(1991) 01 SHI CK 0012

In the High Court Of Himachal Pradesh

Case No : C.W.P. No. 81 of 1989

Adams Paper Product Pvt. Ltd. and Another — APPELLANT

Vs

Himachal Pradesh State Electricity Board and Others — RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Electricity (Supply) Act, 1948 — Section 79
Himachal Pradesh State Electricity Board Abridged Conditions of Supply of Electricity Rules — Rule 12

Citation : (1991) 2 ShimLC 194

Hon'ble Judges : V.K. Mehrotra, Acting C.J.;Bhawani Singh, J

Bench : Division Bench

Advocate : Rakesh Kanwar, for the Appellant; P.A. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, J.—The Petitioners, namely, M/s. Adams Paper Products Pvt. Ltd. and Shri Mrthan Singh, are engaged in the manufacture of pulp and paper. It has its registered office at E-222, East of Kailash. New Delhi, whereas the factory is located at old Dehradun Road, Paonta Sahib, District Sirmaur, Himachal Pradesh. The second Petitioner is the Managing Director of the Company.

2. The grievance of the Petitioners is that for the purpose of establishing the factory, loans worth lakhs of rupees were sought from the Financial Institutions of the State and in order to obtain energy to run the factory, the first Respondent (Himachal Pradesh State Electricity Board) was approached for sanction of 750 KVA load. The load was sanctioned in January, 1983 with the condition that the Petitioners will bear the cost of transmission line from Badripur sub-station to the factory site. Consequently, the Petitioners deposited a security amount of Rs. 47,850 on 26-10-1983 and also the cost of the line to the extent of Rs. 1,98,000 in 1984 through receipt No. 07331 dated 18-7-1984. For the purpose of meeting the requirement of energy load of the Petitioners. 11 KVA Feeder with ACSR

Conductor 6/1/2.59 mm. on 9 meter long PCC poles in Delta Formation were to be extended from 33/11 KV Sub-Station, Badripur, to the factory site.

3. The Petitioners further submit that the factory came in operation in September, 1985 when it conducted the trial run with the help of 150 KVA temporary load by Diesel Generator supplied by the first Respondent. The Petitioners were sanctioned the load in December, 1986, on Completion of transmission line, from independent Feeder from Badripur Sub-Station. The further case of the Petitioners is that installation of independent Feeder was for their exclusive use and there could be no tapping of power from this installation (Annexure-PC) However, there had been frequent power tripping, which faults were duly conveyed to the first Respondent. The Petitioners have further proposals to extend the production and diversify its functions and a proposal in this connection has already been submitted to the Industrial Reconstruction Bank of India Ltd. and on the basis of the availability of electricity, there were every chances of their proposals being sanctioned However, the Petitioners came to know that certain poles had been erected just after the end of the transmission line of the Petitioners in order to supply power to the factories established by the second and third Respondents.

Precisely, the claim of the Petitioners is that the electricity lines has been established at their cost for their exclusive use. It was on this assurance that the Petitioners established the factory at huge expense and deposited all the charges for the installation of the power line. In these circumstances, the first Respondent is estopped by its conduct and cannot be allowed to tap power from this connection and supply to others since that would not only affect the power demand of the Petitioners but also their future expansion plans.

Shri R.C. Vaidya, Superintending Engineer (O.P.), H.P. State Electricity Board, Solan, has, in his reply-affidavit, stated that the petition is not maintainable since no right of the Petitioners has been violated, The first Respondent is a statutory body incorporated under the Indian Electricity (Supply) Act, 1948 and is engaged in the generation, terns mission and distribution of electricity in the State for public good since it is a duty cast on it under the Electricity Act, 1910, The Respondent is a licensee and is under a legal obligation to supply energy to the consumers. or prospective consumers in the State and the supply of power from the 11 K.V. Badripur Sub-Station to the prospective/intended consumers will not in any way or in any manner prejudice the rights and the power supply to the Petitioners.

