
(1997) 03 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 1776 of 1992

Assam Oxygen Pvt. Ltd. and Another	APPELLANT
Vs	
Assam State Electricity Board and Others	RESPONDENT

Date of Decision : 12-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 49(1), 79, 79A

Citation : (1997) 3 GLR 244

Hon'ble Judges : V.D. Cyani, Acting C.J.

Bench : Single Bench

Advocate : O.P. Bhati and J.C. Gaur, for the Appellant; N.N. Saikia, S.C. ASEB, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Cyani, A.C.J.

1. By this petition under Article 226 of the Constitution, the Petitioners pray for declaration that-

(i) Condition 18 (c) of Terms and Conditions of Supply, 1988 be declared ultra vires, and

(ii) the charging of (sic)est of Rs. 89,070.88 as per bill No. 445 dated 10.8.92 be quashed.

Few basic and undisputed facts of the case are-

The Respondent-Board has framed Terms and Conditions of Supply, 1988 u/s 49(1) of the Electricity Supply Act, 1948 (for short, "the Act"). Clause 18 of the Terms provides for payment of bills within 15 days of its presentation. In ease of complaint, the consumer should pay the bill under protest within the due date. Clause 18(c) provides for surcharge of 5% per month for delayed payment of bill. The Board has also provided an incentive for timely payment, graining rebate of

3% to Industries. Admittedly the Petitioner has entered into an agreement to abide by the Terms and Conditions framed under the Act.

2. While Mr. N.N. Saikia, learned Senior Standing Counsel for the Board, placing reliance on the following decisions in Adoni Ginning Factory and Others Vs. Secretary, Andhra Pradesh Electricity Board, Hyderabad and Others, , Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, contended that imposition of surcharge has been held to be valid.

Mr. O.P. Bhati, learned Counsel for the Petitioner on the other hand strenuously (sic)rged that condition 18(c) is unreasonable in as much as the charging of interest @ 5% per month comes to 60% per annum, which according to him is arbitrary and (sic)ethical, illegal and void in face of Section 79 and 79-A of the Act. He has relied on the following decisions in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others, and Haryana Haryana State Electricity Board Vs. Naresh Tanwar and Another,

3. Referring to orders dated 18.12.90, 22.1.91, 13.3.91, 21.4.92 and 30.5.92, Annexures-B, C, D, E and F, issued by the Superintending Engineer of the Board, learned Counsel submitted that true meaning and import of "due date" as referred to in the above orders, Annexure-B to F, needs legal interpretation.

Although the Petitioner has averred and his Counsel argued about the irregular and inefficient supply of electrical energy by the Board so as to disentitle it no claim or recover any surcharge, the question is no longer res integra and therefore not necessary to be gone into.

4. The Supreme Court, has upheld the stipulation to pay minimum guaranteed charges for supply of electricity irrespective of the fact whether energy was consumed or not as valid in Bihar Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, In Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, it has been held that the Board has power unilaterally to alter the conditions of supply. In the same vein is the judgment of the Apex Court as reported in Jagdamba Paper Industries (Pvt.) Ltd. and Others Vs. Haryana State Electricity Board and Others,

5. The Supreme Court in Adoni Ginning Factory and Others Vs. Secretary, Andhra Pradesh Electricity Board, Hyderabad and Others, has upheld the recovery of surcharge in the following words:

The Electricity Board was, therefore, right in claiming surcharge for the period during which the appeals were pending in the Supreme Court and not claiming surcharge for the period during which the writ petitions and wr(sic)ppeals were pending in the High Court.

6. Faced with the above authorities, learned Counsel appearing for the Petitioner

placing reliance on a judgment of the Supreme Court in Assam State Electricity Board v. Brahmaputra Steels (P) Ltd., (1996) 8 SCC 73 questioned the propriety of collecting surcharge in the instant case from the Petitioners and raised the question of due date for payment with reference to orders dated 18.12.90, 22.1.91, 13.3.91, 21.4.92 and 30.5.92, Annexure-B, C, D, E and F, respectively. The due date mentioned in these orders is not the due date as contemplated by the agreement. The payment of energy bills to be made has to be in accord with Clause 18 of the Terms and Conditions and not as per extension of time granted, as claimed and contended by the learned Counsel for the Petitioner. The "due date" is referable to the Terms and Conditions of Supply as provided for u/s 49(1) of the Act.

7. In view of the foregoing discussion, there is no force in the petition. It is accordingly dismissed. However, there will no order as to costs.