

W.P.(C) No. 4916 of 2005

(In the matter of an application under Article 226 of the Constitution of India)

M/s Incore Metals & Cement Pvt. Ltd, a company having its registered office Jhousagrhi, PO, PS & Dist.- B- Deoghar through its Manager and authorized signatory Shri Ashok Bathwal,S/o Sri N.K. Bathwal, R/o Giridih, PS & Dist.- Giridih
... .. Petitioner

Versus

1.Jharkhand State Electricity Board, Project Building, Dhurwa,Ranchi, through its Chairman
2. Dy. General Manager, Electric Supply Area, Dumka
3. The Electrical Superintending Engineer, Dumka Electric Circle, Dumka
4. The Electrical Executive Engineer, Dumka Electric Division, Dumka
5. The Assistant Electrical Engineer, Mihijam Electric Sub-Division, Mihijam, Dist.- Dumka,
6. The Jharkhand State Electricity Regulatory Commission, 2nd Floor, Rajendra Jawahar Bhawan-cum-Sainik Bazar, Main Road, Ranchi through its Chairman Respondents

PRESENT

HON'BLE MR. JUSTICE PRASHANT KUMAR

For the Petitioner: Mrs. Shilpi John, Adv.
For the Respondents: Mr. P.K. Deomani,S.C., JUVNL
Mr. Ravi Kumar Singh, ASC
Mr. S. Srivastava, Adv.(JSERC)

By Court

This application has been filed for the following reliefs:

For issuance of appropriate writ, order or direction quashing the revised bill of Maximum Demand dtd.4.8.05, and the monthly bill of July, 2005, so far as it charges Maximum Demand for the month of July, 2005 at 3240 KVA instead of 2631 KVA, which is admittedly the Maximum Demand recorded in the meter, which undisputedly is functioning correctly. Petitioner further prays to issue appropriate writ, order or direction to the respondents commanding them to revise the bill of July, 2005 charging the Maximum Demand as per clause 4(C) of the agreement entered into between the Jharkhand State Electricity Board and the petitioner on 14.9.2004 and also to raise future bills up to November, 2005 in accordance with the said Clause of the agreement.

2. In this case petitioner has challenged the bills as contained in Annexures-2 and 3, whereby the respondent-Board had demanded Rs.12,66,516/- and Rs.9,72,000/- towards the Maximum Demands at the rate of 100% contract demand. It further appears that the present writ application was allowed vide order dated 25.1.2006 by a Bench of this Court and the impugned demands set aside. However, it appears that the respondent-Jharkhand State Electricity Board filed an L.P.A. against the aforesaid order. The said L.P.A. has been disposed of vide order dated 15.2.2007 and the case remitted back for deciding the question, **whether Clause (4) of the agreement is against the tariff order, 2004?**

3. It is submitted by Mrs. Shilpi John, learned counsel for the petitioner that the question formulated by the Division Bench of this Court has already been decided by the Hon'ble Supreme Court in ***Jharkhand State Electricity Board and others Vrs. M/s Laxmi Business and Cement Company Private Limited and another*** reported in **(2014) 5 SCC 236**. It is submitted that in the aforesaid judgment, the Hon'ble Supreme Court has held that tariff order, 1999 has no application after coming into force of tariff order, 2004 and the Jharkhand State Electricity Board (J.S.E.B.) is entitled to raise bill only on the basis of tariff order, 2004. It is submitted that in the tariff order, 2004, the respondent-Board can raise bill towards the minimum demand charge on the basis of actual consumed KVA. Therefore, the impugned bills cannot be sustained.

4. Sri P.K. Deomani, learned counsel appearing for the respondent-Company and Sri S. Srivastava, learned counsel for Jharkhand State Electricity Regulatory Commission have not disputed the aforesaid submission in view of the Judgment of the Hon'ble Supreme Court in ***Jharkhand State Electricity Board and others Vrs. M/s Laxmi***

Business and Cement Company Private Limited and another (Supra).

5. As per Section 45 of the Electricity Act, 2003, the respondent-Company is entitled to charge the electricity on the basis of the tariff fixed by the Jharkhand State Electricity Regulatory Commission (JSERC). The JSERC had issued the tariff order, 2004 in the year 2004, which become enforceable with effect from 01.01.2004. In the said tariff order, it is mentioned that a licensee can raise bill towards Maximum Demand on the basis of actual consumption of KVA and not on the basis of 100% contract demand as provided in the tariff order, 1999. The Hon'ble Supreme Court in ***Jharkhand State Electricity Board and others Vrs. M/s Laxmi Business and Cement Company Private Limited and another (Supra)*** has held that the tariff order, 1999 has no application in the State of Jharkhand after coming into force of tariff order, 2004.

6. In that view of the matter, Clause 4(C) of the agreement has also no application, because as per Section 45 of the Electricity Act, 2003, a licensee cannot levy electricity charge in contravention of tariff order issued by JSERC.

7. In view of the aforesaid facts and circumstance, I allow this application and quash Annexures-2 and 3, so far it relates to Maximum Demand on the basis of 100% contract load.

The respondents are directed to raise fresh bills for Maximum Demand on the basis of actual consumption of KVA as per tariff order, 2004. The respondents are further directed to adjust the excess payment made by the petitioner, if any, in the future bills.

(Prashant Kumar, J.)