device used by the Board can also result in misuse to the prejudice of the consumer and there is no justification for the impugned demand as long as there is no charge or accusation against the mills of any theft or adoption of any subterfuge method to evade payment of the rate for actual consumption of electrical energy. Shri Anup Choudhary, learned senior counsel appearing on behalf of the appellant --mills, strongly supported the submissions of Mr. Shanti Bhushan contending in addition that maximum demand can be made only in respect of H.T. supply and not for L.T. supply and that such move is not permitted at all under the agreement, in substance, it is claimed that what is done by the Board is in gross violation of the provisions contained in the statutory agreement entered into between parties. It was also urged that there is a special procedure envisaged by the Board under its orders for determining the rating/capacity of AC Motors installed in the premises and that alone should have been done in these cases instead of relying upon the readings of the MDI meter. So far as this aspect is concerned it needs to be clarified even at this stage that the said circular relates to a particular category of problem or to meet an eventuality where in the name plate details of the big AC Motors are not available or capacity/rating of the motor mentioned is doubtful and not to deal with a situation arising in these cases.

15. Per contra, Shri V.R. Reddy, learned senior counsel for the respondent-Board took pains to deal with and explain everyone of the submissions made above to justify the action of the Board in making the additional demand based on the MDI meter reading disclosing the drawal of excess load energy than the permitted/contracted load, causing thereby loss to the Board on several counts. It is

strenuously contended on behalf of the Board - the excess drawal of load and consequent excess demand was said to inevitably result in great stress on the whole system adversely affecting the maintenance works and scheme of supply as programmed, throwing over board and disrupting several factors essential for maintaining the supply system, to ensure smooth supply to various customers-availing simultaneously of the supply of energy under the system and it is for such reasons only the agreement itself envisaged levy and collection of penal rate if the load capacity availed of was found to be in excess of the contracted load capacity. Reliance has also been placed in this regard on the observations of this Court in the decision reported in Orissa State Electricity Board and Anr. v. IPI Steel Ltd. and Ors. . Reference has also been made to the notification dated 18.2.94 issued by the Board in exercise of its powers under Section 49 of the Electricity (supply) Act, 1948 and all other enabling powers, revising the Low Tension Tariffs, in super session of the existing tariffs and condition No. 2 applicable to Alternatives I, II & III of Tariffs, which enabled the Board in case the connected load in the consumers premises at any time was found to exceed what has been agreed to be under the contract to levy penal rates corresponding to the excess load at twice the normal rate(including of fuel charges, if any, and other charges payable as per tariff). While disputing the credibility and correctness of the expert opinion sought to be used in support of the stand of the appellants, it was contended for the Board, that the formula adopted by the Board and method of determining the excess load availed of over and above the contract load was the proper and correct method, and in support thereof reliance was placed on opinion of another expert as well as from standard text book on the subject. In traversing the claim based upon what is called 'thrust load' the plea on behalf of the Board was that such thrust bad factor has no Impact on MDI meter, since the same was said to be so designed that sudden and/or momentary increase in the utilization of load due to short circuit in system or due to high starting current does not count at all and that not only over load but duration for which that load was operating was also said to be equally sensed by MDI meter and that too precisely. Reiterating the stand that the appellants were billed only for the same tariff as contracted under the agreement, it was contended that the demands raised are unassailable and in accordance with law.

16. We have carefully considered the submissions on behalf of parties on either side. This Court, in the decision reported in Orissa State Electricity Board case (supra) though in dealing with the rights of the Electricity Board for enforcing payment c maximum demand charges and minimum monthly charges noticed about the utility of the MDI meter also called "trivector meter" and observed as hereunder at para 10:

"Every such consumer is provided with two meters. One is called the "trivector meter" and the other is the normal meter which records the total quantity of energy consumed over a given period - which is ordinarily a month. The meter which records the total consumption requires no explanation or elaboration since we are all aware of it. It is the other meter which requires some explanation. Now every large-scale consumer knows the amount of energy required by him and requests for it from the Board. If the Board agrees to supply that or any other particular amount of energy, it makes necessary arrangements therefore by faying the lines to the extent necessary and installing other requisite equipment. It is obvious that if a factory uses energy at a particular level/load and for a particular period, it consumes a particular quantity of energy. The trivector meter records the highest level/load at which the energy is drawn over any thirty-minute period in a month while the other meter records the total consumption of energy in units in the month. Let us take the case of the respondent to illustrate the point. The maximum demand in his case is up to but not exceeding 7778 KVA. That is his requirement. In the normal times, i.e. is entitled to draw energy at that level/load. That is his maximum demand under the agreement. But he may not always do so. Say, in a given

month, he draws' energy at 6000 KVA level only, even then he has to pay the minimum charges as stipulated in the agreement. But if he draws and consumes energy exceeding eighty per cent of the energy, he pays demand and energy charges for what he utilises. Now, let us notice how the trivector meter, i.e., the meter which records the maximum demand works; the meter is so designed that it only records the maximum load/level at which energy is drawn over any thirty-minute period in a month. It only goes forward but never goes back until it is put back manually. To be more precise, suppose the respondent has drawn energy at 7770 KVA for a thirty-minute period on the first day of the month, the meter will record that figure and will stay there even if the respondent consumes at 7000 or lesser KVA during the rest of the month. From this circumstance, however, one cannot jump to the conclusion that it is an arbitrary way of levying consumption charges."

