

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 5102 of 2008
with
W.P.(C) No. 3650 of 2010

M/s. Dayal Steels Ltd. having its works and unit at village Chaha P.O. & P.S.- Ramgarh Cantt. District -Ramgarh through its Managing Director Bijay Kumar Harlalka S/o Sri Chandi Prasad Harlalka, R/o Hotel Park Campus, Main Road , P.O.P.S. Ramgarh Cantt. District- Ramgarh

.....Petitioner(In both cases)

Vs.

1. Jharkhand State Electricity regulatory Commission through its Secretary, Jawan Bhawan, Sainik Market, Main Road, P.O. & P.S.- Hindpiri, Districtly-Ranchi
2. Damodar valley Corporation, D.V.C. Towers, V.I.P. Road, P.O. & P.S. Salt Lake, Kolkata-54, through Secretary of the said Corporation, Officiating at D.V.C. Towers, V.I.P. Road, P.O. & P.S. Salt Lake, Kolkata-54
3.The Chief Engineer (Commercial), Damodar Valley Corporation D.V.C. Towers, V.I.P. Road, P.O. & P.S. Salt Lake, Kolkata-54.
4. The Superintending Engineer (E), Damodar Valley Corporation, GOMD V, Main Road, Hazaribagh (Jharkhand)
5.The Executive Engineer (E), Damodar Valley Corporation, Ramgarh Sub Station, P.O. P.S. & District-Ramgarh(Jharkhand)Respondents(in WPC 5102/2008)

1. Damodar valley Corporation, D.V.C. Towers, V.I.P. Road, P.O. & P.S. Salt Lake, Kolkata-54, through Secretary of the said Corporation, Officiating at D.V.C. Towers, V.I.P. Road, P.O. & P.S. Salt Lake, Kolkata-54
2.The Chief Engineer (Commercial), Damodar Valley Corporation D.V.C. Towers, V.I.P. Road, P.O. & P.S. Salt Lake, Kolkata-54.
3. The Superintending Engineer (E), Damodar Valley Corporation, GOMD V, Main Road, Hazaribagh (Jharkhand)
4.The Senior Divisional Engineer (E)-Maintenance In-Charge, Damodar Valley Corporation, GOMD-V, Main Road, Hazaribagh (Jharkhand)
5. National Physical Laboratory Chief Engineer, P.O. & P.S. Dr. K.S. Krishnan Marg, New Delhi-12
---Respondents (in WPC3650/10)

CORAM: HON'BLE MR. JUSTICE PRASHANT KUMAR

For the Petitioner: Mr. Ajit Kumar
(In both cases)
For the Respondents: Mr. S.K. Ughal
Mr. T. Kabiraj
(In both cases)

3/19.02.2015: In the aforesaid two writ applications, common question of facts and law arose, therefore, are heard together and disposed of by this common order.

2. It appears that respondents Damodar Valley Corporation (hereinafter referred to as 'DVC') raised a bill of Rs. 2.66 Crore on 06. 06. 2008 (Annexure-S.A.-1) for the period commencing from 01.05.2008 to 16.05.2008 on average basis. The aforesaid bill challenged by the petitioner vide WPC No. 3277 of 2008, on the ground that no notice given

to the petitioner before declaring that the meter, installed in the premises of petitioner, has become defective. The petitioner further challenged the bill on the ground that the same has not been raised according to the provision of Clause 11.3 of the Electricity Supply Code 2005 (hereinafter referred to as the 'Code'), which provides that in case of defective meter, the bill can be raised on the basis of average consumption of last 12 months immediately preceding the month in which the meter was last read. It is further contended that it is imperative for the respondent to send the meter for testing before a third party agency nominated by Jharkhand State Electricity Regulatory Commission (hereinafter referred to as JSERC). It appears that during the pendency of aforesaid writ application, petitioner paid Rs. 1.8 crore to the respondent towards the bill amount. It is worth mentioning that aforesaid writ application disposed of by a bench of this Court vide order dated 22.08.2008 (Annexure-3) whereby and whereunder respondents were directed to send the meter to any of the three agencies, notified by the JSERC, with prior intimation to the petitioner. It is further ordered that if petitioner so desire, may remain present before the agency, at the time of testing of the meter.

3. It appears that in pursuance of the aforesaid order, respondents sent the meter to M/s National Physical laboratory , New Delhi for necessary testing. It is also not out of place to mention here that the respondents gave prior intimation to the petitioner as directed by this Court. It then appears that the National Physical Laboratory, New Delhi after testing the meter concluded vide Annexure-7/1 that the meter was not functioning correctly. Thus, according to it the meter was defective. Thereafter respondents vide order dated 03.06.2010 intimated this petitioner that since the meter was found defective, therefore, the earlier bill raised on 16.6.2008 was correct. Hence, petitioner pay rest of the amount. This letter is impugned in WPC No. 3650 of 2010.
4. The petitioner has challenged another four bills in WPC No. 5102 of 2008, issued on 09.09.2008, 03.10.2008, 03.11.2008 and 04.12.2008, which relates for the following periods i.e. 02.08.2008 to 31.8.2008, 01.09.2008 to 30.09.2008, 01.10.2008 to 31.10.2008 and 01.11.2008 to 30.11.2008 respectively. These bills also challenged on the ground that the same were issued in contravention of provision contained in Clause 11.3 of the Code.
5. It is submitted by Sri Ajit Kumar, learned counsel for the

petitioner that respondents in WPC No. 3277 of 2008 filed a counter affidavit and stated at paragraph no. 15, that they are bound by the Code framed by the JSERC. He further submitted that in the said writ application, respondents admitted that they will send the meter for testing to the independent agency and after receipt of the report they will raise fresh bill. It is submitted that as per the direction of this Court the meter sent to the National Physical Laboratory, New Delhi for necessary testing and its report received, which shows that the meter was defective. Accordingly it is submitted that now respondents are required to raise fresh bill according to Clause 11.3 of the 'Code', but instead of doing so respondents issued Annexure-8 (WPC 3650/2010) and claimed that earlier bill raised on 16.6.2008 was correct.

