

IN THE HIGH COURT OF JHARKHAND AT RANCHI.

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W.P.C. No. 3517 of 2010  
With  
W.P.C.No. 3881 of 2010

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M/S BIMALDEEP STEEL PVT. LTD., PO & PS Jugsalai, Jamshedpur,  
Distt. Singhbhum, Jharkhand. **Petitioner in both Cases.**

**Versus**

1. Jharkhand State Electricity Board, through its Chairman  
2. General Manager-cum- Chief Engineer, Singhbhum Electric Supply Area, JSEB, Jamshedpur  
3. Electric Superintending Engineer, Adityapur Electric Supply Circle, JSEB, Jamshedpur  
4. Electric Executive Engineer (Comml. & Rev.) Singhbhum Electric Supply Area, JSEB, Jamshedpur.  
5. Jharkhand State Electricity Regulatory Commission, through its Secretary, Ranchi. **Respondents.**

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**CORAM : HON'BLE MR. JUSTICE PRASHANT KUMAR**

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For the Petitioners : Mr. N.K.Pasari.  
For the Respondents : M/s. Ajit Kumar, Mukesh Kumar, Navin Kr.  
Ravi Kr. Singh

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**Reserved on 09.01.2015**

**Delivered on 12/02/2015**

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**Prashant Kumar, J.** The facts and points of law arose in these writ petitions, filed by M/s Bimaldeep Steel Pvt. Ltd. are more or less similar, thus, both the writ petitions are heard together and disposed of this order.

**2.** In Writ Petition No. 3517 of 2010, petitioner has prayed for quashing the supplementary bill dated 17.06.2010 ( Annexure-4), whereby and where under, petitioner was directed to pay Rs. 1,31,18,298/- for the Month of April 2009 to May 2010. In the aforesaid writ petition, petitioner further prayed for quashing the notice dated 12.07.2010 ( Annexure-12), whereby and where under, petitioner was directed to pay supplementary bill as contained in Annexure-4 within 15 days, otherwise his electrical service line will be disconnected.

**3.** In Writ Petition No. 3881 of 2010, petitioner has prayed for quashing the Inspection Report dated 19.03.2009 (Annexure-4), whereby

and where under, the crucible capacity of petitioner's furnace has been determined. The petitioner further prayed for quashing the letter dated 17.05.2010, whereby the respondent-authority had decided to accord sanction of 11000 KVA load to the petitioner based upon the inspection carried on 19.03.2009. The petitioner further prayed for a direction upon the respondents commanding them not to pressurise petitioner to enhance its contract demand from 7000 to of 11000 KVA. Petitioner further prayed that a declaration be made in terms of Tariff Schedule of 2010 that measurement of crucible capacity is not relevant to determine the demand load in the factory premises of the petitioner.

4. Sans unnecessary particulars, the fact of the case is that, petitioner is a private limited company, registered under the Companies Act and it established a Sponge Iron Plant in the Adityapur Industrial Area, Jamshedpur. It appears that initially petitioner took H.T.S. Electric connection from the then Jharkhand State Electricity Board ( in short JSEB ) having contract demand of 150 KVA. The electric connection energised from 13.03.2004. It is further stated that on the aforesaid date, 2004 Tariff of JSEB enforced. It is further stated that the petitioner received bill on the basis of 2004 Tariff and it paid the bill accordingly. It is further stated that in 2004 Tariff, certain provisions of 1993 Tariff remain as it is by virtue of Clause 1.4 of the Terms and Conditions of the 2004 Tariff. It is further stated that Clause 16.5 of the 1993 Tariff provides that:

**" Surcharge for exceeding the contract demand:-**

*If during any month in a financial year the actual maximum demand of a consumer exceeds 110 per cent of the contract demand then the highest demand so recorded shall be treated as the contract demand for that financial year and the minimum base charges, both in respect of maximum demand and energy charge shall be payable on that basis."*

5. Clause 1.4 of the Terms and Conditions of 2004 Tariff states that

all other terms and conditions in respect of meter rent, supply at lower voltage and Capacitor charge, Circuit Breakage charge, Electricity Duty, Rebate Security Deposit, Surcharge for exceeding contract demand etc. shall remain as existing in the State.

