IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9742 of 2020

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M/s Gokul Steels Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 1B, Durga Vihar Commercial Complex, S.P. Verma Road, P.S. Kotwali, Patna-800001, and its works at Hardas Bigha, Near Khusrupur, Fatuha, District Patna, through its Director, Raunak Madho Garia, aged about 29 years (Male), son of Dilip Kumar Madhogaria, resident of Exhibition Road, Flat No. 402, Ambition Residency, Behind Narain Plaza, P.S. Kotwali, P.O. GPO, District-Patna.

... ... Petitioner/s

Versus

1. The South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Managing Director.
2. The General Manager (Revenue), South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
3. The Electrical Executive Engineer, H.T. Cell, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
4. The Electrical Executive Engineer, Electric Supply Division, Fatuha, District- Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Suraj Samdarshi, Advocate
For the Respondent/s : Mr. Umesh Prasad Singh, Senior Advocate with Mr. Prakash Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 13-01-2021

Heard Mr. Suraj Samdarshi, learned counsel for the petitioner and Mr. Umesh Prasad Singh, learned senior counsel along with Prakash Kumar, learned counsel for the respondents.

2. The petitioner has moved the Court for the following reliefs:

> *"(i) For quashing of the letter no. 3109 dated 02.12.2020 issued by the respondent no.2, whereby and whereunder a supplementary*

demand to the extent of Rs.5,67,41,905/- for the period August, 2015 to October, 2020 has been raised on the ground that the earlier bills were raised erroneously.

(ii) For quashing of the bill dated 02.12.2020 issued in pursuance of the letter no. 3109 dated 2.12.2020 for Rs.5,67,41,905/-

(iii) For a direction to the respondent authorities not to insist upon the demand till the veracity/correctness of the meter is tested by a check meter in accordance with the provisions as contained in the Bihar Electricity Supply Code, 2007.

(iv) For a direction to the respondent authorities not to incorporate the supplementary demand, in regular future energy bills, as current consumption charges is distinct from any supplementary bill issued in terms of Section 56 of the Electricity Act, 2003.

(v) For a direction to the respondent authorities not to disconnect the electric supply of the petitioner for non-payment of the revised supplementary bill amount as raised vide letter no. 3109 dated 2.12.2020, due date whereof has been fixed as 17.12.2020.

(vi) For a declaration that in view of the specific provision under Section 56(2) of the Electricity Act, 2003, regarding limitation for raising any demand and consequential disconnection, the respondent authorities cannot disconnect the electric supply till adjudication of the dispute; and for any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case."

3. Essentially, the grievance of the petitioner is against the supplementary demand raised by the respondents by and under Letter No. 3109 dated 01.12.2020 for the period from

August, 2015 to October, 2020.

4. Learned counsel for the petitioner submitted that for the first time after five years, the respondents have raised such supplementary demand, which is not in accordance with law. It was submitted that when there is no dispute or change in the amount of consumption by the petitioner, the multiplying factor of 02, which is the reason for them to raise such supplementary demand, is unjustified. Moreover, it was submitted that the petitioner has made a representation before the competent authority for testing of the meter which is still pending. Learned counsel submitted that there is imminent threat of disconnection due to non-payment of the huge demand of more than rupees five and a half crores. It was submitted that even in the bill(s) for the month of November, 2020, onwards, the petitioner unit is under constant threat of disconnection of his electric supply. Learned counsel submitted that the Hon'ble Supreme Court in the case of **Assistant Engineer (D1) Ajmer Vidyut Vitran Nigam Limited Vs. Rahamatullah Khan alias Rahamiulla [(2020) 4 SCC 650]** has held that disconnection of supply to the consumer on account of non-payment of additional demand of electricity charges is impermissible. Learned counsel submitted that even the regulation requires the testing of the

metering unit on a dispute raised by the consumer within seven days which has not been complied with.

5. Learned counsel for the respondents submitted that the petitioner is trying to create a dispute when there is none. It was submitted that initially, at the petitioner unit, a High Tension service metering unit was installed on 25.04.2014, which was burnt leading to installation of a new metering unit on 24.08.2015. It was submitted that the first metering unit had the multiplying factor of 01, whereas the second metering unit, installed on 24.08.2015, has a multiplying factor of 02. Learned counsel stated that this, in substance, means that whatever is the actual reading, the units chargeable would be computed twice that reading, and accordingly, a bill/demand would be raised. Learned counsel explained that this is for the reason that due to heavy load, the metering units are susceptible to failure or damage if the actual consumption/current is allowed to pass through, and for this purpose, the same is reduced at a prior point and the actual metering unit then registers the consumption. Thus, it was submitted that the moment the metering unit is classified as M.F. 02, the same denotes that it has to be read with a multiplying factor of 02 with regard to raising of actual demand. It was submitted that the respondents

have explained the entire procedure in their counter affidavit.

