

BIHAR STATE ELECTRICITY BOARD

v.

THE PATNA ELECTRIC SUPPLY CO. LTD. & ORS.
(I.A. No. 5. Civil Appeal No. 2630 of 1982)

SEPTEMBER 01, 2011

[ALTAMAS KABIR, D.K. JAIN AND MARKANDEY
KATJU, JJ.]

SETTLEMENT: *Settlement of dues – Respondent no.1 (PESCO) taken over by appellant (BSEB) – Dispute regarding payment of compensation to PESCO by BSEB in respect of the assets of PESCO – Supreme Court directed BSEB to pay PESCO the purchase price on the basis of book value – Non-compliance of directions for payment by BSEB – Interlocutory application – Supreme Court directed that net amount of compensation payable to PESCO worked out to Rs. 135.45 lakhs and out of the said amount, a sum of Rs. 99.72 lakhs was already paid by BSEB to PESCO – Under the directions of the Supreme Court, the balance amount of Rs. 35.74 lakhs paid by BSEB to the Bank of India to liquidate the dues of PESCO – A further sum of Rs. 36.59 lakhs shown as liability in the accounts of PESCO – The amount of Rs. 36.59 lakhs paid by PESCO to the Bank of India – Interlocutory application disposed of with direction that PESCO was entitled to Rs. 36.59 lakhs if it had made the payment on that account to the Bank – Whether PESCO was entitled to receive from the BSEB the sum of Rs. 36.59 lacs – Held: PESCO is entitled to recover the said sum from BSEB, since it has been able to prove that the amount had been paid by it to the Bank.*

CIVIL APPELLATE JURISDICTION : I.A. No. 5.

IN

Civil Appeal No. 2630 of 1982.

A From the Judgment & Order dated 22.07.1981 of the Calcutta High Court in appeal from Appellate Order No. 16 of 1980.

B Gaurab Banerjee, ASG, Navin Prakash, Puneet Jain, Sushil Kumar Jain, Bina Gupta, Gopal Prasad, Gopal Singh, Chandan Kumar for the appearing parites.

The following order of the Court was delivered

ORDER

C 1. After the respondent No.1, Patna Electric Supply Company Limited (PESCO), was taken over by the appellant, Bihar State Electricity Board (BSEB), certain disputes arose regarding payment of compensation by BSEB to PESCO in respect of the assets of PESCO. This resulted in litigation and ultimately in C.A. No.2630 of 1982 this Court, while granting
D leave, directed that BSEB would pay to PESCO the purchase price on the basis of book-value in accordance with the provisions of the Indian Electricity Act, 1910. Since payments were not made by BSEB to PESCO in terms of the said directions, PESCO filed I.A. No.5 for appropriate directions to
E be given to BSEB in this regard.

F 2. On 8.1.2005, after noting that what was payable by BSEB to PESCO was the book-value and not the market value of the assets of PESCO, this Court, after taking into consideration the submissions of the respective parties, came to the conclusion that the net amount of compensation payable to PESCO worked out to Rs. 135.45 lakhs. Out of the said amount, a sum of Rs. 99.72 lakhs had already been paid by BSEB to PESCO, leaving a balance amount of Rs. 35.74 lakhs payable by BSEB to PESCO. It was also noted that under
G the directions of this Court the balance amount of Rs. 35.74 lakhs had been paid by BSEB to the Bank of India to liquidate the dues of PESCO.

H 3. In addition to the above, a further sum of Rs. 36.59 lakhs was shown as liability in the accounts of PESCO. It was noted

that it was not the case of BSEB that the said amount had been paid by it to the aforesaid Bank. On the other hand, it was noted that it was PESCO's case that this amount had been paid by it to the Bank of India and in support thereof a 'No Objection Certificate' dated 21.3.2001 issued by the Bank in favour of PESCO had been placed on record. On the basis of the aforesaid calculations and the submissions made on behalf of the respective parties, I.A. No.5 was disposed of with the following observations :

(1) The amount of consumer dues calculated while arriving at the book value of the assets of PESCO cannot be questioned by BSEB at this stage;

(2) PESCO is entitled to the sum of Rs.36.59 lakhs provided it has made the payment on that account to the Bank; and

(3) PESCO is entitled to interest in the manner above stated on filing requisite material on record along with an affidavit showing payment of interest.

