M/S. NORTHERN INDIA IRON & STEEL CO ETC. A

v.

STATE OF HARYANA & ANR.

November 10, 1975

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[A. N. RAY, C.J., K. K. MATHEW AND N. L. UNTWALIA, JJ.]

Electricity (Supply) Act, 1948—"Demand Charge" and "Energy Charge"—How calculated in terms of power cut.

The State Electricity Board had framed, in exercise of its power under s. 49 of the Electricity (Supply) Act, 1948, certain terms and conditions and, the procedure in regard to supply of electricity to its consumers. For big consumers the system of tariff is the two-part tariff system comprising of (i) Demand charge and (ii) Energy charge. A "Demand charge" means the amount chargeable per month in respect of the Electricity Board's readiness to serve the consumer irrespective of whether he consumes any energy or not and is based upon certain factors. "Energy charge" means the charge for energy actually taken by the consumer and is applicable to the units consumed by him in any month. This was in addition to any demand charge, if applicable. C

A schedule of tariff of energy was framed by the Board. Cl. 4(b) mentions how the monthly demand charge shall be calculated and sub-clause (f) of this clause states that in the event of lock-out, fire or any other circumstances considered by the supplier to be beyond the control of the consumer, the consumer shall be entitled to a proportionate reduction of demand charges/minimum charges. D

As a result of shortage of electricity the State Electricity Board considerably restricted the supply to large industrial concerns. Because of this the Board allowed some reduction in the demand charges. The appellant, who was a bulk consumer of electricity, could not get the full quantity as per the contract between the parties. The appellant, therefore, filed a writ petition that there should be either no demand charge at all, when the Board was not in a position to supply electric energy, or there should be a proportionate reduction of the demand charge. The High Court noted the reduction made by the Board and held that the Board was entitled to the demand charge. It did not, however, decide as to what should be the basis for and in what proportion the demand charge should be reduced. The appellant also contended that no duty was leviable on the demand charge, under the Punjab Electricity (Duty) Act, 1958, but only on the energy charge, for the actual amount of energy supplied but the High Court rejected this contention. E F

Allowing the appeal in part on the first contention,

HELD: (1) The circumstance of power cut which disabled the Board to give the full supply to the appellant would be a circumstance which disabled the consumer from consuming electricity as per the contract and this was a circumstance which was beyond its control and could not be considered otherwise by the Board. It entitled the consumer to a proportionate reduction of the demand charge. In a circumstance like this the obligation of the consumer to serve at least 3 days' notice on the supplier as per the later part of sub-clause (f) was not attracted as the requirement of the notice was only in the case of shut-down of not less than 15 days' duration [682 A, B, C] G

Therefore, the inability of the Board to supply electric energy due to power cut as per the demand of the consumer according to the contract will be reflected in and considered as a circumstance beyond the control of the consumer which prevented him from consuming electricity as per the contract to the extent it wanted to consume. [682, D] H

(2) A reading of the clauses of the Schedule of tariff as a whole makes it clear that the duty under the Punjab Act is chargeable on the price of energy supplied in a month. Therefore, the duty is chargeable not only on the energy charge but also on the demand charge. It is, however, chargeable on the actual amount of demand charge realisable from the consumer.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1306, 1310, 1370-1380 and 1422 to 1424 of 1975.

Appeals by special leave from the judgment and orders dated the 9th July 1975 of the Punjab & Haryana High Court at Chandigarh in Civil Writ Petitions Nos. 733, 595, 725, 681, 720, 723, 726, 728, 777, 780, 781, 833, 892, 884, 885 and 887 of 1975 respectively.

M. C. Bhandare, (In 1306) and *Mrs. S. Bhandare* for the appellants in C.As. 1306, 1370-1980 and 1422-1424 of 1975.

F. S. Nariman, A. K. Srivastava and *B. P. Singh* for the appellants in C.A. 1310.

A. K. Sen, (In CA 1306), *Dr. L. M. Singhvi,* (In 1310), *K. K. Jain, Bishamber Lal, S. K. Gupta* and *P. Dayal* for the Respondent No. 2 in all the appeals.

L. N. Sinha, Sol. General (In CAs. 1306 and 1310) and *R. N. Sachthey* for Respondent No. 1 in all the appeals.

The Judgment of the Court was delivered by

UNTWALIA, J—In these appeals by special leave the common question for determination is whether the Haryana State Electricity Board (briefly, the Board), respondent no. 2, is entitled to claim any demand charge from the appellants in respect of the supply of electric energy to them and whether the State of Haryana, respondent no. 1 is entitled to charge any duty under the Punjab Electricity (Duty) Act, 1958 on the demand charge. Several connected Writ Petitions were disposed of by the High Court of Punjab & Haryana by a common Judgment and this judgment will govern all the cases which had been heard together by us.