4. It has also been denied that the supply of power to the Petitioners has been irregular. It has been stated that the supply to the Petitioners has been regular and without any fault. The delay in the execution of the supply lines to the Petitioners had been on account of objections of some of the villagers through whose lands the supply line was to pass and as soon as these disputes were settled, the transmission line to the factory of the Petitioners was completed. The further case of the first Respondent is that the transmission line to the factory of

the Petitioners may have been completed at their cost, however, the same is being maintained by the Board and more than half of 11 KV line Conductor has been augmented at the cost of other consumers; in any case, the whole of the service line together with any wire, meters and other apparatus on the consumers'' premises, are the property of the Board, notwithstanding the fact that the cost of the whole or part of the service line/equipment may have been paid by the consumers. The Board also retains the rights to make use of such service line/equipment for extending power supply to other consumers in the vicinity or for any other purpose provided that does not adversely affect the supply to the consumers and in order to safeguard the interest of the Petitioners, the line was augmented at the cost of other consumers by replacing the small size Conductors by higher size Conductors. By this installation, there would be no loss or damage to the load being supplied to the Petitioners. The action of the Board, therefore, is strictly in accordance with law and it cannot be estopped from extending power supply to other consumers. Finally, it has also been said that there has not been any violation of Articles 14 and 19 of the Constitution of India.

5. Second and third Respondents have also filed a joint reply. They have practically supported the stand taken by the first Respondent. Besides that, their case is that the Petitioners have no enforceable right nor any estoppel in their favour. They established their Industries after seeking loans worth lakhs of rupees from number of financial institutions and as a result or delay in the supply of energy to them, huge losses have been sustained by them. Their requirement for the energy was duly examined by the first Respondent before the same was allowed to them after payment of security, then additional security, and the cost towards the execution of the supply line to them and in support of the same, various documents have been annexed with this reply.

6. In the rejoinder affidavits to the replies filed by the Respondents, the Petitioners have practically reiterated the stand already taken by them in the main petition, although submission relating to the plea of estoppel have been made. On the record of this case, there is a supplementary affidavit of Superintending Engineer (OP) Circle, HPSEB, Solan, whereby it has been explained that the Petitioners were sanctioned 550 K.VA load at 11000 voltage vide office order No. CEO/DB-42/SL/78-79-13697-98, dated 5-9-1984 (Annexure-R/1-A). This document, inter alia, explains that the Petitioners are to adhere to the Indian Electricity Rules, Board''s abridged conditions of supply and tariff schedule. It is also stated in this affidavit that 11 KV feeder from which the tapping was given to the Petitioners was already in existence at 11 K.V Nihalgarh feeder and in order to extend it, the Petitioners were called upon to deposit the charges. This was necessitated since the industry of the Petitioners was planned outside the area and no other industry was anticipated at that time. Regarding Annexure-PC, dated 2-12-1986, it has been stated that this document is to be read alongwith letter of SDO (O) Paonta, dated 1-12-1986 and if so read, no exclusive use of the electricity line was given to the Petitioners. As a matter of

fact, it is clear from this leater of 1-12-1986 that the reference therein is about the execution of the line. Then, it is also there in this affidavit that 11 KV line from Badripur to the premises of the Petitioners is being maintained by the Board and augmentation of this line has been done at the cost of other consumers. Irrespective of the cost having been paid by the consumers, the ownership and maintenance of the line and the property remains with the first Respondent However, even if supplies are given to other consumers, no loss or damage to the power requirements of the Petitioners would be there. Letter dated 2-12-1986 (Annexure-PC) is of no legal consequence since the same cannot have any over-riding effect on the statutory provisions and the supply conditions which govern the matter in issue. Then, there is another supplementary affidavit of the Petitioners sticking to the stand that they have the exclusive right to use the supply line. At page 88 of the paper-book, there is another affidavit of Shri R.C. Vaidya, Superintending Engineer (O.P.) Circle, HPSEB, Solan, which reads as under:

That I undertake that by extending the power supply to M/s. Milk Products Pvt. Ltd. and M/s. Himachal Milk Specialities Pvt. Ltd, and any other prospective consumer, the supply of electricity available to M/s Adams Paper Products Private Limited shall not be adversely effected.

I further undertake that there will be no tripping due to the extension of power to M/s. Himachal Milk Products Private Limited and M/s. Himachal Milk Specialities Private Limited and others except the normal tripping etc which are due to defects beyond the control of the Board.

