

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Civil Review No.40 of 2013

Tata Yodogawa LimitedPetitioner
Versus
Jharkhand State Electricity Board & others Respondents

CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH

For the Petitioners :Mr. M.L.Verma, Sr. Advocate, Mr.M.S. Mittal, Sr. Advocate &
Ms. Shilpi Shandilya John
For the Respondents : M/s Anil Kumar Sinha, Sr. Advocate , Mr. Ajit Kumar &
Mr. Saket Upadhyay

C.A.V. on 21.6.2013

Pronounced on 17.07.2013

Aparesk Kumar Singh,J. Heard learned counsel for the parties.

2. The present review application is directed against the order dated 2.5.2013 (modified vide order dated 7.5.2013) passed in C.W.J.C. No. 852 of 2000(R) and has been preferred by the writ petitioner. In the writ petition the petitioner had sought quashing of the tariff for the consumers of the induction furnace contained in the Electricity Board's internal communication dated 24.9.1999 (Annexure-5 to the writ petition) whereby a new tariff for consumers of induction furnace was levied w.e.f. 1.9.1999 and to implement the said tariff schedule for billing purpose for the consumer having induction furnace for the month of December 1999 onwards. As such it was prayed that the respondents cannot enforce such tariff schedule for induction furnace, consequently no bill can be raised on the basis thereof w.e.f. any date what so ever. Further prayer was made for a declaration that otherwise also the aforesaid tariff schedule for induction furnace contained in Annexure-5 to writ application prepared on the basis of consensus between electricity board and Bihar Steel Manufacturer Association is not applicable to the petitioner on the grounds taken therein. The petitioner had further prayed for quashing of the letter dated 30.9.1999 issued by the respondents directing it to execute a fresh agreement for induction furnace installed in its premises as also the letter dated 16.3.2000, whereby it was directed to segregate the load of the induction furnace from other loads. The provisional supplementary bill dated 16.3.2000 for Rs. 32,13,848/- for the month of January-February, 2000 raised on the basis of the aforesaid new tariff schedule of induction furnace was also challenged where under the Respondent-

Board had fixed contract demand of the petitioner at 29.131 MVA as against actual contract demand of 10.5. M.V.A. On 24.4.2000, after hearing the counsel for the parties, and upon undertaking of the petitioner the following order was passed:-

“Heard Mr. S.S. Ray, Sr. Counsel for the petitioner and Mr. V.R. Reddy Sr. Counsel for the Bihar State Electricity Board.

A counter affidavit has been filed on behalf of the Bihar State Electricity Board and yet rejoinder is to be filed by the petitioner side.

In the facts and circumstances of the case, limited questions have arisen for consideration as to whether powers under section 49 of the Electricity(Supply) Act, 1948 can be exercised by the Board unreasonably. At the same time a question has also arisen as to whether the decision taken by the Board to apply an uniform policy for raising the tariff on the basis of production as per capacity of the furnace of the petitioner and whether it can be applied in the facts and circumstances of the case without pre-determination of the question of load factor.

Let this matter, therefore, be finally heard in the admission matter itself on 18.7.2000. List this case for admission on 18.7.2000, so that it may be disposed of at the admission stage itself.

Mr. Ray, learned counsel for the petitioner has prayed for interim orders to the extent that new tariff may not be applied so far unit of the petitioner is concerned. The learned counsel for the Electricity Board, however, is not objecting to this as the matter is fixed for early disposal but submitted that for survival of the Board 50% of the demand should be paid by the petitioner and the petitioner should also pay a sum of Rs. 5,00,000/- per month onwards. However, learned counsel for the petitioner has agreed to pay a sum of Rs. 15,00,000/- as lump-sum towards demand raised by the Board and has also agreed to furnish bank guarantee of Rs. 15,00,000/- in the name of the Registrar, Patna High Court, Ranchi Bench:Ranchi without prejudice to the right and interest of the petitioner.