4. Thereafter, the matter was taken up on several occasions to enable PESCO to prove that such payment had actually been made by PESCO to the Bank of India on account whereof the said amount was shown as a liability in PESCO's accounts. On 26.3.2009, the Bank of India, Kolkata Main Branch, was directed to supply the statements relating to the cash credit account maintained by PESCO for the period commencing from 1973 till the closure of the account. Leave was given to the appellant to respond to the same once the statements were made available by the Bank. Ultimately, on 30.9.2010 it was submitted on behalf of the Bank that the information, as was required to be given, had been filed by way of separate affidavits and leave was also granted to file an additional affidavit to place on record certain other documents.

5. The first affidavit affirmed on behalf of the Bank on 31.10.2006 mentions a final settlement arrived at between the

A Bank and PESCO, to the tune of Rs. 45.93 lakhs and with the interest accrued thereupon the amount became Rs. 48.34 lakhs. According to the Bank records, the said amount was paid by PESCO between 15.1.2001 to 19.12.2001. The second affidavit affirmed on behalf of the Bank indicates that the

B balance as was outstanding in the Cash Credit Account of PESCO, as on 5.2.1974, was Rs. 37,26,137.77. It was also made clear that a sum of Rs. 84,08,363/- had been received by the Bank, out of which BSEB had paid Rs. 38.74 lakhs and PESCO had paid Rs. 48,34,363/-. It is, therefore, clear that the

C Bank received two amounts, one from BSES and the other from PESCO. It is also clear that the amount of Rs. 35.74 lakhs paid by BSEB, which was the balance of the book-value of the assets of PESCO, was pursuant to the directions given by the Court on account of the fact that the said amount had initially

D been paid by PESCO. It is also clear that the other amount of Rs. 48,34,363/- was paid by PESCO to the Bank and was the Cash Credit amount of PESCO's account with Bank of India, and which amount, together with interest, was payable to PESCO in terms of the order passed by this Court on

E 8.11.2005.

6. This was in effect the substance of the submissions made by Mr. Puneet Jain, learned Advocate, appearing for PESCO. On the other hand, learned Additional Solicitor General, Mr. Gaurav Banerjee, submitted that once the total

F dues of PESCO had been assessed at Rs. 135.46 lakhs and the entire amount had been paid, including a sum of Rs. 35.74 lakhs paid by BSEB to the Bank, nothing further remained outstanding to be paid to PESCO.

7. We have carefully considered the submissions made on

G behalf of the respective parties and it is necessary to put an end to the controversy regarding the amount which PESCO is entitled to receive from the BSEB on account of its take over by the BSEB.

8. The figure of Rs. 135.46 lakhs was arrived at by this

H Court upon deducting all the liabilities from the book-value of

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the assets of PESCO, after taking into consideration the ad hoc payments made by BSEB to PESCO to the tune of Rs. 99.72 lakhs between 1.4.1974 and 8.2.1980. This Court concluded that the net amount payable to PESCO was Rs. 35.74 lakhs, which, in fact, was due from PESCO to the Bank and which amount was ultimately liquidated by BSEB. The dues in relation to the said sum of Rs. 135.46 lakhs, therefore, stood concluded on such payments being made. Further this Court also took notice of the sum of Rs. 36.59 lakhs in the liabilities column 7 of PESCO's account and the same was shown against cash credit with Bank of India. Ultimately, as indicated hereinbefore, this Court held that PESCO was also entitled to the sum of Rs. 36.59 lakhs, provided such payment had been paid by PESCO to the Bank.

9. One of the affidavits filed on behalf of the Bank, as referred to hereinabove, clearly indicates that the said sum of Rs. 48,34,363/-, had been paid by PESCO to the Bank. The third affidavit affirmed on behalf of the Bank on 30.9.2010, contains an annexure being a letter addressed to PESCO by the Bank of India certifying that PESCO had paid to the Bank a sum of Rs. 48,34,363/- between 15.1.2001 to 19.12.2001 towards final settlement of dues to the Bank.

10. Accordingly, in terms of the order dated 8.11.2005, PESCO is entitled to recover the said sum from BSEB, since it has been able to prove that the amount had been paid by it to the Bank. Consequently, the directions given on 5.4.2011 for reimbursement of the aforesaid amount to PESCO, together with interest @ 6 per cent per annum, from 19.12.2001 till the date of the order, in view of what has been discussed hereinabove, does not require any elaboration. The application for direction, is therefore, disposed of in terms of the order passed by this Court on 15.4.2011. The payment, if not made, shall be made within one month from the date of communication of this order.

D.G.

I.A. dispose of. H