

Before the
Bihar Electricity Regulatory Commission
Patna

Dated the 10th September, 2007

Complaint Case No. 1/2007

Present :

- | | | |
|----|----------------------|--|
| 1. | B.K. Halder | Member & Chairman In-charge |
| 2. | S.K. Jayaswal | Member |

Between

Hai Medicare & Research Institute Pvt. Ltd. Petitioner

Versus

Bihar State Electricity Board & Others Respondents

Counsel for Petitioner Shri S.S. Rekhi

Counsel for Respondents Shri Prakash Kumar

ORDER

The petitioner who was a party to a bilateral agreement executed with Bihar State Electricity Board (hence forward to be referred as B.S.E.B.) for electric connection of 667 KVA contract demand, regard being had to installation of transformer of 1000 KVA capacity by the former now wants to back out from primal issue of the contractual terms and having failed to persuade B.S.E.B. to reduce the contract demand from 667 KVA to 550 KVA and come to its terms, has chosen this Forum (Bihar Electricity Regulatory Commission) for redressal of his grievance under various provisions of the Indian Electricity Act 2003.

The factual matrix –

Hai Medicare and Research Institute Pvt Ltd. located in Raja Bazar, Patna is a private concern of which Dr. Ahmed Abdul Hai happens to be the Managing Director. The petitioner having installed transformer of 1000 KVA capacity, moved Bihar State Electricity Board, the Licensee for sanction of load of 550 KVA contract demand of electric connection. Since the tariff in vogue in the year 2002 stipulates that the transformer of HT and EHT consumers shall not be more than 150% of the contract demand, the petitioner was required, regard being had to his move for sanction of contract demand of 550 KVA, to have a maximum transformer rating of 825 KVA. When the petitioner moved the B.S.E.B. for reduction of contract demand from 667 KVA to 550 KVA, as transformer of 825 KVA was not normally in practice and also that it was not in conformity to the Bureau of Indian Standard IS 2026(Part I)-1977. Be that as it may, the petitioner executed an agreement with B.S.E.B. for 667 KVA contract demand. It seems that even pursuant to the execution of agreement the petitioner did not leave his pursuit for reduction of contract demand to 550 KVA. The B.S.E.B. however in its resolution taken on 21st / 22nd August, 2003 considered the request of the petitioner for reduction of contract demand from 667 KVA to 550 KVA for a period of one year with a caution that it would not be treated as a precedent. The decision was however subject to review on the basis of consumption level of the consumer. It seems that the relaxation granted to the petitioner remained operative for the period specified in the resolution and thereafter it ceased to be operational. Now the petitioner wants to make castle and interprets this resolution, twisting the issue involved, and it is argued with all stress by the learned counsel appearing for the petitioner that the stipulation made in the

resolution was also a part of the contract and B.S.E.B. was obliged to honour its commitment made therein. Time and again the petitioner had been pouring representation before the B.S.E.B. for reduction of contract demand to 550 KVA and the response was negative in most unequivocal terms as is evident from Annexure – 5 & 7 that since petitioner had retained transformer of 1000 KVA capacity, his contract demand has to be treated as 667 KVA.

The moot questions that would arise for consideration are as to whether it is lawfully permissible for the petitioner to resile from the contractual obligation emanating from the agreement, particularly when it is not a case of petitioner that the agreement in question was executed by him under duress or coercion. The other issue which merits consideration is as to whether the stipulation made in the resolution of B.S.E.B. relaxing contract demand to 550 KVA for a period of one year can be treated as part of contract between both the parties and would not permit B.S.E.B. for deviation from the commitment made therein particularly when relaxation was only for period of one year and a caution was also sounded in the resolution that it would not be quoted as precedent in future. The other issue that may merit consideration is that whether stipulation made in the tariff of 2002 can be said to be in violation of the Electricity Rules, 1956.

We would not answer these questions as that would prejudice the parties, particularly when we feel that this Commission in such nature of grievances cannot exercise its jurisdiction vested in it by the Act. Since this petition has been laid down before this Commission invoking the various provisions of Indian Electricity Act 2003, it would be quite appropriate to refer to them in brevity. Though the provision of Section 129 of the Electricity Act, 2003 is sought to be invoked, since it is not brought to our notice that there has been violation of provision of the Electricity Act, 2003 the provision of this Section would not be

attracted in this circumstances. The provisions of Section 49 of the aforesaid Act are in respect of Open Access allowed to certain consumers by the appropriate Commission and this provision has no role to play in this proceeding. Similarly the provisions of the Section 157 of the Act are in respect of review of a judgement or order passed under Section 154 of the Act which is not the case of petitioner. The provisions of Sections 173 and 174 of the Act have no relevance to the nature of issues involved in this proceeding. The provision of Section 185 of the Act is only a repeal and saving provision.

Though plethora of decisions were cited, the issues involved therein have no relevancy to the facts of the instant case. Since the Bihar Electricity Regulatory Commission in exercise of its jurisdiction has already laid down guidelines for constitution of Consumer Grievance Redressal Forum, in terms of which, redressal forum has been established by the Licensee in the State, the grievance of the petitioner who is a consumer shall squarely fall within the ambit of jurisdiction of the said forum and the petitioner can well seek redressal of his grievance before the said Forum, if so advised. However before parting with this order we may sound a note of caution to the B.S.E.B. that an authority deciding an issue must do it in express terms so as to give an impression that the issues were attended to by the authority with all seriousness and discretion was exercised judiciously. The resolution taken by the B.S.E.B. in its meeting held on 22nd August, 2003 was subject to review on the basis of consumption level of the consumer but we are unable to understand that while rejecting representation of the petitioner for reduction of contract demand to 550 KVA, order contained in Annexure – 5 & 7, did not make stipulation that consumption level of the petitioner was ever taken into consideration by the B.S.E.B. Whatever views we have expressed herein would not affect merit of the case as

these are simply admitted facts which have been placed before us. In facts and circumstances of the case the petition being not maintainable we dispose of this petition at admission stage itself in the above terms with option to the petitioner to knock the proper forum for redressal of his grievance. There would not be order, however as to cost.

Sd/-
(S.K. Jayaswal)
Member

Sd/-
(B.K. Halder)
Member & Chairman In-charge