

Rajasthan High Court

Guru Nanak Steel Rolling Mill vs State Of Rajasthan And Ors. on 24 April, 1989

Equivalent citations: 1989 (2) WLN 41

Bench: M Sharma, I Israni

JUDGMENT

1. On the last date it was given out by the learned Counsel for the parties that a limited controversy is involved in the present writ petition as to whether if any sum for the period of disconnection of electricity during the agreement period of five years is due to the Electricity Board, whether the same can be recovered under the provisions of Rajasthan Government Electrical Undertaking (Dues Recovery) Act, 1960, Rajasthan Act No. 34 of 1960 (for short the Act). It was, therefore, agreed that the case should be disposed of at the orders stage.

2. The facts are not disputed and they are these : An agreement in between the petitioner-firm and the R S.E.B. for the supply of electric energy to the extent of 350 K.VA contract demand was entered into on 13th May, 1976. The electric energy was released to the petitioner by the Board on 8th July, 1976. Therefore, the agreement period of five years was to expire on 7th July, 1981. There is no dispute between the parties that in the aforesaid period of agreement, disconnection was made more than once on the ground of non-payment of the consumption charges and a demand of Rs. 3,96,372.72 paise was raised but the petitioner did not pay the aforesaid amount and, therefore, the electric connection was disconnected. When the petitioner failed to pay the amount, the Assistant Engineer of the Board submitted an application for recovery of the aforesaid amount to the Collector, Bharatpur, under Section 256 of the Land Revenue Act, 1956. The Collector, thereafter, started proceedings. The property was attached and was put for auction. The petitioner thereafter moved this Court.

3. We may state at the very out-set that the learned Counsel has not disputed that the amount of Rs. 3,96,372.72 paise was due. as minimum charges for the period of disconnection during the agreement period of five years and we may state that disconnection was made in the year 1978 i.e. even before the five years agreement period expired, which was to expire on 7th July, 1981. The contention of learned Counsel is that a look at the definition of dues as given under Section 2(b) of the Act will show that any sum payable to the Govt. electrical undertaking on account of consumption of electrical energy supplied will fall under the expression and if no electric energy is either supplied or consumed during the period of disconnection, it cannot be said that any electrical energy was supplied or consumed. The minimum charges for the period of disconnection, though may be due but no dues as defined in Section 2(b) of the Act and cannot be recovered as arrears of land revenue. The learned Counsel has drawn our attention to the Madhya Pradesh Government Electrical Undertaking (Dues Recovery) Act, 1961. (for short the M.P. Act) and to the definition of dues as contained in Section 2(b) of that Act. In the aforesaid definition not only any sum payable on account of consumption of electricity supplied but also minimum charges, under an agreement or otherwise is included. By referring to the aforesaid provisions of the M P. Act, the learned Counsel contends that the definition of dues under Section Kb) of that Act is such wider to include even the dues for minimum charges whereas in the definition of dues in the Act the minimum charges will not be included.

4. Mr. Rastogi learned Counsel for the Board contends that during the agreement period of five years the petitioner-firm was liable to pay minimum charges even for the period of disconnection and we may state that there can be no dispute that a consumer of electricity is liable to pay minimum charges even for the period of disconnection. This view has been taken by us in the case of *M/s National Air Products Ltd. v. R.S E.B. Jaipur* D.B.C. W.P No. 2567/1988, decided on 23rd September, 1988. That apart there can be no dispute that under clause 30(ii) in the event of the supply being disconnection for any reasons detailed above, all the money then payable by the consumer shall become due and recoverable forthwith and the consumer shall continue to pay the monthly minimum charges and the minimum guarantee, if any, for the unexpired period of the agreement or, where there is no written agreement, for the period which would have been applicable if any agreement had been executed. Therefore, there can be no dispute as stated earlier that even for the period of disconnection on the ground of non-payment the petitioner firm was liable to pay minimum charges.

5. A perusal of the aims and objects of the Act will show that it is in fact to extend the period of limitation. The purpose for which the Act was made by the State Legislature is expeditious recovery of certain dues.