On the basis of the undertaking given by the learned counsel for the petitioner, it is directed that new tariff shall not be enforced till the disposal of this writ application and there shall be no coercive steps pursuant to Annexures-13 and 13/1 of the writ application provided the petitioner pays a sum of Rs. 15,00,000/- to the Electricity Board within a period of 2 weeks from today and furnishes a Bank guarantee of Rs. 15,00,000/- in the name of the Registrar of this Bench within the same. However, it is made clear that the petitioner will have no grievance so far as 1993 Tariff is concerned”.

The matter was admitted thereafter, for hearing on 18.7.2000 and interim order dated 3.4.2000 passed earlier was continued. On 14.9.2007 the respondents raised the question relating to maintainability of the writ petition before learned Single Judge of this Court as the petitioner had sought quashing of the tariff which was subordinate legislation and according to the High Court Rules, the Division Bench has jurisdiction to hear these matters. On behalf of the petitioner it was submitted that the petitioner abandons the prayer under relief no. 1 whereby the petitioner had sought for quashing of the tariff. On the basis of the aforesaid submission following order was passed on 14.9.2007:-

“Mr. V.P.Singh, learned Sr. counsel appearing on behalf of the J.S.E.B, raised a preliminary objection regarding the maintainability of these writ petitions before this Court. It has been submitted that the petitioners have sought for quashing the tariff which is a subordinate legislation and according to the High Court Rules, the Division Bench

has jurisdiction to hear such matter.

Dr. Devi Pal, Learned Sr. Counsel appearing on behalf of the petitioners, submitted that in fact the petitioners intend to challenge the letter dated 16.3.2000 as contained in Annexure-13 and also for declaration that the tariff scheduled for induction furnace as contained in Annexure-5, which is meant exclusive for induction furnace units, is not applicable to the petitioners and as such he abandons the said prayer Relief no.1 whereby the petitioners have sought for quashing the tariff.

In that case, Mr. V.P.Singh has got no objection.

Accordingly, the petitioners are allowed to abandon their prayer as sought for in Relief No. 1.

As jointly prayed for, put up both the cases on 21.9.07”.

Thereafter, the matter was finally heard on 11.4.2013 by this Court.

3. Learned Sr. Counsel Mr. N.K. Poddar who had appeared on behalf of the writ petitioner, at the outset very fairly and categorically submitted that the petitioner had initially challenged the vires of the tariff for the consumers of the induction furnace contained in the Board's internal communication dated 24.9.1999(Annexure-5) and the retrospective application of the said tariff w.e.f 1.9.1999 but the petitioner had abandoned the said prayer made in para 1(i) of the writ application as has also been recorded in the order dated 14.9.2007 passed in the said writ application. Learned Sr. counsel, therefore, confined himself to the sole question whether the tariff schedule communicated by the Bihar State Electricity Board(B.S.E.B.) vide Annexure-5 dated 24.9.1999 was applicable to the petitioner or not and consequently, whether the bills raised by Annexure-13 dated 16.3.2000 for a sum of Rs. 32,13,848/- for the month of January – February, 2000 were fit to be quashed. It is relevant to point out herein that the gazette notification dated 15.3.2000 which apparently was published on 6.4.2000 was brought on record as Annexure-C to the counter affidavit filed by the respondent- Board . However, no challenge to the gazette notification dated 15.3.2000 notified on 6.4.2000 was made on behalf of the petitioner during the entire course of the proceeding of the writ petition.

A mere perusal of the same would show that the terms of the instant tariff notification dated 6.4.2000 where in the same terms as that of the tariff schedule contained in letter dated 24.9.1999 (Annexure-5) to the writ application which had initially been challenged by the writ petitioner. However, as indicated earlier the writ petitioners had consciously abandoned its prayer no. 1.

4. The writ petition was heard on the sole question whether the tariff schedule

implemented by B.S.E.B vide Annexure-5 dated 24.9.1999 is applicable to the petitioner's unit or not and, consequently whether the petitioner is liable to pay the impugned bills raised vide Annexure-13 dated 16.3.2000 amounting to Rs. 32,13,848/- for the month of January- February, 2000. Submissions and arguments were advanced on behalf of the petitioner by Learned Sr. Counsel, Mr. N.K.Poddar and Mr. Anil Kumar Sinha, Learned Sr. Counsel appearing on behalf of the J.S.E.B, which had stepped into the shoes of the erstwhile B.S.E.B. pursuant to the bifurcation of the parent State of Bihar.