Civil Appeal No. 1306/1975 is by M/s Northern India Iron & Steel Co. Ltd. and arises out of Writ Petition No. 733/1975. We may state a few necessary facts of this case; those of the other cases being more or less similar. The appellant owns a factory and manufactures alloy steel and steel castings. It is a large consumer of electricity supplied by the Board. As per the contract between the appellant and the board the total connected load of the installation in question is 8687, 649 Kilowatts and its contract demand is the same. At the ratio of one K.V. to 0.85 KW, the corresponding K.V. of the contract demand works to 10,221 K.V. The appellant was allotted 1,06,590 units on daily basis as its power quota by the Board. There was shortage of electric energy in the State of Haryana. The State Government, therefore, issued orders and directions for maintaining the supply and securing the equitable distribution of the energy. Orders were issued by the State Government under section

228 of the Indian Electricity Act, 1910—hereinafter called the 1910 Act, restricting considerably the supply of electric energy by the Board to the large industrial consumers as a result of which power cut was introduced. It is not necessary to give the facts and figures of the amount of power cut, suffice it to say that at the relevant time there were substantial power cuts and the appellant was not able to get supply of energy according to its demand as per the quantity mentioned in the contract. In these circumstances a dispute arose between the parties as to whether the Board was entitled to get any demand charge, if so to what extent, and whether the State could demand any duty on such charge. Under Section 49 of the Electricity (Supply) Act, 1948 hereinafter called the 1948 Act, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs of course, the power of the Board is subject to the other provisions of the Act and regulations, if any, made in this behalf.

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There are two well-known systems of tariffs-one is the flat rate system and the other is known as the two-part tariff system. Under the former a flat rate is charged on unit of energy consumed. The latter system is meant for big consumers of electricity and it comprised of (1) demand charges to cover investment, installation and the standing charges to some extent and (2) energy charges for the actual amount of energy consumed. The Board has framed in exercise of its power under section 49 of the 1948 Act certain terms and conditions and procedure in regard to supply of electricity to its consumers. They are applicable in the cases of the appellants also. Demand Charge has been defined in clause 1(h) thus :

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> "Demand charge" shall mean the amount chargeable per month in respect of Board's readiness to serve the consumer irrespective of whether he consumes any energy or not, and is based upon the connected load, the maximum demand or the contract demand, as the case may be and as prescribed in the relevant schedule of tariff.

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And in sub-clause (i) "Energy Charge" has been defined thus :

> "Energy charge" shall mean the charge for energy actually taken by the consumer and is applicable to the units consumed by him in any month. This is in addition to any demand charge, if applicable.

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A schedule of tariff for supply of energy which is amended from time to time has been framed by the Board. Such schedule of tariff for steel furnace power supply mentions in item 2 the character of service. Clause 3 provides for tariff and clause 4 deals with the demand assessment. The two part tariff mentioned in clause 3 in case of the appellant was "Demand Charges Rs. 12/- per KVA per month PLUS Energy charges Rs. 7.00 paise per Kwh". There was some surcharge on the above rates. The relevant Sub-clauses of clause 4 i.e., Demand Assessment may now be quoted here :

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"(a) The demand for any month shall be defined as the highest average load measured in Kilovolt amperes during any consecutive minutes period of the month.

(b) The monthly demand charges shall be based on (i) the actual maximum demand during the month or (ii) 65% of the contract demand or (iii) 75% of the highest maximum demand during the preceding eleven months or (iv) 100 KVA whichever is the highest. For the first 11 months from the commencement of Supply alternative (iii) shall not be applicable.

(c) The contract demand means the maximum K.W/KVA for the supply of which the Board undertakes to provide facilities from time to time.

NOTE—In case the consumer exceeds his contract demand in any month by more than 7½% a surcharge of 25% will be levied on the 50P/Monthly minimum charges (industrial, Factory lighting and colony supply).

(d) If in any case the maximum demand is being measured in KW the same shall be converted into KVA by the use of actual power factor and KVA tariff applied for working out the demand charges.

(e) In case the supply has been given on restricted hours basis then a reduction of 30% in demand charges will be given if supply is for 12 hours or less, occasional break downs or shut downs if any, on the part of the supplier, shall, however, not entitle a consumer to any reductions.

(f) Force Majeure : In the event of lock out, fire or any other circumstances considered by the supplier to be beyond the control of the consumer, the consumer shall be entitled to a proportionate reduction of demand charges/minimum charges provided he serves at least 3 days notice on the supplier for shut down of not less than 15 days duration.

It appears from the judgment of the High Court that some reduction (perhaps upto 60%) was given by the Board in the demand charges because of the inability of the Board to supply energy as per the requirement of the appellant consumers due to power cuts imposed by the Government. But the appellant seems to have taken the stand that either there should be no demand charge at all when the Board was not in a position to supply electric energy as per its requirement or there should be a proportionate reduction of the demand charge. Hence it filed a Writ petition. The High Court has noted the reduction made by the Board and has held that the Board is entitled to the demand charge. It has, however, not been

decided as to what should be the basis for and in what proportion the demand charges be reduced. A

The stand of the appellant as respects the charge of duty by the State Government under the Punjab Electricity (Duty) Act, 1958—hereinafter called the Duty Act, was that no duty could be levied on the demand charge. The High Court has repelled this contention. B

The two questions which fall our determination in these appeals are :

(1) Whether on the facts and in the circumstances of the cases the Board is entitled to claim any demand charge; if so, to what extent? C

(2) Whether any duty is leviable on the demand charge; if so, to what extent?

