

PETITIONER:
ORISSA STATE ELECTRICITY BOARD

Vs.

RESPONDENT:
ORISSA TILES LIMITED

DATE OF JUDGMENT 31/03/1993

BENCH:
JEEVAN REDDY, B.P. (J)
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JEEVAN REDDY, B.P. (J)
VENKATACHALA N. (J)

CITATION:
1993 SCR (2) 860 1993 SCC Supl. (3) 481
JT 1993 (3) 613 1993 SCALE (2) 324

ACT:
Indian Electricity Act, 1910.
Agreement between Electricity Board and Consumer--Provision for minimum charges--Default in payment of electricity charges--Disconnection of supply--Liability of consumer to pay minimum charges for period subsequent to date of disconnection of supply--Consumer held liable to pay minimum charges for period subsequent to disconnection.

HEADNOTE:
The respondent-industry entered into an agreement with the appellant-Board for supply of electricity on 5th March, 1965. Under the agreement, which was valid for five years i.e. upto 5th March 1970, consumer was obliged to pay certain minimum charges in any event. However, on 30th April, 1968 supply of electricity to respondent was disconnected for non-payment of electricity charges. Since the respondent also failed to pay the minimum charges for the period subsequent to the date of disconnection, the Electricity Board riled a suit for the amount due on account of the electricity consumed upto April 30, 1968 and for the minimum charges from May 1, 1968 to March 5, 1970. The Trial Court decreed the suit.
The respondent preferred an appeal before the High Court which sustained the Trial Court's decree only for the period upto the date of disconnection but disallowed the claim for the period subsequent to the date of disconnection on the ground that since the respondent did not avail of any energy whatsoever during the period subsequent to the disconnection it was not liable to pay the minimum charges for that person.
In appeal to this Court it was contended on behalf of the Electricity Board that in view of the judgment of this Court in the case of Bihar State Electricity Board, Patna and Ors. v. M/s Creen Rubber Industries and Ors., [1990] 1 S.C.C. 731 the respondent was liable to pay the minimum charges for the period subsequent to disconnection.

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Allowing the appeal and setting aside the order of the High Court, this Court,
HELD: Clause (13) of the agreement between the parties does oblige the consumer to pay a certain minimum charges in any

event. The judgment and decree of the Trial Court is restored. [862 E, 863 D]
Bihar State Electricity Board, Patna & Ors. v. M/s Green Rubber Industries and Ors., [1990] 1 S.C.C. 731, relied on.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1496 of 1993.
From the Judgment and Order dated 20.2.1985 of the Orissa High Court in First Appeal No.139 of 1974

Raj Kumar Mehta for the Appellant.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Heard the counsel for the appellant.
None appears for the respondent though served. Leave granted.

This appeal by the Orissa State Electricity Board is preferred against the judgment of the Orissa High Court allowing partly an appeal preferred by the respondent. The dispute pertains to the liability of the consumer (respondent in this appeal) to pay the minimum charges during the period subsequent to the date of disconnection of supply of energy to him for the non-payment of electricity dues.

The respondent is an industry. It entered into an agreement with the appellant for supply of electricity on March 5, 1965. The agreement was valid for a period of five years. He started availing of the energy with effect from July 31, 1965. The supply of his industry was disconnected on April 30, 1968 for non-payment of electricity charges. Since the consumer also failed to pay the minimum charges for the period subsequent to the date of disconnection, the Board filed a suit for the amount due on account of the electricity consumed between April 1, 1968 and April 30, 1968 and for the minimum charges for the period May 1, 1968 to March 5, 1970. (It may be remembered that the agreement between parties was valid upto March 5, 1970). The Trial Court decreed the suit as prayed for along with interest 862

of 6% per annum on the amount decreed from the date of suit till the date of decree and also future interest at the same rate till full satisfaction. On appeal, the High Court sustained the decree of the Trial Court only for the period upto the date of disconnection (April 30, 1968) but disallowed the claim for the period subsequent to the date of disconnection. The reasoning of the High Court is that inasmuch as the supply was disconnected and the respondent-consumer did not avail of any energy whatsoever during the period subsequent to the disconnection, it is not liable to pay the minimum charges.

In this appeal, it is contended by the learned counsel for the appellant that the question arising herein is concluded in favour of the Board by the decision of this Court in Bihar State Electricity Board, Patna and Ors. v. M/s Green Rubber Industries and Ors., [1990] 1 S.C.C. 731. On a perusal of the judgment, we find that was also a case where the claim inter alia pertained to the period subsequent to the date of disconnection till the expiry of the agreement. In that case too, minimum charges were claimed by the Board even for the period during which the supply remained disconnected and no energy whatsoever was availed of by the consumer. We also find that clause (4) of the agreement considered in the said decision and clauses (6) and (13) of the agreement concerned herein are substantially same. Clause (13) of the agreement between the parties hereto does

oblige the consumer to pay a certain minimum charges in any event. The clause reads as follows:

"Clause 13.

The consumer shall (subject to the provisions hereinafter contained) pay to the Engineer for the power demand and electrical energy supplied under this Agreement, the charges to be ascertained as mentioned below viz. (Government resolution on tariff to be inserted here)

LARGE INDUSTRIES: For demand of 125 K.V.A. and above for supply at 11 K.V. at

(i) Rs.5.50 paise per K.V.A. per month plus
(ii) Rs.0.08 paise per K.W.H. per month
subject to an overall maximum rate of Rs.0.09 paise per K.W.H. and

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without prejudice to payment of minimum charge of 75 per cent of the contract demand at the above rate of Rs.5.50 paise per K.V.A. per month and subject further to absolute minimum payment on 125 K.V.A. in the first part of the tariff.

For less than 250 K.V.A the demand may be metered in K.W. and charged for at Rs.6.00 per K.W. per month. Besides the charges for K.W.H. consumed at the rate specified above. For supply at M.T. less than 11 K.V.A and M.T. less than 11 K.V.A. and M.T. the above rate will be increased by 10%."

The reasons for such a stipulation and its justifiability are duly and fully explained by this Court in the aforesaid decision. It is not necessary for us to reiterate the same. The appeal is accordingly allowed. The Judgment of the High Court is set aside. The judgment and decree of the Trial Court is restored. No costs.
T.N.A.

Appeal allowed.

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