5. This Court, in the aforesaid circumstances proceeded to determine the issues raised in the said writ application by the judgment dated 2.5.2013. It was held that the tariff schedule notified by the B.S.E.B vide Annexure-5 dated 24.9.1999 is applicable to the petitioner's unit as well and accordingly, the petitioner is liable to pay the electricity bills raised on the basis of the said tariff. This Court, however for the reasons indicated therein directed the respondents to rectify the impugned bill in question after carrying out necessary correction in the computation of the capacity of the induction furnace of the petitioner based upon the measurement undertaken by it during the physical inspection of the petitioner's unit within a period of 6 weeks. It was also held that the petitioner would be liable to pay outstanding bills raised after rectification. It will also be liable to pay the delayed payment surcharge on the rectified bill reckoned from 16.3.2000 i.e. the date of the impugned bill after adjustment of any amount deposited by it pursuant to the interim orders passed earlier till the same are paid. It was also held that the respondent-Board would be entitled to raise electricity bill against the petitioner for the remaining period, thereafter on the basis of instant tariff in question till they are replaced by any subsequent tariff as notified by the Jharkhand State Regulatory Commission.

6. In the present review petition, though several grounds have been taken, learned Sr. Counsel Mr. M.L. Verma appearing on behalf of the petitioner sought review of the judgment dated 2.5.2013 mainly on two counts as rest of the grounds indicated in the body of the review petition according to him related to the merits of

the case which may not be grounds for seeking review of the impugned judgment.

They are as follows:-

i) that though the petitioner had abandoned the prayer no. 1 which related to challenge to the tariff for consumers of induction furnace contained in Board's communication dated 24.9.1999 but had not waived their right to challenge the retrospective application of the tariff as notified under the gazette notification dated 16.4.2000 w.e.f 1.9.1999. Therefore, it was submitted on their part that the tariff schedule cannot have a retrospective application as has been made to be under the gazette notification dated 6.4.2000 as no such power has been conferred upon the Board or the respondent- government under the parent act i.e. Electricity Supply Act, 1948. Learned counsel for the petitioner in support of his aforesaid submission has relied upon the judgment rendered in the case of ***M/s Vikromatic Steel Pvt. Ltd. Vrs. Jharkhand State Electricity Board & others*** reported in ***2003(4) JCR 247*** (para 5 and 6 thereof). He has further relied upon the judgment rendered by the Patna High Court in the case of ***Shyam Singh Vrs. Collector, District Hamirpur, U.P. & others*** reported in ***1993(1) PLJR page 36*** (para 7 to 9 thereof) as also in the case of ***Council for Protection of Public Rights and Welfare, Raj Kumar Hotel & others, Bihar Motion Picture Association & ors. & M/s Midway Apartments Co-operative Housing Society Vrs. The State of Bihar & ors & The Bihar State Electricity Board & ors.*** reported in ***1994(1) PLJR 853*** (para23 and 59 thereof).

ii) Learned Sr. Counsel has further sought review of the instant judgment where in it has been held that the petitioner would be liable to pay delayed payment surcharge on the rectified bill raised after rectification reckoned from 16.3.2000(Annexure-13). According to learned Sr. counsel Mr. Verma appearing on behalf of the petitioner the same direction is in teeth of clause 16.2. of the 1993 tariff whereby the delayed payment surcharge is payable after expiry of the period of 1 month from the due date of raising of bill. The said bill now being raised after rectification should not carry the delayed payment surcharge to be reckoned from 16.3.2000 as on the said date no such bill was in existence. In support of his

aforesaid contention he has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of ***Kusumam Hotels Private Ltd. Vrs. Kerala State Electricity Board & others*** reported in ***2008(13)SCC 213***(para 45 thereof).