6. The definition of dues as defined in Section 2(b) of the Act is as under:

"dues" means any sum payable to the Government Electrical Undertaking on account of:

(i) consumption of electrical energy supplied; or

(ii) any remuneration, rent or other charges for hire, inspection test, installation, connection, repair, maintenance or removal of any electric meter, electric machinery, control gear fittings, wires or apparatus for lighting, heating, cooling or motive, power or for any other purpose for which electricity can or may be used or any industrial or agricultural machinery operated by electricity; or

(iii) price of any such goods as aforesaid taken on loan but not returned.

7. The question is as to whether in the expression 'consumption' as contained in the above extracted definition of "dues", the amount of minimum charges for the period of disconnection is also included. Like other definition Sections, the definition of Section 2(b) is "unless subject or contract otherwise requires." Let us come to other provisions of the Act. Section 3 of the Act provides that every bill for dues payable to a Government Electrical Undertaking by a debtor shall be in the prescribed form and shall specify conspicuously the date by which such dues are to be paid. Its Sub-section (2) provides that if the dues are not paid by such date the debtor shall be liable to pay in addition thereto such penalty, as may be prescribed and such dues and penalty shall be recoverable along with the cost incurred in making such recovery. in the manner here in after laid down in this Act. Under Section 4, where the dues are not paid by a debtor by the date specified in the bill, the prescribed authority may at any time serve or cause to be served upon him a notice of demand in the prescribed form, stating the name of the debtor, the amount payable by him on account of the various dues, penalty and costs of recovery and the under-taking to which it is payable. Under

Section 5, where a notice of demand has been served on the debtor or his authorised agent under Section 4, he may, if he denies his liability to pay the dues, penalty or costs or any part of any of them institute a suit after depositing with the prescribed authority the aggregate amount specified in the notice of demand under protest in writing for the refund of the same. A suit referred to in Sub-section (1) may be instituted in a civil court of competent jurisdiction at any time within six months from the date of deposit with the prescribed authority and subject to the result of such suit, the notice of demand shall be conclusive proof of the various dues, penalty and costs mentioned therein. Under Section 6, if the aggregate amount of the various dues, penalty and costs mentioned in the notice of demand served under section (4) is not deposited with the prescribed authority within thirty days from the date of such service or such extended period as the prescribed authority may from time to time allow, the debtor shall be deemed to be in default in respect of such amount and the same shall be recoverable as an arrear of land revenue, any thing contained in any other law, or instrument, or agreement to the contrary notwithstanding. The prescribed authority may forward to the Collector a certificate under his signature in the prescribed form stating the amount and details of the demand and the name and description of the debtor in default and the Collector shall, on receipt of such certificate, proceed to recover from the debtor the amount of the demand as if it were an arrear of land revenue. It will, therefore, be clear from the bare perusal of the aforesaid provision of the Act that a bill has to be raised for dues payable to the Govt. and a bill is not to be raised only for the amount for which the electrical energy supplied has actually been consumed. There can be no dispute that a bill for the dues during the disconnection period so far as the minimum charges are concerned is raised and can be raised and in the instant case as appears from Annex. R/1 a registered A.D. dated 28th June, 1989 a bill for Rs. 3,96,372.72 paise was addressed to the petitioner firm and as per Annexure R/1, the acknowledgement receipt, was received by the petitioner firm on 29th June, 1979. Therefore, the pleading to the contrary in the writ petition that the petitioner came to know about the arrears on 28th June, 1979 is not correct. It can be said that the petitioner in fact received notice of demand under Rule 4. This fact has been concealed by the petitioner in the writ petition in as much as the receipt of the notice of demand on 28th June, 1979 or 29th June, 1979 is not mentioned. In our opinion in the expression "consumption of electrical energy supplied" under the Act, even the dues payable for the minimum charges during the period of disconnection during the agreemental period will be included. So far as the definition of 'dues' contained in Section 2(b) of the MP Act is concerned, we may state that the said amendment appears to have been made in 1976, perhaps to make matters beyond any controversy by way of classification, otherwise in our opinion even without the aforesaid amendment in the definition under Section 2(b) of the MP Act taking into consideration the object and context of the definition of dues the amount of minimum charges for the period of disconnection which the consumer was liable to pay will be included in the expression 'consumption of electrical energy supplied'. We are, therefore, of the opinion that the said amount can be recovered as arrears of land revenue under the Act.

8. There is no force in the writ petition. Dismissed, with no order as to costs.