7. Before proceeding further to examine the respective contentions of the parties, it is important to refer to orders of the Supreme Court of India since they are also available at pages 89 to 92 of the case file. The first order is of August 11, 1989 in petition for Special Leave to Appeal (Civil) No. 94-9 of 1989 whereby the Supreme Court said:

...this Court doth order that pending the hearing and final disposal by this Court of the application for stay after notice, Respondent No. 1 herein viz, Himachal Pradesh State Electricity Board be and is hereby restrained from giving new connections out of 11 KV independent feeder installed for the factory of the Petitioners herein and so far as Respondent Nos. 1 and 3 herein are concerned, if Respondent No. 1 herein supplies power to them it must be done in the manner not to cause tripping to the supply to Petitioner No. I and therefore such supply will not create any right in favour of Respondent Nos. 2 and 3 herein...

Then, in November 16, 1989 order, the Supreme Court said:

...Upon hearing counsel for the parties herein this Court doth order that the petition for special leave to appeal above mentioned, be and is hereby dismissed. And this Court doth further Order that this Court''s Order dated 11th day of August, 1989, passed in Interlocutory Application No. 1 in SLP (Civil) No. 944 9 of; 989 granting ex parte injunction shall continue for a period of six weeks from this the 16th day of November, 1989 to enable the Petitioners to make application for appropriate relief to the High Court...

8. The Petitioners had moved the SLP in the Supreme Court of India against the order of this Court of 1-8-1989 whereby the stay granted on 21-3-1989 was vacated on the undertaking filed by the first Respondent through Superintending Engineer (OP) Circle, HPSEB, Solan, through the affidavit parts of which have already been extracted above.

9. The first question to be examined in this case is whether the Petitioners have any legally sustainable right to claim exclusive use of the power supply line in question. While examining this question, we found that the sole emphasis of the Petitioners'' counsel was on letter, dated 2-12-1996 (Annexure PC) since it was contended that exclusive use of the supply line was given and no tapping of power load was to be done by the first Respondent.

10. We have considered this aspect of the case carefully. After looking the records placed before us by the first Respondent, it is clear that letter (Annexure-PC) of 2-12-1986 refers to the letter of Sub-Divisional Officer (E), Sub-Division, HPSEB, Paonta, the number of which is actually 2428 and not 2408 dated l-12-1986. A glance through this letter strengthens the submission of the first Respondent that this letter refers to the completion and energisation of this line to the Petitioners and does not mention that the line is exclusively meant for the Petitioners and no tapping of power load would be done therefrom. It appears that the Executive Engineer, while issuing this letter to the Petitioners, did not carefully read the contents of Annexure-R/1-B The result, therefore, is that this document (Annexure-PC) has not to be understood to give any right to the Petitioners and their submission, principally based on this document, is rendered inconsequential.

11. Further, the learned Counsel for the first Respondent explained that it is a normal practice with the Board in cases where the supply line is to be taken to a distant place, the consumer is called upon to meet the expenditure, but that does not mean that other prospective consumers cannot be allowed the benefit of supply from out of the line once erected for the benefit of certain persons only. There is a great deal of substance in these submissions since this appears to have happened in the present case also. The Petitioners were the first to establish their industry at this place. Being away from the main feeder, a new line had to be constructed and in order to do so, the Petitioners were called upon to pay the charges. Since they were the only consumers at that point of time, they assumed that the supply line was meant for their exclusive use, then and in future, and this assumption was further reinforced by the fact that they had paid the installation charges also. With the passage of time, more industries started coming up in the area and their requirement of the power was also sanctioned by the first Respondent and it has been stated that in order to meet the increasing demand, the supply line was augmented and the second and third Respondents also met the expenditure like the Petitioners. This is an era of socialisation of

available resources and electric energy is one such source. With rapid industrialisation, the distribution of electric energy has also to be made available to all,