7. Mr. Verma, learned Sr. Counsel further submits that consequent to the judgment passed by this Court the respondents have raised a huge outstanding bill of approximately Rs. 272 crores which is wholly unsustainable in law and has been raised upon misreading of the judgment rendered by this Court. According to the learned Sr. Counsel there is apparently contradictory finding recorded in para 33, 35 and 37 of the impugned judgment as though the petitioner has been allowed substantial relief by quashing the impugned bills because of erroneous computation of the capacity of the induction furnace of the petitioner but this Court has directed the respondents to raise rectified bill on the basis of "instant" tariff in question which has raised confusion whether the tariff of 1993 would be applicable or that of 24.9.1999 would be applicable for raising such bills. Learned counsel for the petitioner submitted that in the aforesaid circumstances, this Court in exercise of its review powers should not refrain from correcting the error which are apparent on the face of the record and also which are in teeth of the statutory notification as also of the law settled by the Hon'ble Supreme Court. Learned Sr. Counsel has also relied upon the judgment of the Hon'ble Supreme Court rendered in the case of ***A.R. Antulay Vrs. R.S. Nayak & another*** reported in ***1988(2) SCC 602***. By referring to the opinion of the Apex Court in the said judgment, it is submitted that this Court can always correct its own error brought to its notice either by way of petition or *ex debito justitiae*.

8. Learned Sr. Counsel, Mr. Anil Kumar Sinha appearing on behalf of the respondent- Board at the outset raised the question about the maintainability of the instant review petition. According to the learned Sr. Counsel in the writ application the vires of the tariff schedule contained in the Board's internal communication dated 24.9.1999 (Annexure-5) was under challenge. The challenge to the said tariff schedule was consciously abandoned by the petitioner as was also recorded in the order dated 14.9.2007 during the course of the proceeding in the writ application. It

is vehemently submitted on his part that once the challenge to the vires of the tariff schedule and its retrospective application have been abandoned earlier on the part of the petitioner, learned Sr. Counsel Mr. N.K.Poddar then appearing on behalf of the writ petitioner very fairly did not press any argument relating to the challenge to the vires of the notification dated 24.9.1999 or its retrospective application. It is further submitted on behalf of Mr. Sinha, learned Sr. Counsel that during the course of the proceeding of the case, the counsel representing the parties, has full authority to press for certain relief while foregoing the challenge to other reliefs prayed for originally in the petition. The prayer made in para 1(i) of the writ application was not only to challenge the vires of the tariff schedule dated 24.9.1999 but also to its application from retrospective effect i.e. w.e.f. 1.9.1999 as would appear from the language used in para 1(i) of the writ application. In such circumstances, after the said prayer was abandoned by the writ petitioner in the year 2007 after obtaining the stay in their favour in the year 2000 petitioner now cannot seek review of the impugned judgment on the grounds now being urged. It is submitted that in the entire body of the review petition the petitioner has very cleverly avoided any statement that the Learned Senior Counsel earlier representing the petitioner had made submission beyond instruction. In such circumstances when the writ petition has been decided on the question raised and argued before this Court, the petitioner cannot be allowed to seek review of the impugned judgment on the grounds now being urged as the same does not suffers from any error apparent on the face of record. It also does not suffers from any error on any question of law, now being raised on behalf of the review petitioner

9. Learned Sr. Counsel further submitted that the Board is conferred with power under Section 49 of the Act of 1948 to notify the tariff schedule which it had done. He has further submitted that under Section 78 of the Act of 1948 the State government has been conferred with power to make rules by notification in the official gazette which however is not a mandatory requirement in respect of notification of the tariff schedule which the Board is otherwise empowered to do under Section 49 of the Electricity Supply Act, 1948. In any case it is submitted that

at no point of time during the pendency of the writ application the petitioner has challenged the gazette notification dated 6.4.2000 in relation to which now arguments are being advanced laboriously on behalf of the petitioner that it cannot apply retrospectively. It is submitted that in such circumstances, the review petition is not maintainable on the grounds which are now being argued on behalf of the review petitioner.

10. Mr. Sinha appearing on behalf of the respondent- Board further submitted that the petitioner had obtained stay upon the payment of bills and all along has been enjoying the stay to the detriment of the Board. Therefore, this Court, in the circumstances when the very challenge to the vires of the tariff schedule dated 24.9.1999 and its retrospective application had earlier been abandoned, held that the tariff schedule in question is applicable to the petitioner's induction furnace and that the petitioner is liable to pay the bills raised under the instant tariff of 24.9.1999. It is further submitted that this Court has rightly held that the petitioner is liable to pay delayed payment surcharge over the rectified bill to be raised after correction in the computation of the volume of capacity of the induction furnace of the petitioner reckoned from 16.3.2000. The petitioner after having obtained the stay so long at the expense of the Board cannot escape the liability to pay the delayed payment surcharge.

