
(1995) 04 SC CK 0096
In the Supreme Court Of India
Case No : SLP © No. 5000 Of 1995

Assam State Electricity Board and Others APPELLANT
Vs
Brahama Putra Steels (P) Ltd. and Others RESPONDENT

Date of Decision : 26-04-1995

Acts Referred:

Industrial Policy of Assam 1986

Citation : (1995) 77 ELT 479 : (1995) 4 JT 417 : (1995) 3 SCALE 366 : (1995) 3 SCC 559 Supp : (1995) 1 SCR 90 Supp

Hon'ble Judges : N. Venkatachala, J;Kuldip Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Kuldip Singh J.-Special leave granted.

2. The Government of Assam introduced an Industrial Policy called "Industrial Policy of Assam 1986" (the Policy). The Policy provided power subsidy in the following terms:

"Power subsidy

Power subsidy will be granted as follows:

With regard to the small-scale sector, power subsidy will be granted to the extent of 50% for the first five years of commercial production. There will be no ceiling to the subsidy amount which can be availed of by the small-scale sector.

Subsidy on drawal of power lines:

For the SSI units 50% of the cost incurred on drawal of Electrical Power Line, from the main line to the factory sheds, will be subsidised up to a ceiling of Rs 20,000 for each industrial unit.

Power subsidy:

(a) Power subsidy will be granted as follows:

With regard to the small-scale sector, power subsidy will be granted to the extent of 50% for the first five years of commercial production. There will be no ceiling to the subsidy amount which can be availed of by the small-scale sector.

(b) * * *

(c) Power subsidy will be allowed on actual consumption of power for manufacturing process in respect of the small-scale sector, power actually consumed by the units, except that used for residential purpose will be subsidised.

(d) Existing units undertaking expansion/diversification will also be eligible for power concession for the expanded/diversified part of their activities.

Reimbursement of the subsidy amount will be done directly by the Udyog Sahayak on a quarterly basis."

3. The authority to reimburse the subsidy was Udyog Sahayak, a Branch of the Directorate of the Industries, Government of Assam. The industries entitled to the subsidy were to be given the same for a period of 5 years from the date of the setting up of the industry. The respondent-industry was set up sometime in July 1988 and as such the entitlement of the industry was up to July 1993. It is the case of the industry that no subsidy was paid till December 1993 and as such a writ petition was filed in the High Court in March 1993 seeking a direction to the State of Assam to pay the subsidy in terms of the Policy. The writ petition came for motion hearing before the High Court on 31-3-1993, when the following order was passed:

"Post the petition for order on 26-4-1993 for consideration of the interim prayer. In the meantime, petitioner shall clear the bill dated 11-3-1993 amounting to Rs 6,27,708 within 7 days from today adjusting any amount if already paid by the petitioner against the said bill. It is directed that until further order electricity supply to the petitioner industry shall not be disconnected."

Thereafter the petition came for hearing before the High Court on 18-6-1993. The High Court passed the following order:

"Taking into consideration the hardship faced by the petitioner due to admitted failure on the part of the Government to pay the subsidy, for the ends of justice, in the interim, I direct that Government of Assam shall pay the arrear electricity charges to ASEB as well as current charges payable up to June 1993 within a period of one month from today and the ASEB will receive the payment from the Government. The petitioner, shall, however, be liable to pay the current bills raised for consumption of electricity on and from July 1993. Respondent ASEB is directed not to disconnect the supply of electricity to Petitioner 1 until further order."

4. The High Court finally allowed the writ petition and directed the State Government to pay the subsidy to the respondent-Company in terms of the

Policy. Apart from the abovesaid direction, the High Court further held as under:

