(1987) 09 KAR CK 0023

In the Karnataka High Court

Case No : W.P. No. 2623/1987

All Karnataka Conductor Manufacturers'' Association and Another	APPELLANT
Vs	
State of Karnataka and Another	RESPONDENT

Date of Decision : 21-09-1987

Acts Referred:
Electricity (Supply) Act, 1948 — Section 78a

Citation : (1988) 1 KarLJ 68

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

M.P. Chandrakantharaj Urs, J.-Petitioner No. 1 is the All Karnataka Conductor Manufacturers'' Association by its President and petitioner No. 2 is the Proprietor, Karnataka Wire and Metal Corporation. Their grievance is that the 2nd respondent-Karnataka Electricity Board (hereinafter referred to as ''the Board'') has ignored the direction given to it contained in the Government Order No. C1 28 SPM 84, Bangalore, dated the 20th February 1986 to give preference to the products manufactured by Small Scale Industries or by Tiny Industries in respect of certain items listed in the schedule annexed to that order. At Sl. No. 9 in the Annexure to the aforementioned Government Order, AAC & ACSR Conductors upto 19 strand are mentioned. The petitioners who are manufacturers of such conductors, are aggrieved by the policy of the Board in purchasing the same from the other source than the Small Scale and Tiny Industries situated within the Karnataka State. It is contended for the petitioners that the same is in violation of Section 78-A of the Electricity (Supply) Act, 1948 (''the Act'' in short) and therefore the Board is duty bound to obey the directions given by the State Government in accordance with Section 78-A of the Act as purchase of conductors is a matter of policy to be pursued by the Board and therefore, the Court must issue a writ of mandamus compelling the Board to purchase conductors of the type mentioned at Sl. No. 9 in the annexure to the Government order dated 20th February 1986 from the members of Petitioner No. 1.

2. I do not find that the petitioners are entitled to such a relief from this court. The Government Order dated 20th February 1986 is an executive order made in exercise of its executive power under Article 162 of the Constitution. The order at paragraph-1 makes it clear that the Government has been pleased to reserve the articles mentioned in the Annexure for exclusive purchase from the tiny/ small scale industries of the State and direct that preference shall be given to the products of tiny and small scale Industries in all such purchases. It further directed the Stores Purchase Department, various Departmental Purchase Committees, Government owned/controlled Companies, Corporations, Undertakings and Autonomous Bodies like Universities and Local Bodies to fix Rate Contracts with or purchase from tiny and Small Scale Industries Units if the price quoted by SSI and Tiny units is within 15% of the lowest rates quoted by any non-SSI units of the State or any SSI or Non-SSI units outside the State.

3. The crux of the argument is that the Board being a Statutory body, is bound to obey the direction of the Government contemplated under Section 78-A of the Act. Section 78-A of the Act reads as follows:

"78-A: (1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the Authority whose decision thereon shall be final".

4. Sri Kadidal Manjappa, learned Counsel for the petitioner, strenuously contended that making purchase of conductors is part of the functions of the Board and the Board therefore should be guided by the provisions contained in Section 78 A of the Act by the direction given by the Government as per Annexure-A.

5. Government Order dated 20th February 1986 being in the nature of directions given among others to various Departmental Purchase Committees as well, the Board should in obedience to the direction, make the purchase from the members of the 1st petitioner Association who are manufacturers of conductors of electricity of the specified type.

6. The Supreme Court in more than one case, has held that administrative instructions issued by Government to its officers are not enforceable by a writ of mandamus. I do not find any force in the argument. Such administrative instructions do not confer legal rights on 3rd parties. Nor a duty is cast on the functionaries in the Government (See G.J. Fernandez v. State of Mysore and others AIR 1967 SC 1753). (See also Kumari Regina v. St. Alaysius Higher Elementary School & another, AIR 1971 SC 1920).

7. Apart from the fact that a writ of mandamus lies only to enforce statutory obligations or duties and not otherwise, the order at Annexure-A dated 20th Feb. 1986 is a general order issued by the State Government to its various

Departmental Purchase Committees, Undertakings and Autonomous bodies etc., directing them to make purchase on certain conditions being specified of their requirement from manufacturers of items voluntarily charactarised as Small Scale Industries/Tiny Industries. It is, in other words, a policy direction of State Government itself to promote and encourage the tiny and Small Scale Industries. That cannot be equated with the policy of the Board which is contemplated by the legislature while enacting Section 78-A(1) of the Act, This becomes abundantly clear if one has a look at Section 78-A(2) which clearly envisages the possibility of dispute arising between Government and the Board as per direction whether it is relatable to or is a question of policy. Therefore what is given as a general direction to all Departmental Purchase Committees and other units on which Government has control including local authorities and local bodies, cannot be considered, on the facts of this case, to be a policy direction issued under Section 78-A(1) of the Act to the Respondent Board.

8. In any event, a look at Section 59 of the Act provides further guidance. Section 59 of the Act is as follows:

"Sec. 59: (1) The Board shall, after taking credit of any subvention from the State Government under Section-63, carry on its operations under this Act and adjust its tariffs so as to ensure that the total revenues in any year of account shall, after meeting all expenses properly chargeable to revenues, including operating, maintenance and management expenses, taxes (if any) on income and profits, depreciation and interest payable on all debentures, bonds and loans leave such surplus as is not less than three per cent or such higher per centage, as the State Government may, by notification in the Official Gazette, specify in this behalf, of the value of the fixed assets of the Board in service at the beginning of such year.

Explanation: For the purposes of this sub-section "Value of the fixed assets of the Board in service at the beginning of the year" means that original cost of such fixed assets as reduced by the aggregate of the cumulative depreciation in respect of such assets calculated in accordance with the provision of this Act and consumers'' contributions for service line."

(2) In specifying any higher percentage, under sub section (1), the State Government shall have due regard to the availability of amounts accrued by way of depreciation and liability for loan amortization and leave- (a) a reasonable sum to contribute towards the cost of capital works; and (b) where in respect of the Board, a notification has been issued under sub-section (1) of Section 12 A a reasonable sum by way of return on the capital provided by the State Government under sub-section (3) of that Section and the amount of the loans (if any) converted by the State Government into capital under sub-section (1) of Section 66-A."

Section 59 as extracted above, clearly indicates the legislative intent underlying the Act, to give power and discretion to the Board in the management of its finances. While the Government may outline the general financial policy in exercise of Section 78-A of the Act, it cannot in its purported exercise of power, direct the Board to purchase any of its requirements from any specific units of manufacturers. The Board should be free in the management of its finances and utilisation of conductors in the discharge of its functions.

9. In that view of the matter, no legal right has enured to the benefit of the third parties like the petitioners by virtue of the Government Order dated 20th February 1986 which may be enforced under Article 226 of the Constitution.

10. Writ petition is misconceived. Accordingly it is rejected.

11. This order is made after notice to the respondents but at the stage of preliminary hearing.