6. Sri Ajit Kumar submits that as per 2nd proviso of Clause 11.3 of the 'Code', in case of defective meter, it is incumbent for the respondents to raise bill on the basis of average consumption of last 12 months immediately before meter become defective. It is submitted that in the instant case, DVC admittedly had not raised bills on the basis of average last 12 months consumption, rather it raised bills on the consumption of last 2-3 months, which is against the provision contained in the 'Code'. Accordingly, it is submitted that the aforesaid letter as contained in Annexure-8 (WPC 3650 of 2010) as well as the bills dated 09.09.2008, 03.10.2008, 03.11.2008 and 04.12.2008 cannot be sustained.
7. On the other hand, Sri. S.K.Ughal, learned counsel appearing for the DVC submits that in view of section 42 Clause 5 and 6, Consumer Redressal Grievance Forum and Ombudsman have already been constituted, therefore effective alternative remedy available to the petitioner. It is submitted that in view of the aforesaid statutory remedy, these writ applications are not maintainable. It is further submitted that as per Clause 10 of the agreement, entered in between the respondents and petitioner, in case of defective meter the respondents entitled to raise bill on the basis of average of previous three months consumption. Thus, he submits that there is no illegality in the impugned bills.
8. Having heard the submissions, I have gone through the record of the case. It appears that earlier petitioner has moved to this Court vide WPC No. 3277 of 2008. In that writ application a bench of this Court has observed that on receipt of the test report, if the meter found defective, then the respondents may take appropriate action as per law. Thus, from the said

observation of this court, it is clear that if the independent agency concludes that the meter is defective, then it is the duty of the respondents to raise bill as per the provisions contained in Clause 11.3 of the 'Code'.

9. The relevant provision of the Code is quoted herein below for ready reference:-

11.3 Billing in the event of Defective meters.

11.3.1 Subject to the provisions of Part XII and part XIV of the Act in case of a defective meter not recording accurately (slow or fast) the bill of the consumer shall be adjusted on the basis of the test report of the meter for the period of the meter was defective subject to a maximum period of three months prior to the date on which the defect was detected.

Provided that before testing the meter licensee shall give 7 days notice to the consumer to be present during testing of meter intimating date, time and place of testing and if the consumer or his representative is present the testing shall be done in his presence and he will sign the report as a token of witness.

Provided further that in case the meter is defective or burnt and has stopped recording or lost, the consumer shall be billed on the basis of average consumption of the last twelve months immediately preceding the month in which meter was last read(including that month) for the period for which meter was stopped recording subject to maximum period of 3 months.

Provided that in case of tampering the assessment shall be carried out as per provisions of Section 126 of Section 135 of the Act, depending on the circumstance of each case.

10. From the plain reading of 2nd proviso of Clause 11.3.1, it is clear that if the meter is defective, then the consumer shall be billed on the basis of average consumption of last 12 months immediately preceding the month in which the meter was last read.
11. It is admitted position that before 01.04.2008 the meter was reading correctly. Thus, in view of the aforesaid provision, the respondents require to raise bill on the basis of consumption of last 12 months i.e. from April'2007 to March'2008. Likewise, in the case of bills raised for the month of August, September, October and November, 2008, which were challenged in WPS No. 5102 of 2008, the respondents require to raise bills on the basis of average consumption from August 2007 to July 2008.

12. The contention of learned counsel for the DVC that as per the agreement, the respondents entitled to raise bill on three months average, cannot be accepted, because in the counter affidavit filed in the earlier writ application, the respondents categorically stated that after commencement of New Act, the Supply Code 2005 is binding on it. Moreover, it is well settled that if any cause of agreement is against the statute, then the same will not be enforced. So far the contention of alternative remedy is concerned, in this case most of the facts has been admitted by the DVC. The question is only as to what should be the procedure for calculation of bill if the meter is defective. In that view of the matter, the same can be decided by this Court, because it is purely a question of law. Under that circumstance, even if the statutory alternative remedy available, these writs applications are maintainable. Accordingly, I reject the aforesaid contentions.
13. In view of the discussions made above, I allow these writ applications and quash Annexure-8 and Annexure – S/A1 of WPC No. 3650 of 2010 and bills dated 09.09.2008, 03.10.2008, 03.11.2008 and 04.12.2008 annexed with WPC No. 5102 of 2008. However, I give liberty to the respondents to raise fresh bills for the aforesaid periods according to the provision of clause 11.3.1 of the Code, within three months from today. It is made clear that the respondents shall adjust the amounts, already paid by the petitioner against the aforesaid bill.

(Prashant Kumar,J.)

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