6. Learned counsel drew the attention of the Court to Annexure-3 of the writ petition dated 24.08.2015, which is the installation report of the changed metering unit and has been duly signed by the authorized representative of the petitioner in which at the very initial portion, it is clearly mentioned “M.F. 02”. Thus, it was submitted that the petitioner was aware right from 24.08.2015 that the new metering unit which was installed, had multiplying factor of 02. Learned counsel submitted that there is no dispute with regard to the reading in the metering unit and it is only a matter of procedure as has been explained earlier that the actual reading has to be multiplied by 02 to arrive at the real and actual demand figure relating to consumption of units. It was submitted that due to factors which are currently not known, for which the respondents have initiated steps to fix responsibility, the multiplying factor of 01, as per the old metering unit, continued to be applied with regard to the reading of the newly installed metering unit having a multiplying factor of 02 and, thus, only half the amount was charged and difference/arrears for the period in question, is more than rupees five and a half crores. It was submitted that the Court may take note of the fact that the first metering unit,

which was installed on 25.04.2014 which had got burnt, itself indicates that the load was such that M.F. 01 metering unit was not feasible, and due to which reason M.F. 02 metering unit was installed and after installation, the same was duly accepted and acknowledged by the representative of the petitioner who has also signed on the report dated 24.08.2015. Learned counsel submitted that once the new metering unit shows M.F. 02, the petitioner cannot, now, take a stand or dispute such multiplying factor as it was within his knowledge, which was documented and on which his representative has also signed and no dispute was ever raised by the petitioner, till the time the respondents realized their error and proceeded to correct it.

7. Learned counsel submitted that in the present case also the respondents are agreeable to follow the order passed by the Bihar Electricity Regulatory Commission in Case No.01/2017 dated 14.06.2017, where it has been held that any HT consumer whose line is running and exercises option for payment of arrears in installments shall have to deposit minimum 25% of the total arrears as 1st installment along with the amount of the current monthly bill and the balance arrears may be paid in maximum six monthly equal installments along with the current bill and interest on arrears amount at the rate of

delayed payment surcharge on reducing basis till the entire arrears is paid. Learned counsel took a categorical stand before the Court that for the supplementary demand, the electric connection of the petitioner would not be disconnected, but the petitioner has stopped paying even the current charges. Learned counsel submitted that as far as the testing of the meter is concerned, the same was got tested, at the request of the petitioner on 15.12.2020 and the representative of the petitioner has also signed on the same as would be clear from Annexure-9 of the supplementary affidavit filed by the petitioner himself, which shows that on 15.12.2020, five Engineers of the respondents got the meter tested in the presence of the representative of the petitioner. It was submitted that on the same even though the testing was carried out in the presence of representative of the petitioner, but he wrote that he was not satisfied with the inspection, which is totally untenable, for the reason that there cannot be any question of satisfaction of any party and if at all there was any objection, the same had to be clearly and specifically spelt out, and moreover, such objection was required to be taken and pointed out at the time of inspection itself so that the authorities could have acted on the same, if they found substance in such objection. Thus, learned

counsel submitted that the petitioner is somehow or the other trying to keep the matter under litigation so that he gets away from his liability to pay as per the demand which was to be legally raised against him. Learned counsel submitted that even as per Section 56(1) of The Electricity Act, 2003 (hereinafter referred to as the "Act"), titled '*Disconnection of supply in default of payment*', the proviso thereof reads as below:

> '*Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-*
> *(a) an amount equal to the sum claimed from him, or*
> *(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,*
> *whichever is less, pending disposal of any dispute between him and the licensee*.'

8. Learned counsel submitted that the present is not a case of average charge as the consumption of unit is not disputed and the only issue is whether as per the installed metering unit, the multiplying factor should be 01 or 02.

9. Learned counsel for the petitioner, by way of reply, submitted that proviso (b) of Section 56(1) of the Act is applicable as it clearly states that the electricity charges due should be calculated on the basis of average charge which is equal to the actual reading in the meter and there is no dispute

on this.

10. No other points were urged by either side. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any cogent ground warranting interference.

11. The brief facts of the case relevant for considering the present matter are that the petitioner, a commercial unit, obtained a High Tension electric connection on 25.04.2014. However, the metering unit was burnt due to which a new metering unit was installed on 24.08.2015. The seed of the dispute was, probably, born at the time of change of the metering unit, inasmuch as, the first metering unit, which was installed on 25.04.2014 had the multiplying factor of 01, whereas, with regard to the second metering unit, which was installed on 24.08.2015, the multiplying factor shown was 02.