Learned Sr. Counsel has relied upon the judgment of the Hon'ble Supreme Court rendered in the case of *ILAC Limited Vrs. Collector of Central Excise* reported in **1997(5) SCC 772**(para 11 and 12 thereof). It is submitted on his behalf that once the challenge to the applicability of the tariff having failed, it is the duty of the Court, in such case where the petitioner was enjoying the stay, to put the parties in the same position that they would have been, but for the interim orders of the Court. Any other view would result in the act or order of the Court prejudicing parties i.e. the Board in the instant case for no fault of its and would also mean rewarding the writ petitioner in spite of his failure. Learned Sr. Counsel has further submitted that the impugned judgment suffers from no contradiction so far as raising of the bills are concerned as they are to be raised on the basis of the tariff which is in

vogue from time to time. The bills which have been raised after passing of the judgment of this Court may give a fresh cause of action to the petitioner but it cannot be a ground of review of the instant judgment in question.

Learned Sr. Counsel, Mr. Sinha has drawn the attention of this Court to the interim order dated 3.4.2000 and 24.4.2000 passed in the writ petition which were issued on the basis of undertaking given by the petitioner that no coercive steps would be taken pursuant to Annexure-13 and 13/1 to the writ application provided that the petitioner pay a sum of Rs. 15,00,000/- to the Electricity Board and furnish a bank guarantee of the same amount in the name of Registrar of this Court within the same period. It is submitted that this Court while granting the interim order made it clear that petitioner will have no grievance so far as 1993 tariff is concerned. In such circumstances, it is submitted that the petitioner having enjoyed stay of the operation of the tariff schedule dated 24.9.1999, now cannot be allowed to escape the liability to pay the delayed payment surcharge on the bills raised under the instant tariff schedule for the period in question. It is further submitted that in such circumstances, the procedure prescribed for the consumer is to first make the payment of the impugned bill and then lodge its protest. However, in the instant case since the impugned bills were stayed by virtue of an interim order and the challenge to the same has failed, the petitioner is fully liable to pay the delayed payment surcharge over the same. In any case the same cannot at all be a ground to seek review of the impugned judgment. Therefore, the instant review petition is fit to be dismissed as without being any merit and not maintainable.

11. I have heard counsel for the parties at length and gone through the relevant materials including the impugned judgment as also the judgment relied upon by the parties. The first ground of review raised by the petitioner is that the impugned judgment suffers from serious error of law as the tariff schedule notified by the State Government dated 6.4.2000 could not have been retrospectively applicable to the petitioner's unit .

12. In the opening paragraphs of the judgment the sequence of the events leading to the passing of the impugned judgment have been recorded. In para 1(i)

of the writ application what was under challenge was tariff schedule of 24.9.1999 introducing the new tariff for induction furnace consumer w.e.f 1.9.1999. The interim orders were passed earlier by this Court on 3.4.2000 and 24.4.2000, on the specific challenge to the vires of the said tariff. However, the writ petitioner consciously abandoned the challenge to the tariff schedule dated 24.9.1999 and its application from 1.9.1999 during the course of the writ proceedings which has been recorded in the order dated 14.9.2007. The petitioner never made a challenge to the gazette notification dated 6.4.2000. Therefore, the vires of the tariff schedule and its retrospective application under which the impugned bills were raised for the month of January-February, 2000 were not in question when the matter was finally argued and heard by this Court. Learned Sr. Counsel Mr. N.K. Poddar appearing on behalf of the petitioner being conscious of the said situation very fairly had submitted that since the aforesaid challenge had been abandoned earlier the petitioner would confine its prayer in the writ application to their challenge to the applicability of such tariff for the induction furnace of the petitioner on the grounds and submissions which were extensively argued on his behalf. This Court, therefore, proceeded to decide the writ application on the sole question that whether the tariff schedule dated 24.9.1999 was applicable to the petitioner's induction furnace or not. The matter was heard at length and decided by the judgment dated 2.5.2013 holding that the tariff schedule dated 24.4.1999 is applicable to the petitioner's unit as well and petitioner is liable to pay electricity bills based upon the said tariff. In these circumstances, the grounds raised on behalf of the learned Sr. Counsel, Mr. M.L.Verma for seeking review of the judgment in question is not tenable in law as well as on facts. It appears that no statement has been made in the review petition either that the Sr. Counsel earlier representing the petitioner had without any instruction advanced his submissions abandoning challenge to the retrospective application of the tariff. The gazette notification dated 6.4.2000 or its retrospectivity was never under challenge in the writ application.