**6.** It appears that in the Month of September, 2004, the contract demand of the petitioner's factory was enhanced from 150 KVA to 600 KVA. Thereafter, again it was enhanced from 600 KVA to 7000 KVA, with effect from April 2009. During that period, the petitioner had installed induction furnace in its factory premises. It is stated that from April 2009 to June, 2010, petitioner had paid energy bill, received from the JSEB, as per 2004 Tariff. It appears that petitioner again applied for enhancement of its contract demand by 1000 KVA ( totalling 8000 KVA) keeping in view that there was upward trend in the consumption of electricity in the petitioner's premises. It is stated that respondent- JSEB instead of enhancing the contract demand of the petitioner as prayed by it, inspected the premises of the petitioner on 19.03.2009 and took measurement of crucible capacity and prepared inspection report ( Annexure-4 to the Writ Petition No. 3881 of 2010). It is stated that thereafter on the basis of aforesaid inspection report, respondent took unilateral decision to enhance the contract demand of the petitioner from 7000 KVA to 11000 KVA vide Annexure-3 to the Writ Petition No. 3517 of 2010 and directed the petitioner to carry out various formalities. It is stated that before any action could be taken by the petitioner vide aforesaid Annexure-3, he was served with supplementary bill of Rs. 1,31,18,298/- vide letter dated 17.06.2010. It is stated that said supplementary bill issued on the basis of audit objection. It is stated that from perusal of calculation chart attached with the supplementary bill, it is clear that the same had been issued on the basis of contract demand of

11000 KVA. It is stated that the unilateral enhancement of contract demand of the petitioner from 7000 KVA to 11000 KVA is without jurisdiction and against the provisions of Tariff of 2004. Accordingly, it is submitted that the aforesaid decision of JSEB to enhance contract demand of the petitioner from 7000 KVA to 11000 KVA and consequently, raising supplementary bill on the basis of aforesaid contract demand and issuance of notice to pay aforesaid bill are arbitrary, without jurisdiction and against the Tariff promulgated by the Jharkhand State Electricity Regulatory Commission ( in short JSERC), therefore, the same is liable to be quashed by this Court.

Z. It is submitted by Mr. N.K.Pasari, learned counsel for the petitioner that, in fact, JSEB had taken measurement of the crucible capacity of the petitioner's furnace on the basis of Tariff issued by Bihar State Electricity Board in the Month of September, 1999. Said tariff was superseded by Bihar State Electricity Board vide Tariff dated 07.05.2001. It is submitted that aforesaid two Tariffs never adopted by the JSEB. It is further submitted that aforesaid two Tariffs not taken into account by JSERC, while issuing Tariff of the year, 2004. Thus, in the State of Jharkhand , the Tariff of 1999 and of 2001 never enforced. Thus, the consumers falling in the State of Jharkhand are governed by Tariff of 2004 and 1993. He further submits that petitioner gave details of its consumption of electricity at paragraph no.21 of the writ petition and had also brought on record the bills ( Annexure-2 series) for those period issued by JSEB. It is submitted that petitioner already paid the said amount. It is submitted that though petitioner had consumed electrical energy excess to its contract demand but it had paid the amount of the bill, raised by the JSEB in terms of Clause 16.5 of 1993 Tariff read with Clause 1.4 of 2004 Tariff. It is submitted that once petitioner paid the electricity bill raised by the JSEB