12. At this stage, it would be useful to refer to the scheme of how actually meter readings are computed, as has been explained in the counter affidavit filed by the respondent no. 1, especially at paragraphs no. 4-7, which are extracted hereinbelow:

> *"4. That the respondents at the outset crave leave to mention 1st the relevant facts and as such states that the petitioner was connected with electric supply for the first*

time in High Tension Service on 25.04.2014. The 'metering unit' was installed at the last point of supply outside the factory premises of the petitioner where as a 'meter' was installed at the receiving end inside the factory premises for recording the consumed 'units' on 25.04.2014. The 'metering unit's' 'current transformer ratio' (CT Ratio) and 'potential transformer ratio' (PT ratio) as also of the 'meter' were the same i.e. of the capacity C.T. Ratio 50/1 A, 33 KV/110 V, and as such the 'Multiplying Factor' (MF) one (1) was applicable. The full details of the 'metering unit' as well as the 'meter' for the purpose of counting the units consumed were of same capacity as such MF (one) was applied for billing purpose; accordingly, all the relevant data were inserted in the software/computer in respect of 'Metering Unit' and the meter with an intention to preserve the record as also for the purpose of drawing/preparing the monthly bills for the energy consumed; the details prepared by the engineers of the respondent no. 1 were acknowledged and signed by all the experts as also the representative of the petitioner on 25.04.2014.

5. *That the respondents state that admittedly the contract demand of the petitioner is 1667 KVA, and as such the petitioner executed the High Tension (HT) agreement. The contract demand in the case of petitioner since was very high and may be due to other reasons. The 'metering unit' installed on 25.04.2014 was burnt and as such a new 'metering unit' was installed as on 24.08.2015, the details as to 'metering unit' the applicable 'multiplying factor' as also show other details are available in Annexure-3 enclosed by the petitioner with the writ application, besides, other details it would appear that MF 02(two) is also mentioned in Annexure-3, which the report*

of the engineers who examined and installed the metering unit and having found in all respect defects free; the report Annexure 3 also contains the signature of consumer/petitioner's representative. The document Annexure-3 which contained the every details including the MF 02 (two) to be applicable was certified, acknowledged and signed by the representative of the petitioner constitute an agreement inter-se between the parties. It is a matter of records that during all these years right from 24.08.2015, the petitioner never challenged the correctness or otherwise the details mentioned in Annexure-3 annexed to the writ application nor the petitioner disputed MF 02 (two) entry mentioned and applicable on and from the date of installation of new metering unit of the capacity CT Ratio 100/1A, PT Ratio-33KV/110 V. The changes/variations in the metering unit installed previously and new metering unit installed on 24.08.2015 are apparent, if the details mentioned in Annexure R/A enclosed herewith and the report Annexure-3 enclosed with the writ application by the petitioner are verified and examined.

6. *That the respondents state that till date the petitioner has not questioned the capacity of the metering unit or other details mentioned in Annexure- 3 to the writ application; what the petitioner is questioning now only the limited issue of application of MF 2 applied to the billing and has not challenged that the 'metering unit' installed outside the premises that is the last point of supply was/is defective; It is further mentioned that there is no dispute inter-se between the petitioner and the Licensee respondent No.1 as to the total units of energy consumed by the petitioner except the issue raised by the petitioner about the change in the MF 01 (one) to MF*

02(two) which has only effect while preparing amount chargeable in the bills in relation to the total units consumed by the petitioner.

7. *That the respondents state that there is no dispute as to the, total units consumed as also any defects/deficiency in the 'metering unit' or the 'meter' by the petitioner, the respondents reiterate that the metering unit and also the meter installed being defect free and also there is no fault of machinery, the demand of the petitioner to install a check meter is malicious and is mere pretence not to pay or further delay the recovery of the amount under the supplementary bill date 02.12.2020. The demand from the petitioner so far energy consumed under the supplementary bill prepared applying MF 02(two) are the same for which earlier bills were drawn applying MF-1(One) for the total nos. of units consumed during the period 24.08.2015 till 30th of Nov'2020, it was detected that the petitioner was charged in every bill applying MF 01(one) instead of MF 02(two), in other words, instead of Rs. 5,67,41,905.00 the petitioner was liable to pay the double of this amount, but due to human error the energy bills were issued on the basis of data inserted in the software/computer MF 01(one) as on 25.04.2014 which should have been changed to MF 02(two) on and from 24.08.2015, the present supplementary bill Annexure-2/A has been issued after giving credits of the amount received in the past calculated by applying the MF01l(one). The error continued only issuing the bills which according to the respondents is the result of the human error and not due to fault 'Metering Units' or the 'meter' or the computer, on this ground also, the petitioner demands to install the check meter is not an honest and reasonable*

