(2003) 12 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 33961 of 1992

Agra Beverages Corporation Pvt. Ltd. — APPELLANT

Vs

U.P.State Electricity Board & Anr. — RESPONDENT

Date of Decision : 03-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 49

Citation : (2003) 12 AHC CK 0086

Hon'ble Judges : M.Katju, J and R.S.Tripathi, J

Final Decision : Dismissed

Judgement

M. Katju, J.

1. This writ petition has been filed against the impugned order dated 2941992 Annexure 4 to the writ petition and the impugned bill of electricity dues dated 29492 Annexure 5 to the petition.

2. The petitioner has prayed for a mandamus directing the respondents to restore the electricity connection of the petitioner and to refund the amount paid by the petitioner with interest and to treat the petitioner as a noncontinuous process consumer.

Heard learned Counsel for the parties.

3. The petitioner is a company registered under the Indian Companies Act doing the business of manufacturing soft beverages. For this purpose it consumes electricity and it has a sanctioned load of 250 KVA. The tariff payable to the petitioner is that applicable to HV2 category.

4. Before 1286 there was a common tariff for continuous and noncontinuous process consumers. By notification of the U.P. Electricity Board dated 28186 under Section 49 of the Electricity (Supply) Act, 1948 the power tariff was revised. True copy of the said notification dated 28186 is Annexure 1. A perusal

of clause 4(b) of the said notification shows that now a higher power tariff has been imposed for continuous process consumers and a lower one for noncontinuous process consumers.

5. Clause 15 of the said notification is a list of continuous process consumers. The petitioner has urged that Beverage is not one of the products mentioned in the said list and hence the petitioner cannot be charged, the rate of continuous process consumers.

6. However, the petitioner has been sent the impugned bill treating him as continuous process consumer. It is this billing of the petitioner as continuous process consumer which has been challenged in this petition.

7. A counter affidavit has been filed by the respondents. It is alleged in para 12 of the same that the petitioner comes, within the category of ?Distilleries and Breweries? mentioned in Clause (xvii) of the list of continuous process consumers in the notification dated 29186. We do not agree. The word Brewery has a well known meaning in common parlance. It means the place for making liquor from malt. A soft beverage is not liquor, and hence we do not agree with the learned Counsel for the respondents that the petitioner''s unit comes within the category of `Brewery''.

8. Learned Counsel for the respondents then submitted that the items mentioned in the list of continuous process consumers is illustrative and not exhaustive. In our opinion it is not necessary for us to decide this issue in this case since we find from the allegations in paragraphs 8 to 11 of the writ petition and paragraphs 4 to 7 and 27 and 29 of the counter affidavit that the petitioner had filed a civil before the III Additional Civil Judge, Agra being Suit No. 189 of 1981 in which he had obtained a decree, copy of which is Annexure 2 to the writ petition. In this decree the learned Civil Judge has directed that the petitioner should be treated to be in the category of continuous process consumer. The operative portion of the judgment reads:

9. No doubt an appeal is pending against the said judgment before the District Judge, Agra but it appears that no stay order has been passed and hence the said decree is still in force.

10. On the strength of that decree the petitioner obtained continuous supply of electricity but be claims to be billed at the rate applicable to noncontinuous power consumers. Thus the petitioner is blowing hot and cold together in this matter. No doubt the petitioner''s industry is not mentioned in the list of continuous power consumers in the notification dated 29186 but since the petitioner has itself obtained a judgment from a Civil Court to the effect that he should be treated as continuous process consumer and it has received power supply on that basis it cannot turn around and claim that it should be billed at the rate applicable to noncontinuous process consumer.

11. Writ is a discretionary remedy and in this case we are not inclined to exercise

our discretion under Article 226 of the Constitution. Even if the petitioner is technically correct that it does not come within the list of continuous process consumers in the notification dated 29186 having obtained the judgment from the Civil Court for treating it as continuous process consumer it cannot turn around now and claim otherwise.

12. Since writ is a discretionary remedy no writ will be issued merely because there is violation of law vide JT 2003 (6) SC 20, Chandra Singh v. State of Rajasthan (para 42). To claim a writ the petitioner must not only show violation of law but he must also show equity in his favour. Unless he can satisfy the Court on both law and equity no writ will be issued. Hence even assuming that in this case the law is in the petitioner favour because it does not come within the list of continuous process consumer mentioned in the notification dated 28186 equity is certainly not in favour of the petitioner because it has itself applied to the Civil Court to be treated as continuous process industry and has obtained a judgment from the Civil Court vide Annexure2 to the petition by which it has been treated as continuous process consumer. Hence there is no equity in favour of the petitioner. The writ petition is dismissed.