A BIHAR STATE ELECTRICITY BOARD

v.

M/S. BIJOY MINING COMPANY LTD. AND ORS.

JULY 15, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Electricity—Agreement between Electricity Board and consumer—Clause 13—Annual minimum guarantee charges—Bill for—Objection by consumer—Ground that there was erratic supply—Claim for proportionate
C *deduction from bill—Writ—High Court held that it was not open to Electricity Board to issue impugned bill without proportionate deduction—Appeal by Electricity Board—Held application should be made to competent authority for investigation of erratic supply and proportionate deduction—Order of High Court set aside—Liberty to consumer to file application to Chief Engineer of*
D *Electricity Board—Chief Engineer to make enquiry and give proportionate deduction if Board was responsible.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9843 of 1996.

E From the Judgment and Order dated 21.9.93 of the Patna High Court in C.W.J.C. No. 2811 of 1993.

Pramod Swarup for the Appellant.

Gopal Prasad and Ejaz Maqbool for the Respondents.

F The following Order of the Court was delivered :

Leave granted.

Heard learned counsel on both sides.

G This appeal by special leave arises against the order of the Division Bench of the High Court of Patna, dated September 21, 1993 made in CWJC No. 2811/93. Admittedly, the respondent had entered into an agreement with the appellant-Board for supply of electricity pursuant to which the respondent was required to pay the minimum guarantee charges. When
H a bill was issued, it would appear that the respondent had objected to the

minimum guarantee bill on the ground that there was erratic supply of electricity and the Board was unable to supply the required quantity of the electricity. Consequently, the respondent is not liable to pay the minimum guarantee under the contract. The High Court allowed the writ petition finding that on an earlier occasion the High Court in CWJC No. 3642/92 had disposed of writ petitions on February 25, 1993 directing the Board to raise fresh bill giving proportionate reduction in the annual minimum guarantee charges, but the same not being complied with it is not open to the Board to give the bill as impugned in the writ petition.

It is seen that clause 13 of the agreement provides as under :

> "13. - if at any time the consumer is prevented from receiving or using the electrical energy to be supplied under this agreement either in whole, or in part due to strike, riots, fire, floods, explosions, act of God or any other case reasonably beyond control or if the Board is prevented from supplying or unable to supply such electrical energy owing to any or all of the cause mentioned above than the demand charge and guaranteed energy charge set out in the Schedule shall be reduced in proportion to the ability of the consumer to take or the Board to supply such power and the decision of the Chief Engineer, Bihar State Electricity Board, in this respect shall be final.
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> Note : The term Chief Engineer includes additional Chief Engineer for the area concerned."

A reading thereof would clearly indicate that the Board is enjoined to give proportionate reduction provided any one of the conditions enumerated therein had occasioned. Obviously, an application in that behalf shall be required to be filed to the the Chief Engineer of the Board who was required to investigate into the matter and then his decision shall be final. It would appear that a representation was made, but it is not clear whether it was to the Chief Engineer, the competent authority in terms of the agreement or any other officer. Under these circumstances, unless an application is made to the competent authority to investigate into the matter, the Board in terms of clause 13 of the contract is necessarily obliged to demand and the consumer is to comply with the payment of minimum guarantee amount in terms of the agreement, subject to the decision by the Chief Engineer. Accordingly, we set aside the order of the

A High Court giving liberty to the respondents to make an application afresh within a period of one month from the date of the receipt of this order to the Chief Engineer, Electricity Board. The Chief Engineer would enquire into and give the decision in that behalf. In the event, the Chief Engineer finds that the Board was responsible, then necessarily, in terms of clause 13, the proportionate reduction is required to be given to the respondents.
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The appeal is accordingly ordered. No costs

T.N.A. Appeal ordered.