12. The load sanctioned in favour of the Petitioners has not been reduced. There is an undertaking by the first Respondent that the supply of electricity to two other consumers would not in any way affect the supply to the Petitioners, demonstrates quite clearly that the Petitioners are not likely to be affected by the supply to Respondents 2 and 3. There is also an assurance on behalf of the first Respondent that except for trippings over which it has no control, no trippings would be there in the supply of electricity to the Petitioners So far as the future requirements of the Petitioners are concerned no justiciable right can be based on such a plea. However, we hope that the first Respondent would not refuse such a demand unless there are really justifiable reasons for doing so and the benefit of Regulation 12(iv) would be given to the Petitioner-. This provision reads as under:

12(iv) Cost of Augmentation.--If after commencing the service, the consumer requires an additional load and if for the supply of additional power, the service line/equipment is required to be augmented, the entire cost of such augmentation shall be borne by the consumer, provided that the additional load could not have been met even if there were no extensions, if any, made by the Board from the line/equipment already paid for by the consumer.

13. Therefore, it is difficult to comprehend and allow the Petitioners the exclusive use of the supply line and restrain the first Respondent from supplying the power to other consumers including the second and third Respondents. This kind of submission is neither fair nor can be allowed in the interest of other consumers.

14. In the Himachal Pradesh State Electricity Board Abridged Conditions of Supply of Electricity Rules, framed u/s 79(j) of the Electricity Supply Act, 1948, there is Rule 12(iii), on which reliance has been placed by the first Respondent to supply power to other consumers out of the line in question and to meet other objections of the Petitioners. It is important to quote this provision:

12(iii) Right of Board in respect of Line I Equipment Paid for by the Consumer.--Notwithstanding that the cost of the whole or part of the service line/equipment may have been paid for by the consumer, the whole of the service line, together with any wires, meters and other apparatus on the consumer''s premises shall be and remain the property of the Board, by whom it is to be maintained. The Board also retains the right to make use of such service line/equipment for extending power supply to other consumers in the vicinity or for any other purpose provided that it does not adversely affect the supply to the consumer.

15. We also, of our own, examined the case of the Petitioners on the principle of estoppel in the light of the Supreme Court decisions like Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others, AIR 1968 SC 718, the Union of India and Ors. v. Anglo Afghan Agencies etc ATR 1979 SC 621 ; Century

Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., ; Tapti Oil Industries and Another etc. Vs. State of Maharashtra and Others, , Tapti Oil Industries and Anr. etc. v. State of Maharashtra and Ors. (FB) But, in our considered opinion, the case of the Petitioners does not fall within the parameters laid down by the apex Court while enunciating various facets of this principle. The Petitioners have not placed any material to demonstrate that the first Respondent had held out any representation or assurance that in case the Petitioners would establish their industry, the benefit of the supply line would not be extended to any other consumer. We feel the first Respondent could not have possibly done so in the light of the statutory provisions and the terms of contract of supply between the parties, placed before us by the Respondents. Further, this principle becomes applicable where, on the representation of a party, the aggrieved party has changed his position to his detriment. In the present case, the Petitioners did not establish their industry on the basis of any representation or assurance of the first Respondent therefore there is neither any representation nor any disadvantage or detriment suffered by the Petitioners. Promissory estoppel is available only where there is clear and unambiguous representation See Excise Commissioner, Uttar Pradesh, Allahabad and Others Vs. Ram Kumar and Others, , Excise Commissioner U.P. v. Ram Kumar. Mere admissions, which are expressions of opinion limited to context and being rather vague hopes, are not binding See P.C. Sethi and Others Vs. Union of India (UOI) and Others, , P.C. Sethi v. Union of India.

The supply line carried much more load than the requirement of the Petitioners. They were sanctioned the load they required for the running of their factory and the same is being extended to them by the first Respondent and there is now an undertaking that the sanctioned load would not be cut nor trippings in the supply, except in circumstances beyond its control, would be there. In these circumstances, we are of the opinion that the Petitioners do not have any claim on this ground also.

16. The result of the aforesaid discussion is that there is no merit in this petition and the same is dismissed. However, we hope that the first Respondent would give supply to the Petitioners as per the undertaking and assurance given to this Court in the affidavit of Shri R.C. Vaidya, Superintending Engineer (OP), Circle, HPSEB, Solan, dated July 29, 1989. No costs.