

BIHAR STATE ELECTRICITY BOARD
v.
HOTEL SATKAR PVT. LTD. AND OTHERS

SEPTEMBER 24, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Indian Electricity Act, 1910—Discontinuance of supply of electricity—Whether Electricity Board justified in making demands on the basis of contract demand in the absence of agreement between parties—Parties agree to inter-determination of dispute for the period upto February 1984 by an officer not below rank of Chief Engineer to be nominated by Government—Chief Engineer determining the amount payable on the basis of actual consumption—Held : Decision of Chief Engineer is binding on the parties.

The respondent filed a Writ Petition challenging the legality of notice u/s. 24(1) of the Indian Electricity Act 1910 for disconnection of electricity supplied to the Respondent by the appellant Board on the ground of non-payment of bills amounting to Rs. 3,01,449.30 upto March 1979 submitted by the Board to the respondent. The respondent's contention was that in the absence of any contract entered into with the appellant Board, charge could be levied only on the basis of actual consumption and not on basis of contract demand. It was further contended that the bills submitted by the appellant being disputed, no notice could have been issued u/s. 24(1) and the matter could only have been referred to be Electrical Inspector for a decision u/s. 24(2) of the Act. The High Court accepted the contentions of the respondent and quashed the notice of demand and issued a mandamus to the appellant Board not to disconnect the supply line so long as the dispute was not resolved in accordance with law.

On appeal preferred by the Board, this Court, issued certain interim directions regarding payment of bills on the basis of actual consumption. On 9th May, 1984, the appellant Board disconnected the supply of electricity as the respondent failed to pay the bills issued by the Board. On an application filed by the respondent, this Court by its order dated 28.5.1984, on the agreement and joint submissions of both parties, directed that the correct amount payable be determined by an officer, not below the rank of Chief Engineer to be nominated by Government. Subject to the

A respondent undertaking that the amount so determined shall be paid within a week and compliance therewith, this Court directed the Board to restore the supply of electricity. Such payment however was to be without prejudice to the rights and contentions raised in the appeal. The Chief Engineer nominated by the Government, after hearing the parties came to the conclusion that for the period from 1st April 1977 to February 1984, the respondent was liable to pay a sum of Rs. 9,68,335.67 on the basis of actual consumption of energy and giving credits for amounts actually paid, the outstanding dues till February 1984 worked out to Rs. 3,84,559.33. Objections were filed by the respondent to the report of the Chief Engineer.

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C Disposing of the appeal, this Court

HELD : 1. The Respondent could not seek to wriggle out of the Chief Engineer's report submitted pursuant to this Court's order dated 28.5.1984 which has been passed on the agreement of both parties, on the ground that it was without prejudice to the contentions in the appeal. [678-E-G]

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2. Though initially the dispute related to bills sub-mitted upto 1979 on the date the Court passed the order i.e. on 28.5.1984, the controversy was in respect of the amount charged till February 1984 and not the original amount which was the subject matter of the Writ Petition. [679-B-C]

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3. The Chief Engineer had determined the liability not on the basis of contract demand but on the basis of actual consumption. [679-D-E]

4. The fact that the dispute regarding the bills raised upto 1979 had been referred to the Chief Inspector under section 24(2) of the Electricity Act must be considered in the light of subsequent developments and any order that may be passed by the Electrical Inspector cannot over-ride the ultimate decision taken by the Chief Engineer in determining the liability of the respondent. [679-G-H, 680-A-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 921. of 1980.

From the Judgment and Order dated 7.9.79 of the Patna High Court in C.W.J.C. No. 1710 of 1979.

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Pramod Swarup and Praveen Swarup for the Appellant.

S.B. Sanyal and P.P. Singh for the Respondents.

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The Judgment of the Court was delivered by

PATTANAİK, J. This appeal is directed against the judgment of Division Bench of the Patna High Court dated 7th September, 1979 in Civil Writ Jurisdiction Case No. 1710 of 1978.

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The respondent filed the writ petition challenging the legality of the notice served by the appellant issued in exercise of power under Section 24(1) of the Indian Electricity Act, 1910 (hereinafter referred to as 'the Act') *inter alia* on the ground that a *bona fide* dispute exists between the licensee and the consumer of electric energy and as such the provisions of Section 24(1) of the Act will not apply. The case of the respondent - consumer is that the appellant has been supplying energy to the respondent hotel but the said respondent has not entered into any agreement and therefore the appellant is entitled to be charged on the basis of the actual consumption and not on the basis of any contract demand. The appellant, however, submitted bills in respect of the energy consumed on the basis of the contract demand which the respondent did not pay and for such default in payment of the amount charged under the bills the appellant issued notice of discontinuance under Section 24 of the Act. According to the respondent's case the bills submitted by the appellant being disputed, no notice could have been issued by the appellant under sub-section (1) of Section 24 and the matter can only be referred to the Electrical Inspector for a decision as provided under sub-section (2) of Section 24. The appellant disputed the aforesaid stand of the respondent and submitted that the respondent having failed to pay the bills raised by the appellant in respect of the energy consumed, the appellant was fully justified in issuing notice under Section 24(1) of the Act and there is no illegality in the same. The High Court by the impugned judgment came to the conclusion that no agreement had been entered into between the licensee, namely, the Bihar State Electricity Board and the consumer, the respondent. It further came to the conclusion that in the absence of any agreement between the parties the Board was not entitled to raise the bills on the basis of the contract demand and can only charge on the basis of the actual consumption of energy. Finally, the High Court came to the conclusion that there existed a *bona fide* dispute between the licensee and the consumer, and therefore, until that dispute is resolved by a determination made by the Electrical