An argument was advanced before us in the first instance by counsel for the appellants with reference to the definition of the demand charge in clause 1(h) of the terms and conditions of supply framed by the Board that since the Board was not ready to serve D the consumer and the consumer was ready to consume maximum electric energy the former was not entitled to ask for any demand charge. This argument, in the beginning was combated with equal force, if not more, on behalf of the Board and it was asserted that the Board was entitled to assess and claim the full demand charge as per clause 4 of the tariff irrespective of the fact whether it was in a position to supply the energy according to the demand of the consumer E or not. Such an extreme stand on either side appeared to us a bit puzzling and leading to inequitable results. The difficulty was not easy to solve. If we were to hold that for the Board's inability to supply a fraction of the consumer's demand as per the contract it could claim only the energy charge and not the demand charge, it would have been very hard and injurious to the Board and the consumer would have unjustifiably got the supply at a very cheap rate F If on the other hand, we were to say that the consumer was liable to pay the entire demand charge as per the method of assessment provided in clause 4 of the tariff even when for no fault of it, it could get only a fraction of its demand fulfilled, resulting in its not being able to run the industry to its full capacity, it would be liable to pay a huge amount per month, and this will not only be uneconomical but G would seriously affect its economic structure. But we were happy to find that a just, equitable and legal solution of the difficulty was provided during the course of the argument on either side and that is with reference to sub-clause (f) of clause 4 of the tariff. It is, therefore, not necessary to resolve the extreme stand taken on either side.

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Under clause 4(f) the consumer is entitled to a proportionate reduction of demand charges in the event of lock-out, fire or any other circumstances considered by the supplier beyond the control of the

A consumer; that is to say, if the consumer is not able to consume any part of the electric energy due to any circumstance beyond its control and which is considered by the Board to be so, then it shall get a proportionate reduction in the demand charge. The circumstance of power cut which disabled the Board to give the full supply to the appellant because of the Government Order under section 228 of the 1910 Act, undoubtedly would be a circumstance which disabled the consumer from consuming electricity as per the contract. And this was circumstance which was beyond its control and could not be considered otherwise by the Board. It entitled the consumer to a proportionate reduction of the demand charges. This interpretation of sub-clause (f) of clause 4 of the tariff was accepted to be the correct, legal and equitable interpretation on all hands. In our opinion it is so. In a circumstance like this, it is plain, the obligation of the consumer to serve at least 3 days notice on the supplier as per the latter part of sub-clause (f) was not attracted, as the requirement of notice was only in the case of shut down of not less than 15 days duration.

We are, therefore, of the view that the inability of the Board to supply electric energy due to power cut or any other circumstance beyond its control as per the demand of the consumer according to the contract will be reflected in and considered as a circumstance beyond the control of the consumer which prevented it from consuming electricity as per the contract and to the extent it wanted to consume. The monthly demand charge for a particular month will have to be assessed in accordance with sub-clause (b) of clause 4 of the tariff and therefore from a proportionate reduction will have to be made as per sub-clause (f). We hope, in the light of the judgment, there will be no difficulty in working out the figures of the proportionate reduction in any of the cases and for any period. In case of any difference or dispute as to the quantum of the demand charge or the proportionate reduction, parties will be at liberty to pursue their remedy as may be available to them in accordance with law.

Coming to the question of duty, we have no hesitation in an outright rejection of the extreme contention put forward on behalf of the appellants that no duty is leviable at all on the demand charge. But it is clear, and this was fairly conceded to by the Solicitor General appearing for the State of Haryana, that the amount of duty payable will be on the actual amount of demand charge realisable from the consumer after the proportionate reduction under clause 4(f) of the tariff.

Section 3 of the Duty Act says that there shall be levied and paid to the State Government on the energy supplied by the Board to a consumer a duty to be called the "electricity duty", computed at the rates indicated in the various clauses of sub-section (1) of section 3. The expression used in the various clauses is "where the energy is supplied" to a particular type of consumer, then the rate of duty will be as specified therein. On the basis of the said expression the argument put forward on behalf of the appellant was that the duty could be levied only on the energy charges for the actual amount of energy

supplied. Such an argument is too obviously wrong to be accepted. Reading the clauses as a whole it would be seen that the duty is chargeable on the price of energy supplied in a month. The price of energy in a two-part tariff system would mean and include the energy charge as also the demand charge. This is made further, clear by the manner of calculation provided in Rule 3 of the Punjab Electricity (Duty) Rules, 1958. Sub-rule (1) says :

> "The duty under clause (iii) and (iv) of sub-section (1) of section 3 of the Act shall be calculated on the price of the energy recoverable at the net rate of the Board which will include the demand charge when the Supply is governed by a two-part tariff."

It is therefore, manifest that the duty under the Duty Act is chargeable not only on the energy charge but also on the demand charge when the supply is governed by two-part tariff and it is chargeable on the actual amount of demand charge realisable from the consumer.

For the reasons stated above, we allow these appeals in part to the extent indicated above. In the circumstances we shall make no order as to costs in any of the appeals.

P.B.R. *Appeals partly allowed.*