

BIHAR STATE ELECTRICITY BOARD AND ORS.

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v.

M/S. ALLIED REFRACTORIES (PVT.) LTD. AND ORS.

JANUARY 25, 1996

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

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*Electricity Supply Act, 1948 :*

*S. 49—Contract entered into between Electricity Board and Consumer—Payment of minimum guarantee charges to Board—Failure to consume minimum guarantee level of electricity on account of non-supply of electricity due to trippings, load sheddings or power cuts, consumer entitled to make application for proportionate reduction of the minimum guarantee—Instead, consumer approaching the High Court by filing writ petition—High Court directing grant of proportionate reduction—Held, not justified—Hence set aside—Consumer to make application—Board to consider and pass appropriate orders within a reasonable time.*

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*Bihar State Electricity Board & Anr. v. M/s. Dhanawat Rice & Oil Mills, [1989] 1 SCC 452, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2940 of 1996.

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From the Judgment and Order dated 16.8.88 of the Patna High Court in C.W.J.C. No. 1480 of 1988(R).

Praveen Swarup and Pramod Swarup for the Appellants.

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The following Order of the Court was delivered :

Leave granted.

Though the respondents have been served twice and respondents 1, 2 and 6 were again served on September 22, 1995, they are not appearing either in person or through counsel. Acknowledgments from respondents 3, 4 and 5 for the second occasion have not been received. We, therefore, declare that they are deemed to have been served.

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The only question is : whether the respondents are entitled to the

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- A proportionate reduction of the minimum guaranteed amount for non-supply of the electricity due to disruption by trippings, load sheddings and power cuts etc.? Clause (13) of the contract entered into provides that they are entitled to make an application in such a situation and the Board would consider and pass appropriate orders in that behalf. Admittedly, the respondents had not made such an application, but straightaway approached the High Court for the relief. The High Court in the impugned order dated August, 16, 1988 in C.W.J.C. No. 1480 of 1988 directed the appellant to grant them proportionate reduction. The controversy is no longer *res integra*. This Court in *Bihar State Electricity Board & Anr. v. M/s Dhanawat Rice & Oil Mills*, [1989] 1 SCC 452 arising from the appellant-Board itself had held that under Section 49, an agreement had been entered into by the consumer with the appellant to pay minimum guarantee of charges to the Board. On failure to consume the minimum guaranteed level of electricity due to non-supply of electricity by trippings, load sheddings or power cuts, the consumer would be entitled to make an application for proportionate reduction of the minimum guarantee. Since respondents had not made such an application, the High Court was not justified in straightaway allowing the writ petitions and directing the grant of the proportionate reduction. The order is set aside. This order does not preclude the respondents to make application accordingly under Section 49 of the Electricity Supply supply Act and it would be open to the appellant-Board to consider and pass appropriate orders within a reasonable time from the date of making the application.

The appeal is accordingly allowed, but, in the circumstances, without costs.

F G.N.

Appeal allowed.