"The word "subsidy" means a grant of money made by the Government in aid of the promoters of any enterprise or work, and the expression "reimburse" means to pay back, to make restoration or to indemnify. Therefore, the petitioner-Company has to pay the energy charges to ASEB and then the Government has to pay back 50% of the amount paid by the petitioner-Company. That apart, in any event the Government has to grant "power subsidy" to the extent of 50% only. Therefore, the contention of the learned Advocate General has some force. But the interim order was made rightly or wrongly and that interim order is enforceable or executable one. The order was not appealed and, therefore, it became final. It is also settled that the doctrine of *res judicata* is applicable to different stages of the same proceedings, that is to say, matter decided at one stage cannot be reagitated in subsequent stage. Be that as it may, it is not disputed that the petitioner-Company paid sufficient amount of electricity charges to the electricity Board, about 523 lakhs according to the petitioner-Company. The petitioner-Company has produced tables of account showing outstanding as on 3-12-1993. The tables show that the electricity charges still outstanding (including surcharge and rebate disallowed) are about Rs 252 lakhs and the power subsidy amount payable to the petitioner-Company is about 300 lakhs. The tables are placed on record. We are not expressing about the correctness of the account. But the tables, if it is found correct, show that the power subsidy amount to be paid to the petitioner-Company under the Policy of 1986 will be more than the entire amount to be paid by the petitioner-Company for the electricity consumption for the period ending 1993 and one or two months of 1994. As already stated, reimbursement of subsidy amount was to be done on quarterly basis but it was not done. The petitioner-Company has the legitimate expectation of receiving the subsidies and, as such, the Court must protect its expectation as a matter of public law. Had the Government paid the subsidy amount in time there might not have been default in payment of electricity charges. The Government is not only to pay power subsidy, but also interest subsidy and subsidy on drawal of power lines. The petitioner-Company also claims capital subsidy and transport subsidy, as already stated. The account can be settled afterwards. On the facts and circumstances of the case, we are of the view that the interim order was a just one at that point of time."

As a consequence of the above-quoted findings, the High Court finally directed as under:

"There shall not be disconnection of supply of electricity to the petitioner-Company on the grounds of arrears till 31-12-1993 and/or a part of January 1994."

5. This appeal by special leave is by the Assam State Electricity Board (the Board).

6. We have heard learned counsel for the parties. A bare reading of the Policy

statement reproduced above shows that the grant of subsidy to an industry was not linked with the payment of electricity charges by the industry to the Board. The industry is under a contractual as well as statutory obligation to pay the charges to the Board in respect of electricity consumed. If there was any delay in the payment of subsidy that would not be the ground for the industry to withhold the electricity charges. We are of the view that the High Court fell into patent error in linking the grant of subsidy with payment of electricity charges. Neither the contents of the interim orders granted by the High Court on 31-3-1993 and 18-6-1993 nor the concept of legitimate expectations of the industry to get subsidy can be validly made the grounds for linking the payment of electricity charges/surcharge with the receipt of the subsidy under the Policy. We, therefore, set aside the above-quoted part of the High Court judgment and the direction given by the High Court quoted above. We allow the writ petition to the above extent.

7. So far as the High Court's direction to the State Government to pay the subsidy in terms of the Policy to the industry, we find no fault with the same and we uphold that part of the judgment.

8. The interim order of the High Court dated 31-3-1993 continued to operate till the final decision of the writ petition by the High Court. In appeal this Court passed order on 4-4-1994 in the following terms:

"Issue notice. Mr Kailash Vasudev accepts the notice on behalf of Respondents 1 and 2. Mr Kailash Vasudev states that so far as the respondent-Company shall pay 75 lakhs out of total dues within 2 weeks from today, failing which there shall be stay of the operation of the impugned judgment qua Electricity Board. List the matter on 25-4-1994."

This Court, therefore, modified the judgment of the High Court in the above-quoted terms on 4-4-1994. It would, therefore, be in the interest of justice that no prejudice in the shape of payment of surcharge be permitted to be caused to the industry from 31-3-1993 till 4-4-1994. We, therefore, direct the Electricity Board not to levy any surcharge for the period from 31-3-1993 to 4-4-1994. At this stage learned counsel for the State of Assam has very fairly stated that the balance of the subsidy due to the industry shall be paid within 3 months from today.

9. We give three weeks to the respondent-industry to pay the total arrears of electricity charges including the surcharge due.

10. With the above direction, the appeal is disposed of. No costs.

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11. In view of the above order, the special leave petition is disposed of.