on the basis of Tariff enforced at the relevant time, it is not open for the JSEB to raise a supplementary bill and enhanced the contract demand of the petitioner's factory on the basis of a tariff of 1999 and 2001 which are not applicable in the State of Jharkhand, in view of the clarification of JSERC and the order dated 17.04.2009 passed by this court in ***Jharkhand State Electricity Board.Vs. M/s Kumardhubi Steels Pvt. Ltd. in W.P.(C) No.5150 of 2007*** (Annexure-10), which was affirmed by the Hon'ble Supreme Court vide order dated 29.09.2009 in Special Leave to Appeal ( Civil) No.20104/2009( Annexure-11). Accordingly, learned counsel for the petitioner submits that the inspection of the crucible capacity of the induction furnace and unilaterally enhancing contract demand of petitioner's factory from 7000 KVA to 11000 KVA and raising supplementary bill on that basis to the tune of Rs. 1,31,18,298/- is wholly without jurisdiction, illegal and arbitrary, therefore, cannot be sustained. It is submitted that JSERC had issued another Tariff in the year 2010 in which provision has been made for the determination of contract demand of the induction furnace and it is stated that same be determined on the basis of technical specification of the equipment issued by manufacturer, but not on the basis of measurement. Accordingly, it is submitted that petitioner is entitled to a declaration for determination of its contract demand on the basis of Tariff issued by JSERC, which became effective from May, 2010.

**8.** On the other hand, Mr. Ajit Kumar, learned senior standing counsel appearing for the respondents, submits that inspection and measurement of crucible of the petitioner's factory carried out with the consent of the petitioner, which will manifest from Annexure-'C'. Thus, petitioner estopped from making any objection against the aforesaid inspection and measurement of the crucible capacity. It is submitted that as per the

terms and conditions of the Tariff of 2004, it is clear that "***all other terms and conditions in respect of meter rent, supply at lower voltage and Capacitor charge, Circuit Breakage charge, Electricity Duty, Rebate Security Deposit, Surcharge for exceeding contract demand etc. shall remain same as existing in the State***". It is submitted that in the year 2004, the induction furnace were governed by the Tariff dated 24.09.1999, issued by Bihar State Electricity Board, which provides that demand charge shall be levied on actual maximum demand recorded in the meter during the Month or 100% of contract demand which ever is higher. It is submitted that on measurement of crucible capacity of the petitioner's induction furnace, the inspecting team had found that contract demand of the petitioner's furnace is 11000 KVA, therefore, the JSEB had issued supplementary electrical bill on the basis of 11000 KVA, in view of the audit objection as contained in Annexure- SA/1. Accordingly, it is submitted that there is no illegality in the inspection, measurement of capacity of crucible and enhancing the contract demand of petitioner by the JSEB and consequently it issued notice to the petitioner to pay Rs. 1,31,18,298/-.

**9.** Having heard the submissions, I have gone through the records of the case.

**10.** The main question raised for determination in this writ petition is, whether the JSEB had power to unilaterally enhance the contract demand of the petitioner's factory from 7000 KVA to 11000 KVA on the basis of inspection carried on 19.03.2009 and could issue supplementary bill on that basis.

**11.** It is not in dispute that the electric connection was given in the petitioner's factory w.e.f. 13.03.2004. It is also not in dispute that on that day Tariff issued by JSERC was applicable. From perusal of said Tariff, I

find that there is no provision in it, which empowers JSEB to determine the contract demand of an induction furnace by measuring the capacity of crucible. It appears from the stand taken by JSEB in its counter affidavit that JSEB had such power under the provisions of Tariff, issued by Bihar State Electricity Board on 24.09.1999. According to JSEB, on the date of the constitution of JSEB, the aforesaid Tariff was applicable in the State of Jharkhand. Thus, as per condition laid down in Clause 1.4 of the Tariff issued by JSERC in the year 2004, the terms and conditions of 1999 Tariff are applicable when petitioner took electric connection.

12. However, aforesaid contention of the JSEB had been turned down by the JSERC vide its letter dated 19.12.2005 (Annexure-9). From perusal of Annexure-9, it appears that the Secretary, JSERC had stated in an expressed term that JSEB while submitting petition for Tariff for the year 2003-04 had not submitted Tariff schedules dated 24.09.1999 and 07.05.2001, hence these Tariffs schedule had not been taken into consideration by the JSERC while issuing the Tariff Orders 2003 and 2004. It is also made clear by JSERC that the above mentioned two orders of the year 1999 and 2001 are not applicable w.e.f. 01.01.2004. In view of the aforesaid letter of JSERC, the contention of JSEB that it had power to inspect and determine the contract demand of petitioner's factory on the basis of measurement of the capacity of the crucible can not be accepted.