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A Inspector under sub-section (2) of Section 24, the licensee was not entitled to issue notice of disconnection in exercise of power under sub-section (1) of Section 24 of the Act. The High Court, therefore, quashed the notice of demand and the threat of disconnection and issued a mandamus to the licensee not to disconnect the supply line so long as the dispute is not resolved in accordance with law. The High Court also further held that

B until the dispute is finally resolved, the consumer would be liable to be charged on the basis of actual consumption of energy. The amount of accumulated arrear which was indicated in the notice of disconnection to the licensee was Rs. 3,01,449,30 upto March, 1979 which demand was quashed by the High Court by the impugned judgment. This Court on 1st

C May, 1981 directed that the respondents shall pay the amount due on the bills submitted to them by the appellant for the consumption and future bills will be paid by the respondents from time to time on the basis of actuals and such submission of bills and payment will be without prejudice to the rights and contentions of the parties. By another Order dated 5th

D May, 1982 this Court further indicated that for the time being the Board will not collect any energy charges by the application of the multiplier of the two. Thereafter, as the respondent failed to pay the bills issued by the Board, the supply of electricity to the respondent was disconnected on 9th of May, 1984. The respondent, therefore, approached this Court by filing an application for necessary direction to the Board to restore the connection of electricity supply and to injunct the Board from disconnecting the supply without permission of this Court during the pendency of the appeal, which was registered as C.M.P. No. 23405 of 1984. In the said application it was alleged that the appellant Board went on giving inflated bills based on erroneous conclusion on the basis of 315 KVA of maximum contract demand which has already been quashed by the Patna High Court and which is contrary to the interim orders issued by this Court as stated earlier. This application was disposed of by this Court with the following direction :

G "Counsel for both the parties have jointly submitted before me that the parties are agreeable that the correct amount payable by the respondent in the appeal by way of charges for actual consumption of electric energy as per tariff rates applicable may be determined by any officer not below the rank of Chief Engineer nominated by the Secretary, Department of Energy, Govt. of India. This suggestion appears to me just and fair which is accordingly accepted and

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the Secretary, Department of Energy will forth with nominate any one officer underhim of the rank indicated above to go into the question as to what amount, if any, remains payable upto date by the Hotel Satkar (P) Ltd. to the Bihar State Electricity Board, Patna by way of consumption charges taking into account actual consumption. Such determination will be made after hearing both the parties of their representatives at Delhi or at Patna as will be convenient to the officer nominated by the Secretary, Department of Energy. The entire process or determination of the amount should be completed within four weeks from today. The Respondent shall file an undertaking during the course of the day today to pay to the Bihar Electricity Board within one week from the date of such determination of the exact amount by the Officer nominated by the Secretary, Department of Energy. Subject to the fulfilment of this condition the Bihar State Electricity Board is hereby directed to restore forthwith the electric connection to the respondent Hotel Stakar (P) Ltd. If the respondent Hotel Stakar fails or defaults in the payment within one week of determination of the amount due, it will be open to the Bihar State Electricity Board to disconnect electric connection. The payment to be made by the Respondent in pursuance of this order will be without prejudice to the rights and contentions raised in the appeal pending before this Court."

Pursuant to the aforesaid order of this Court the Chief Engineer, Central Electricity Authority was nominated by the Secretary, Department of Power Ministry of Energy to go into the question as to what amount, if any, remains payable upto date by the respondent. The said Chief Engineer heard the parties and gave opportunity to present their respective case and after analysing all the relevant papers and documents produced before him, came to the conclusion that for the period from April 1977 to February 1984 the respondent is liable to pay the appellant a sum of Rs. 9,68,335.67 for the energy consumed on the basis of actual consumption and out of the said amount the consumer has paid a total of Rs. 5,83,776.34 and, therefore, the outstanding dues till February 1984 work out to Rs. 3,84,559.33. On behalf of the respondent an objection to the aforesaid report of the Chief Engineer has also been filed in this Court.