17. The provisions contained in Sub-section (7) of Section 26 of the Indian Electricity Act, 1910 envisage the installation of additional meter and checking apparatus, in addition to the meter for ascertaining the amount of energy supplied and quantity consumed. By and large it seems to be that the utility of MDI meter to record effectively and correctly the drawal of power at a continuous block period of 30 minutes in a month by a consumer has come stay as a reasonably safe method with due credibility and recognition in the field and appears to be in vogue even at global level. The question as to whether it can also safely be relied upon as the basis for investigating and determining the excess quantity of load said to have been availed of by a consumer over and above the contracted load as per the agreement is concerned, in our view admits of no doubt and we could find no reasonable or tenable and valid objection to exist so far as its relevance, utility and purpose of determination as well. If the reading by such a device installed could provide a sound basis and yardstick as accepted by this Court in the decision noticed supra for adjudging liability to pay the maximum demand charges/ minimum monthly charge, it should in our view be considered to be equally efficacious for the purpose on hand also in adjudging the issue as to whether the consumer has at any given point of time, in contravention of the agreement with the Board, availed and drawn electricity in excess of the contracted load.

18. Electrical motors are designed to run up to a stipulated capacity of Horse Power. At the same time as disclosed from the communication from Bhilai Steel Plant (an undertaking of the Steel Authority of India: a Government of India Enterprise) brought on record, so far as the motors used in rolling mills are concerned they are said to have overload capacity in the range of 2 to 2.5 times their rated capacity and at times even about 3 times, but only for a very short duration and at any rate such a situation cannot be sustained like that continuously for a duration of 30 minutes. Hence, it is stated that an MDI meter which measure the demand in KW and integrating over a period of 30 minutes should/will register a demand value in KW which is either less than or equal to the motor rated KW. Therefore, if in these cases, the MDI meter disclosed such higher rate of demand, it would be futile for the appellants to contend that there was no over drawal in excess of the contracted load, since such excess drawal stand substantiated by the actual over drawal in excess from the readings of the MDI meter and the motor rated KW as claimed by the appellants are not either genuine or correct. The object of the appellant in making reference to lock rotor test also does not seem to be relevant since the said test could, it appears, only help to determine the capacity of the motor and not of the total connected load or the total load demanded and availed of during the course of actual consumption of energy.

19. The agreements entered into with the Board by the consumers like the appellants make mention in respect of particulars relating to electric supply, the maximum demand of the consumer in terms of H.P., in addition to giving the connected load, alongside. The actual consumption of energy

during the relevant period unit wise also go to indicate that with the normal utilization of the contracted load, it would not have been possible for the mills of the appellants concerned to consume the number of units actually consumed and this circumstance also seems to strongly support the stand of the respondent-Board. The agreement for supply between parties is inclusive of and also subject to the provisions of the Indian Electricity Act, 1910, Electricity (supply) Act, 1948 and notifications, Rules, Regulations framed thereunder as well as the general conditions for supply of electrical energy made by the Board and the amendments made to all such, from time to time. Clause 31 (f) of the General Conditions reads under the caption "Prejudicial use of supply" as follows:

"If at any time, the maximum demand of an HT consumer or of an LT consumer availing supply under IT two part tariff, exceeds his contract demand or if the connected load of LT consumers other than those mentioned above exceeds the connected load mentioned in his agreement or where agreement has not been taken the connected load mentioned in the requisition form, without prior permission of the Board, the Board may forthwith discontinue the supply. Further, if any charges under the tariff applicable become payable on account of such increase the consumer shall be liable to pay supplementary charges based on such increase for such period as the Divisional Engineer of the Board may decide."

20. The Low Tension Tariffs, notified by the Board with effect from March 1994, stipulate in condition No. 2, as hereunder:

"The foregoing tariffs (except tariff A-1 and Alternative of tariffs, D, E, F & G) are applicable to the extent of connected load for which the agreement subsists between the Board and the consumer. In case the connected load in the consumer's premises is at any time, found in excess of what has been agreed to between the consumer and the Board, the consumer shall have to pay in respect of tariffs other than Alternative-III of tariff C (ii) for the units (including minimum charge) corresponding to the excess load at twice the normal tariff rate (inclusive of Fuel Charge, if any, and other charges payable as per tariff) and in respect of Alternative-II of Tariff C (ii) at the following rates: (rest omitted as unnecessary).....

The billing of excess supply at twice the normal tariff applicable to consumer is without prejudice to the Board's right to discontinue the supply in accordance with the provisions contained in the Board's General Conditions for Supply of Electrical Energy and Scale of Miscellaneous and General Charges."

21. The respondent-Board, therefore, is entitled to raise the demand under challenge since such right has been specifically provided for and is part of the conditions for supply and particularly when such drawal of extra load in excess of the contracted load is bound to throw out of gear the entire supply system undermining its efficiency, efficacy not only causing stress on the installations of the Board but considerably affect other consumers who will experience voltage fluctuations. Consequently, we see no merit in the challenge made on behalf of the appellants. The appeals, therefore, fail and shall stand dismissed but with no costs.