13. It appears that aforesaid contention of the JSEB was earlier considered by a Bench of this Court in ***W. P. (C) No. 5150 of 2007 (Jharkhand State Electricity Board. Vs. M/s Kumardhubi Steels Pvt. Ltd.)*** and concluded, vide order dated 17.04.2009, that the Tariff of 1999 and 2001 issued by BSEB have no application in the State of Jharkhand. It is worth mentioning that aforesaid order of learned Single

Judge attains finality after disposal of Special Leave to Appeal No.20104 of 2009 filed by Jharkhand State Electricity Board ( Annexure-11). In this view of the matter, now it is not open for the JSEB to reiterate aforesaid contention again.

**14.** The contention of the learned counsel for the JSEB that measurement of the crucible was taken with the consent of the petitioner, (as it appears from Annexure-'C'), therefore, now petitioner is estopped from challenging the same on the ground of doctrine of estoppel. It is worth mentioning that a Tariff Order issued by JSERC had a statutory force. It is well settled that the doctrine of estoppel has no application against the statute. It is equally well settled that if statute commands that an act be performed in particular way then the statutory authority cannot perform it otherwise by taking the advantage of ignorance of a private person. It is also well settled that jurisdiction cannot be vested in an authority by way of concession. Under the said circumstance, I find no merit in the aforesaid contention of Mr. Ajit Kumar, learned counsel for the JSEB.

**15.** It appears from the Chart incorporated at paragraph no.21 of the writ petition and Annexure-2 series that from 2009 to 06.06.2010, the JSEB issued bills upon the petitioner on the basis of actual KVA recorded in the meter. It is clear from Clause 16.5 of the 1993 Tariff, which was applicable at the relevant time and that if a consumer exceeds 110% of the contract demand then the highest demand so recorded shall be treated as contract demand for that financial year and the minimum base charge of both in respect of maximum demand and energy charge shall be payable on that basis. At this stage, it is pertinent to mention that under the industrial policy of the State of Jharkhand, if the consumption exceeds the contract demand upto 15% in a particular month, then extra



minimum guarantee charge will be treated for that particular month only. It is worth mentioning that aforesaid clause of Industrial Policy was adopted by the JSEB vide Annexure- 8 to the writ petition. Under the said circumstance, it appears that the Electricity Board had issued bills to the petitioner on the basis of actual monthly consumption of electricity, which were paid by the petitioner. In that view of the matter, issuance of supplementary bill on the basis of measurement of capacity of the crucible is not sustainable. From perusal of supplementary bill, it appears that the same had been issued on the basis of audit objection. The said audit objection annexed in the supplementary counter affidavit dated 11.12.2014. From perusal of said audit objection, I do not find any reason as to how the Senior Audit Officer came to the conclusion that petitioner's contract demand was 10800 KVA. Thus, the said Audit Objection also appears to be vague.

**16.** It appears that JSERC has promulgated another Tariff which, became enforceable from May 2010. According to the said Tariff, the contract demand of Induction /arc furnace of consumer can be determined on the total capacity of Induction/arc furnace and the equipment as per manufacturer's technical specification. In the said tariff, it is clearly mentioned that contract demand will not be determined on the basis of measurement. Under the said circumstance, I declare that petitioner is entitled to get his contract demand determined on the basis of aforesaid provisions of Tariff which became enforceable w.e.f. May, 2010.

**17.** In view of the discussions made above, I allow these writ petitions and quash the supplementary bill dated 17.06.2010 ( Annexure-4) and the notice dated 12.07.2010( Annexure-12) of the W. P. (C) No.3517 of 2010 and also quash the Inspection Report dated 19.03.2009 (Annexure-4) and

the letter dated 17.05.2010 of the W. P. (C) No. 3881 of 2010. I hereby direct the respondent- JSEB to determine the contract demand of the petitioner's Induction /arc furnace on the basis of total capacity of Induction/arc furnace and the equipment as per manufacturer's technical specification as provided in the Tariff of May, 2010 and issue revised bill to the petitioner from May, 2010.

**18.** In view of the facts and circumstances of the case, I order that party shall bear their own costs.

**( Prashant Kumar, J.)**

Raman/