13. The judgment relied upon by the petitioner in the case of *M/s Vikromatic Steel Pvt. Ltd. Vrs. Jharkhand State Electricity Board & others (supra)* is

therefore distinguishable on facts. The other judgments relied upon by the petitioners in the case of *Shyam Singh Vrs. Collector, District Hamirpur, U.P. & others (supra)* and in the case of *Council for Protection of Public Rights and Welfare, Raj Kumar Hotel & others, Bihar Motion Picture Association & ors. & M/s Midway Apartments Co-operative Housing Society Vrs. The State of Bihar & ors & The Bihar State Electricity Board & ors.* reported in *1994(1) PLJR 853(supra)* relating to the power to make retrospective application of the tariff schedule notified by the gazette cannot also come to the aid of the petitioner. In the instant case, as has already been indicated herein above the writ petitioner had categorically abandoned the challenge to the vires of the tariff schedule contained in Board's communication dated 24.9.1999 being made applicable from 1.1.1999. The petitioner had confined its prayer to the sole question relating to the challenge to the applicability of the tariff schedule of 24.9.1999 to the petitioner's induction furnace on the grounds and facts urged on its behalf. The writ petition was heard and decided on the sole question which was answered in the negative against the petitioner. Neither the question of retrospectivity of the tariff schedule were under challenge nor the aforesaid judgments as have been relied upon by the petitioner now were cited while the writ petition was being argued on the sole question as referred to herein above.

14. It is trite to say that the Court proceeds on the basis of the case as made out by the respective parties and what has been challenged and argued in support thereof. In the instant case, the argument of the petitioner and respondents have proceeded on the sole question raised on behalf of the petitioner and in support of which extensive argument and copious reference to the materials on record were made as to whether the tariff schedule of 24.9.1999 can be made applicable to the petitioners induction furnace which is of main frequency type having a much lesser KVA capacity per tonne. Based upon the arguments advanced by the rival parties on the sole question, the judgment against which the review application has been preferred was rendered by this Court. In the review petition the petitioner have raised new questions and grounds which were never urged rather abandoned by

the writ petitioner himself during the course of writ petition as also was recorded in the order dated 14.9.2007. Therefore, the judgment in question cannot be said to suffer from any such error of law or such mistake so as to warrant review of the same.

15. This Court, after answering the sole question raised by the writ petitioner in the negative, held that the instant tariff schedule is applicable to the petitioner's unit and in such circumstances the petitioner is liable to pay the bills raised under the said tariff schedule dated 24.9.1999. The petitioner was under an obligation to pay the impugned bills and then protest. If the petitioner would have succeeded in its challenge to the impugned bills, whether whole or part of it, it would have been entitled to refund of the same with interest. Since, the petitioner had been enjoying the stay granted earlier for the last 13 years in respect of the impugned bills in question, this Court in order to ensure that no parties suffer because of operation of the stay during the pendency of the writ application, in the facts and circumstances, considered it proper and equitable to direct that the petitioner would be liable to pay delayed payment surcharge on the rectified bills raised after correction of the computation error to be reckoned from the date of impugned bill dated 16.3.2000 after the challenge to the applicability of the tariff to their Unit has failed. In the circumstances, the judgment relied upon by the respondent- Board in the case of ***Kanoria Chemicals & Industries Ltd. & others Vrs. U.P.State Electricity Board & others*** reported in ***1997(5) SCC 772*** is applicable to the facts of the instant case. The relevant extract contained in para 11 of the said judgment are worthy of being quoted herein below:-

