

(2014) 06 MP CK 0115
In the Madhya Pradesh High Court
Case No : W.A. No. 133/2014

Avn Tubes Limited

APPELLANT

Vs

General Manager (O and M Circle)

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Citation : (2014) 06 MP CK 0115

Hon'ble Judges : A.M. Khanwilkar, C.J;S.K. Gangele, J

Bench : Division Bench

Advocate : P.C. Chandil, Advocate for the Appellant; Vivek Jain, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. Heard, counsel for the parties.
2. This appeal takes exception to the decision of the learned Single Judge dated 9th April 2014 in W.P. No. 768/2014.
3. The appellant had executed agreement for grant of 600 KVA load. However, later on vide application dated 22nd October 2011, the appellant requested the respondent to reduce the said load to 100 KVA. That application was allowed on 24th November 2011, with certain conditions stated in Annexure P/5, which read thus:-
 - (i) The effective date of reduction in Contract Demand would be 01.12.2011.
 - (ii) You would be required to execute a supplementary agreement with our company within a period of one month from date of issue of this letter, otherwise aforesaid approval would stand withdrawn and thereafter request for reduction in contract demand shall be treated as fresh application and dealt with accordingly.
 - (iii) You would be required to tender Meter Security Deposit amounting to Rs. 1,00,000/- (Rs. One lac) only at the time of entering into supplementary agreement.

(iv) The actual effect of reduction in billing shall be allowed only on finalization of supplementary agreement.

(v) You would be required to submit a test report from a competent licensed Electrical Contractor, if alteration of installation is required, to our General Manager (O & M), Morena for record.

(emphasis supplied)

4. The appellant disputed the liability to pay meter security deposit in the sum of Rs. One Lac, contending that it was not the case of installation of new meter but his request was for reduction of the load from 600 KVA to 100 KVA.

5. Since the respondent did not accede to the grievance made by the appellant in this behalf, the appellant approached the Ombudsman, who, in turn, accepted the plea of the appellant that the respondent could not have insisted for meter security deposit amount of Rs. One Lac.

6. As a result of the decision of the Ombudsman, the respondent was obliged to comply with the in principle commitment subject to execution of supplementary agreement by the appellant. The appellant showed willingness to execute the supplementary agreement, but the respondent did not comply with other formalities. Instead, the respondent brought the matter by way of Writ Petition before this court bearing W.P. No. 768/2014. The learned Single Judge answered the issue regarding requirement of deposit of meter security deposit of Rs. One Lac against the respondent and instead upheld the opinion of the Ombudsman that the said condition was untenable. However, the learned Single Judge then proceeded to set aside the decision of the Ombudsman, which was impugned by the respondent in the writ petition on the finding that the Ombudsman had failed to consider the issue as to whether it was a case of deemed approval of the request for reduction of load. Against that decision, the present appeal has been filed by the appellant.

7. According to the appellant, it was unnecessary for the learned Single Judge to dwell upon the said issue having accepted the plea of the appellant on the main ground pertaining to meter security deposit amount. It is submitted that instead of setting aside the decision of the Ombudsman, the learned Single Judge ought to have observed that condition No. (iii) in the communication dated 24th November 2011, Annexure P/5, which was the subject matter of challenge before the Ombudsman, stood effaced and instead the parties be resiled to comply with the other formalities.

8. The respondent on the other hand submits that the permission granted in terms of communication dated 24th November 2011 stood withdrawn on 21st December 2011 and as a result Annexure P/5 can not be acted upon any further.

9. Having considered the rival submissions, we find force in the arguments of the appellant that the learned Single Judge having upheld the finding of the Ombudsman that the condition No. (iii) predicated in the communication dated

24th November 2011, Annexure P/5 is untenable, should have declared that the same stood effaced from the record having been quashed and set aside and then relegated the parties to comply with the other formalities under the said communication. This ought to have been done as a necessary corollary of accepting the plea of the appellant about the illegality of condition No. (iii). The fact that the permission accorded under communication dated 24th November 2011, Annexure P/5 was cancelled on 21st December 2011 will be of no avail as the appellant had challenged the conditions specified in Annexure P/5, in particular Condition No. (iii). This is so because the cancellation of the permission in terms of communication dated 21st December 2011 was on the ground that the appellant had failed to execute the supplementary agreement and comply with the conditions contained in communication dated 24th November 2011, Annexure P/5

10. It is common ground that the appellant had already submitted supplementary agreement and was willing to execute the same sans condition No. (iii) in the communication dated 24th November 2011, Annexure P/5. The appellant having succeeded in challenging that condition before the Ombudsman as also before the learned Single Judge, the consequential order that ought to be passed to mould the relief and do substantial justice in the matter was to relegate the parties to comply with the other formalities in terms of communication dated 24th November 2011, Annexure P/5 instead of setting aside the entire judgment of the Ombudsman.

11. The question regarding whether the permission is deemed to have been granted would not arise for consideration, as in the facts of the present case, the respondent had in fact granted permission vide communication dated 24th November 2011, Annexure P/5. The fact that the said plea was canvassed does not militate against the appellant while considering the wider issue and in particular keeping in mind the consistent view taken by the Ombudsman and also by the learned Single Judge that Condition No. (iii) in the communication dated 24th November 2011, Annexure P/5 is untenable and without authority.

12. The question is: whether at this distance of time, it may be fruitful to relegate the parties to execute the supplementary agreement for the stated period since the subsequent application of the appellant for reduction of load was allowed. This issue arises as a result of subsequent development that later on the appellant made fresh application on 26th December 2012 for reduction of load from 600 KVA to 300 KVA and that application has been allowed. The parties have acted upon the said permission and as a result of which the appellant is availing of the reduced load facility up to 300 KVA. That, however, does not denude the appellant from the relief that he may be entitled for the period during which the permission for reduction of load from 600 KVA to 100 KVA was granted in terms of communication dated 24th November 2011, Annexure P/5, specially when the appellant was willing to comply with all other formalities except the Condition No. (iii) which he had legitimately assailed before the Ombudsman and

succeeded in that challenge. As aforesaid, the learned Single Judge has accepted that challenge and has answered the issue in favour of the appellant.

13. As a result, taking over all view of the matter, in the interest of justice, we deem it appropriate to allow this appeal with the following order:

The operative order passed by the learned Single Judge dated 9th April 2014 in W.P. No. 768/2014 is set aside. Instead, the said writ petition is disposed of with direction to the respondent to take steps to execute supplementary agreement in furtherance of communication dated 24th November 2011, Annexure P/5 and to extend relief to the appellant on that basis until 25th December 2012 as the appellant opted for reduced load up to 300 KVA pursuant to application made on 26th December 2012.

14. Appeal disposed of accordingly with no order as to costs.