Mr. Pramod Swarup, learned counsel appearing for the appellant contended that in view of the agreement between the parties this Court

- A having passed the order on 28th May, 1984 requiring an officer not below the rank of Chief Engineer be nominated by the Secretary, Department of Energy, Govt. of India to go into the entire controversy and the said Chief Engineer having gone into the controversy and having determined the liability of the respondent, the parties are bound by the same and it is no longer necessary to examine the legality of the conclusion arrived at by the
- B Patna High Court. Mr. Sanyal, learned senior counsel appearing for the respondent on the other hand contended that the report submitted by the said Chief Engineer is patently erroneous, and therefore could not bind the respondent for liability as found and further the judgment of the Patna High Court is unassailable. The learned counsel further contended that the
- C very order of this Court dated 28th May, 1984 indicates that payment to be made by the respondent will be without prejudice to the rights and contentions raised in appeal pending before this Court. Mr. Sanyal, further contended that the aforesaid order passed by this Court was in relation to a fresh demand having been raised by the Board during the pendency of
- D the appeal and disconnection of the electric supply for non-payment of the same and it would not cover the demand for the period which was the subject matter in the writ petition before the Patna High Court and which is the subject matter of appeal in this Court.

- E Having considered the rival submissions and having applied our mind to the relevant documents and several orders passed by this Court we are of the considered opinion that this Court was persuaded to pass the order of 28th May, 1984 on the agreement of the parties to get the controversy examined by an officer not below the rank of Chief Engineer to be nominated by the Secretary, Department of Energy, Govt. of India. The
- F said Chief Engineer having examined the documents produced before him by the parties concerned and having determined the entire liability upto February, 1984 the respondent cannot wriggle out of the said order on the ground that the said order was without prejudice to the contentions to be raised in the appeal. As it appears, the controversy between the parties was, whether the Board was justified in raising demands on the basis of the
- G contract demand in the absence of any agreement between the parties and the High Court had ordered that demand can be raised only as per the actual consumption of energy. It further appears from the materials on record that the meters which had been installed to record the consumption of energy were only suitable for 5 Amp. and had their dials calibrated to
- H register consumption corresponding to loads of 100 Amp., 200 Amp., 300

Amp. or 400 Amp. It further transpires that though initially the dispute related to the bills which had been submitted upto the year 1979 but during the pendency of the appeal in this Court when fresh bills were also submitted by the Board and the respondent did not pay the same, the appellant took action of disconnection and respondent, therefore, approached this Court for necessary direction for reconnection. It is on consideration of all these materials and on the agreement between the parties this Court passed the order on 28th May, 1984 requiring the entire controversy to be re-examined by any officer not below the rank of Chief Engineer to be nominated by the Secretary, Department of Energy, Govt. of India. Thus on the date this Court passed the order on 28th May, 1984 the controversy between the parties was in respect of amount charged till February, 1984 and not the original amount which was the subject matter of the writ petition. This being the position and the matter having been duly scrutinised by an officer of the Government of India and amount having been arrived at and the parties having agreed the controversy to be re-examined by such officer it is not permissible for the respondent to contend that they are not bound by the decision thus arrived at. So far as the merits of the objections to the report of the Chief Engineer is concerned we find that the said Chief Engineer has not determined the liability on the basis of contract demand but on the basis of the actual consumption of energy. Mr. Sanyal's argument, however, was that in terms of sub-section (2) of Section 24 of the Act when the matter has been referred to the Electrical Inspector and the said Electrical Inspector has determined the dispute in favour of the respondent, such statutory determination cannot be given a go-bye unless and until it is annulled by any superior authority. He further contended that multiplying factor as applied by the Chief Engineer is not at all applicable to the facts and circumstances of the present case when there was no defect with the meter at any point of time. We find ourselves unable to accept these objections raised by Mr. Sanyal appearing for the respondent. In respect of the dispute with regard to the liability of the respondent to make the payment as per the bills raised upto 1979 no doubt had been referred to the Electrical Inspector under sub-section (2) of Section 24 of the Act. But during the pendency of the appeal in this Court when further bills were raised by the appellant and for non-payment of the same the electrical connection was disconnected and respondent challenged the same and ultimately agreed before this Court to get the entire controversy examined by an independent officer of the

- A Government of India and this Court ultimately passed the order on 28th May, 1984, the entire controversy with regard to the liability of the respondent to pay for the energy consumed was before the Chief Engineer and consequently any order passed by the Electrical Inspector under sub-section (2) of Section 24 cannot override the ultimate decision taken by the Chief Engineer in determining the liability of the respondent. The objections of Mr. Sanyal, therefore cannot be sustained.
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- In the aforesaid premises the impugned judgment of the Patna High Court stands reversed and the liability of the respondent as determined by the Chief Engineer for the energy consumed upto February 1984 becomes enforceable. The respondent would be liable to pay in accordance with the said determination after adjusting the amount already paid. The appeal is disposed of with the aforesaid direction. There will be no order as to costs.
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R.D.

Appeal disposed of.