(1993) 07 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

ANAND CANE CRUSHER APPELLANT

Vs

U.P.STATE ELECTRICITY BOARD AND U.P.STATE ELECTRICITY RESPONDENT

Date of Decision : 26-07-1993

Acts Referred:

Citation : 1993 0 NCDRC 94 : 1993 1 CTJ 1047 : 1993 3 CPJ 365 : 1993 3 CPR 198 : 1994 1 CPC 129

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , B.S.YADAV , Y.Krishnan J.

Advocate : R.S.PANVAR , VINAY GARG

Judgement

1. THESE are two cross appeals against the order dated 20.5.1992 passed by the State Commission of Uttar Pradesh in the Case No. 57/SC/92 on its file.

2. THE Appellant in F.A. No. 240/92 was the Complainant before the State Commission and Appellant in F.A. No. 433/92 was the Respondent before the State Commission. At the outset it may be mentioned that the appeal in F.A. No. 433 of 1992 by the U.P. State Electricity Board is beyond time by three days. The application for condonation of delay in filing the appeal, duly supported by an affidavit, has been considered in the light of the submissions made by the Counsel for the parties. The delay is condoned.

3. THE undisputed facts in this case are that the Appellant in Appeal No. 240 of 1992, M/s. Anand Cane Crusher was crushing sugarcane and manufacturing khandsari from sugarcane with the help of power in their mill. It is a seasonal manufacturing unit : the cane crushing season is officially from 1st of October of a year to the 15th of July of the following year. In actual practice the crushing season is from the 15th of November to April of the following year.

4. THE cane crushing is a ''non-continuous process industry'' and hence M/s. Anand Cane Crusher is a ''non-continuous process consumer'' of electricity. Till December, 1990 M/s. Anand Cane Crusher were billed for the power consumed at the tariff rates applicable to non-continuous process consumers. In February,

1991 the Electricity Board discovered that the billing should be done at the rates applicable to ''continuous process consumer'' industries on the ground that the ''non-continuous process'' industries were exempt only from the peak hour cut in the evening applicable to ''continuous process'' consumer industries. The billing, however, for the power consumed has to be done on the basis of tariff applicable to power consumption by ''continuous process'' industries. Consequently the Respondent State Electricity Board raised bills on 1.4.1991 at the tariff rate applicable to continuous process industries and also raised an arrear bill for under-recovery from February, 1986 to December, 1991 on account of incorrect application of tariff rate amounting to Rs. 1,07,980/-.

5. THE State Commission came to the finding that the cane crushing units are ''non-continuous process'' consumers and are liable to be billed accordingly. It, therefore, quashed the bills for the months of January, February and March, 1991 as also the arrear bill for the period from February, 1986 to December, 1990 based on the tariff rate applicable to ''continuous process'' consumers. It directed the U.P. State Electricity Board to revise the bills as per the rate applicable to ''non-continuous process" consumers and to refund the excess amount to the Opposite Party. It also further directed that the Complainant-M/s. Anand Cane Crusher "shall be billed at the rate of ''non-continuous process'' consumer for the electricity to be consumed." It also held that the Complainant M/s. Anand Cane Crusher was not entitled to any other relief.

6. M /s. Anand Cane Crusher filed their appeal against this order of the State Commission because of its failure to award damages/compensation, interests and costs in the light of the State Commission''s findings. According to the Appellant in F.A. No. 433/92 viz. U.P. State Electricity Board, however, the Complainant M/s. Anand Cane Crusher is a ''non-continuous process'' consumer exempt only from the peak hours restrictions applicable to ''continuous process'' consumers. It has further contended that the ''non-continuous process'' consumers are to be billed for at the same tariff rate as is applicable to ''continuous process'' consumers. It includes sugar mills manufacturing sugar both by the vacuum pan process as well as open pan process, the latter being commonly known as ''cane crushers.'' The State Electricity Board has accepted that, due to omission on the part of its officials, the Anand Cane Crusher was erroneously billed for at the tariff rate applicable to ''non-continuous process'' consumers and that this mistake was detected in 1991. Hence the current bills at the correct tariff and the arrears bills were issued. In its appeal the State Electricity Board has challenged the findings of the State Commission that cane crusher units are to be treated as ''non-continuous process'' consumers for the purposes of tariff.

7. IT is evident from above that the dispute is with reference to the appropriate tariff rate chargeable for the power consumed by M/s. Anand Cane Crusher and not that the electricity bills are inflated on account of error in the number of units of power consumed or error in the appropriate tariff rates for charge. As already

observed the dispute refers to the classification of the cane crusher units for the purposes of tariff billing : whether they should be deemed to be ''non-continuous'' or ''continuous'' process industries. It is not a case where there bills are inflated as such. It is a question whether the bills have been prepared at the appropriate tariff rates.

8. IT is evident that it is a dispute in the realm of tariff and not in the realm of incorrect and inflated bills either in terms of units consumed or the calculation of the amount therefor. It is a dispute pertaining to the classification of the industry as ''continuous'' or ''non-continuous'' process consumer and the correct tariff rate applicable. The dispute is thus in the nature of a dispute about the consideration payable for the power supply. It is a dispute in the realm of ''pricing'' which is beyond the jurisdiction of consumer forums to adjudicate upon. The State Consumer Forum has also no jurisdiction to grant the reliefs, it has actually granted in this case viz. quashing the bills prepared on the basis of tariff for ''continuous power'' consumers and directing the Electricity Board to bill the Complaint - M/s. Anand Cane Crusher hereafter at the ''non-continuous process'' consumer tariff rate. It has no authority to give such relief under Section 14 of the Consumer Protection Act. The order of the State Commission is, therefore, set aside and the appeal of Electricity Board is allowed. The appeal of the Appellant in F.A. No. 240 of 1992 for grant of compensation is also dismissed. From the record, however, it is clear that there have been certain deficiencies in service on the part of the U.P. State Electricity Board : (i) The arrear bill dated 26.4.1991 amounting to Rs. 1,07,980/- for the period February, 1986 to December, 1990 was raised. It was payable at short notice viz. by 8.5.1991 without examining whether arrears could be recovered from February, 1986. (ii) It disconnected power supply to M/s. Anand Cane Crusher on 28th May, 1992 on the ground that it had not paid the bill for the power consumed in the month of April, 1992. The last date for the payment of this bill was 22nd of May, 1992.

9. IN this connection we may observe that the State Commission has passed the order on 20th of May, 1992 declaring that Anand Cane Crusher should be billed for at the tariff rate applicable to ''non-continuous process'' consumers. Consequently, the bill for April, 1992, the last date for the payment of which was 22nd May, 1992 had to be revised in accordance with the order of the State Commission till the appeal against the said order was decided.

10. FURTHER the State Commission''s order was served on the Electricity Board on 23rd May, 1992 whereas power was disconnected on 28th May, 1992 for failure to pay the bill of April, 1992. Evidently the action of the U.P. State Electricity Board was highhanded and contrary to the order of the State Commission and prima facie vindictive.