“Para 11. We, therefore, agree with the High Court that Adoni Ginning cannot be read as laying down the proposition that the grant of stay of a notification revising the electricity charges has the effect of relieving the consumers/petitioners of their obligation to pay late payment surcharge/interest on the amount withheld by them even when their writ petitions are dismissed ultimately. Holding otherwise would mean that even though the Electricity Board, who was the respondent in the writ petitions succeeded therein, is yet deprived of the late payment surcharge which is due to it under the tariff rules/regulations. It would be a case where the Board suffers prejudice on account of the orders of the court and for no fault of its. It succeeds in the writ petition and yet loses. The consumer files the writ petition, obtains stay of operation of the

notification revising the rates and fails in his attack upon the validity of the notification and yet he is relieved of the obligation to pay the late payment surcharge for the period of stay, which he is liable to pay according to the statutory terms and conditions of supply — which terms and conditions indeed form part of the contract of supply entered into by him with the Board. We do not think that any such unfair and inequitable proposition can be sustained in law. No such proposition flows from Adoni Ginning. It is a matter of common knowledge that several petitioners (their counsel) word the stay petition differently. One petitioner may ask for injunction, another may ask for stay of demand notice, the third one may ask for stay of collection of the amount demanded and the fourth one may ask for the stay of the very notification. Such distinctions are bound to occur where a large number of writ petitions are filed challenging the same notification. The interim orders made by the Court may also vary in their phraseology in such a situation. Take this very case: While the consumers had asked for stay of operation of the government order revising the rates, those very consumers asked for an injunction when they came to the Supreme Court. Furthermore, as pointed out rightly by the High Court, the orders of stay granted by the High Court in writ petitions questioning the validity of the Notification dated 21-4-1990 were not uniform. In the case of writ petition filed by the Eastern U.P. Chamber of Commerce and Industry, Allahabad, the operation of the notification was stayed while in the case of the writ petition filed by the Employers' Association of Northern India, it was directed that "effect shall not be given to the Notification dated 21st April, 1990 as against the petitioner", while clarifying at the same time that "in the event of failure of the writ petition, the petitioner shall deposit with the relevant authority within a period of one month from the date of dismissal of the writ petition the difference between the amount of electricity dues to be paid hereinafter by the petitioners under our orders and the sum which may be calculated on the basis of the impugned notification". The words "sum which may be calculated on the basis of the impugned notification" in the later order clearly mean and include the late payment surcharge as well. The acceptance of the appellants' argument would thus bring about a discrimination between a petitioner and a petitioner just because of the variation of the language employed by the court while granting the interim order though in substance and in all relevant aspects, they are similarly situated. It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the courts....."

16. In such circumstances, therefore, the argument raised on behalf of the petitioner that it is not liable to pay the delayed payment surcharge on the rectified

bills reckoned from 16.3.2000 is untenable once its challenge to its applicability to the tariff schedule dated 24.9.1999 has failed. The judgment relied upon by the petitioner on this score in the case of ***Kusumam Hotels Private Ltd. Vrs. Kerala State Electricity Board & others(supra)***, therefore would not come to his aid. His liability to pay bills raised under the said tariff for the period in question stood determined. Therefore his liability to pay delayed payment surcharge on the bills raised thereunder also exists, otherwise it would mean unfairly rewarding a party inspite of his failure and making the other party suffer on account of interim order granted in favour of petitioner during the pendency of the writ application. The interim order passed in favour of one of the parties should not prejudice the other party for no fault of its on failure of the challenge made by the writ petitioner otherwise it would be rewarding the writ petitioner inspite of its failure.

17. In case the petitioner is aggrieved by any such bill raised thereafter, pursuant to the judgment in question, that may be a fresh cause of action for the petitioner but cannot be a ground for seeking review. In the aforesaid facts and circumstances and in the totality of reasons indicated herein above, the petitioner has failed to make out any case for review of the judgment in question dated 2.5.2013. Accordingly, the instant review petition is dismissed.

(Aparesh Kumar Singh, J.)

Jharkhand High Court, Ranchi
The 17th day of July 2013
A. Mohanty