> *demand. The petitioner is duty bound legally as well as contractually to pay the amount under the supplementary as well as current bills. It is apparent that the respondent no. 1 has alone suffered the monetary loss due to human error committed due to no change in multiplying factor inserted in the computer as on 25.04.2014."* (*sic*)

13. From the aforesaid, it is clear that the petitioner never raised any dispute when the new metering unit, with multiplying factor of 02 was installed on 24.08.2015, which was clearly spelt out in the report of such installation, and the same continued till the supplementary demand was raised. Once the new metering unit was accepted by the petitioner without dispute, coupled with the fact that the installation report of the metering unit of 24.08.2015 clearly indicated such multiplying factor of 02, which was also signed by the petitioner's representative, if, for any reason, the multiplying factor had not been correctly given effect to by the respondents while raising the demand, the same would not *per se* enable the petitioner not to pay such charges. The simple reason of a mere error/omission on the part of the respondents in making the correct calculation would not amount to any real dispute, as the unit(s) reflected in the meter is/are not being changed and, quite importantly, even the petitioner has not raised any dispute with regard to the

recording(s)/reading(s) of the new metering unit having a multiplying factor of 02. Thus, if the requirement is that for any reading in a metering unit classified as M.F. 02, the units recorded have to be multiplied with 02 while raising a demand, rectification of an error, if any, in such exercise is merely clerical. The respondents cannot be shut off from raising a supplementary demand, which even otherwise, is in accordance with law, and at the same time would not preclude or prevent them from raising supplementary demand and recovering the huge arrears and would also not create any indefeasible right in the petitioner to absolve himself from payment of the same.

14. Thus, in the considered opinion of the Court, the dispute being raised before the Court has absolutely no merits as far as the main issue is concerned which, at the cost of repetition, can be simply said to be an error in applying the formula to be used while raising the actual demand based on reading rendered by a metering unit classified as M.F. 02, such classification of the new multiplying factor of 02 having been in the petitioner's knowledge since 24.08.2015. The petitioner has not been able to demonstrate before the Court any provision where even for M.F. 02 metering unit, there cannot be a multiplying factor of 02 and the same has to necessarily be 01.

Merely because for five years there has been an oversight on the part of the respondents, that too, as learned counsel for the respondents has himself submitted, may indicate some collusion at the level of employees of the respondents also, for which steps are being taken to fix responsibility, cannot be stretched to the extent that it shall prevent the respondents from realizing an amount which was, otherwise, in law, due to them and which the petitioner was liable to pay.

15. On the point of the petitioner's request for installing a check meter, the Court finds substance in the stand of the respondents. The representative of the petitioner merely writing on the report of the testing carried out on 15.12.2020 that he was '*not satisfied with this inspection*' and requesting to '*install a check meter*', is too vague a statement to merit consideration and needs to be viewed more as a last-ditch effort to somehow save the petitioner from having to pay the supplementary demand. When no specific deficiency is pointed out, it creates an impression that the petitioner has not got any genuine ground for being dissatisfied, and further that to him the inspection shall be 'satisfactory' only if the result is what he desires, and that he shall never be satisfied with any inspection. Even otherwise, the respondents cannot give any uncalled-for

indulgence to the petitioner by carrying out repeated exercise relating to the metering unit installed in the petitioner's premises, that too, without being aware of the specific deficiency in the earlier testing so as to ensure that it is not repeated. The purpose of any inspection is to determine the correct factual position and not to 'satisfy' any person. If a specific lacuna/deficiency/fault in carrying out such inspection is not brought to the notice of the authorities at the very time and stage of inspection, the same cannot be sustained at a later stage. It is not the case of the petitioner that even later he had brought to the notice of the respondents, any specific shortcomings, in his opinion, in the inspection held on 15.12.2020, in the absence of which, challenge to the same and request for installing a check meter, cannot be entertained. Furthermore, the request for installing a check meter does not merit consideration as it cannot be done just on the asking of the petitioner, in the absence of any ground/reason disclosed by the petitioner in support of such request.

16. In view of the discussions made hereinabove, the writ petition being devoid of merit, stands dismissed.

17. All pending Interlocutory Applications also stand disposed off.

18. The Court would note that learned counsel for the respondents himself has submitted that they would not be disconnecting the power connection due to non-payment of the supplementary demand and for which, if needed, they would be moving the appropriate forum for its realization; but so far as the demand for the months of November, 2020 onwards is concerned, the petitioner is liable to pay on the basis of the demand raised and if not paid, it shall be open for the respondents to take appropriate steps, including disconnection of the power supply, however, strictly in accordance with law. As far as the delay in detecting the error of non-application of the correct multiplying factor, the respondents are obliged to fix responsibility for the same and take action against the erring personnel. The said exercise should be taken to its logical conclusion latest within three months from today.

(Ahsanuddin Amanullah, J)

J. Alam/-

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