(1993) 09 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2389 of 1992 and C.M. No. 6135 of 1993

Capt. (Retd.) Iqbal Singh and others — APPELLANT

Vs

Chandigarh Administration — RESPONDENT

Date of Decision : 07-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Electricity Act, 1910 — Section 23, 51A

Citation : AIR 1994 P&H 13 : (1995) 2 CivCC 92 : (1994) 106 PLR 739

Hon'ble Judges : N.K. Kapoor, J;A.L. Bahri, J

Bench : Division Bench

Advocate : Arun Jain, for the Appellant; Ashok Agarwal and Subhash Goel, for the Respondent

Judgement

A.L. Bahri, J.—Iqbal Singh and others, six petitioners, impugned notification dated May 30, 1991 Annexure P3, issued by the Chandigarh Administration providing higher tariff for the consumers of electricity for non-residential purposes being violative of the provisions of Arts. 14 and 19(1)(g) of the Constitution. The petitioners are dealing in the manufacture of ice cream/ice candy. Their units are registered with the Industries Department of Chandigarh Administration for the last 15/20 years. Annexure P1 is one of the certificates issued in this respect. They received bills issued in January 1992, one of these being Annexure P4, calculating tariff on the basis of the impugned notification Annexure P3. According to them the manufacture of ice cream is an industrial activity, and nence they should be charged on the tariff applicable to the industries. There was no intelligible differentia between the ice cream manufacturing and other industrial units manufacturing other items. Annexure P2 is the certificate issued in favour of one of the petitioners by the General Manager, District Industries Centre, Chandigarh Administration, that ice cream manufacturing has been declared as an industry as defined by Government of India. Earlier the Chandigarh Administration was charging electricity tariff at par with small scale industries from the petitioners. However, after issuing of the notification dated May 30, 1991, with effect from July 1, 1991, revised rates of tariff are being applied to the petitioners-consumers covered by non-residential supplies, who are manufacturing ice candy along with such like consumers of electricity appliances like pumping sets, central air conditioning plants and lifts etc. There was no reasonable classification of equating of their units with sports goods, sewing machines, sodawater factories etc. On notice of motion having been issued the Chandigarh Administration has contested the writ petition by filing reply, primarily taking the stand that the petitioners'' premises were not declared as semi industrial plots. The petitioners could approach the department with necessary proof as was done in the case of M/s. Kapur Traders, petitioner No. 5, and the bills issued to them could be revised. On merits it was pleaded that the respondents were legally entitled to issue such like notification as held by the Supreme Court in Kanoria Chemicals and Industries Ltd. and Another Vs. State of U.P. and Others, , the power vested with the respondent to change the category. For application of tariff the petitioners'' case clearly fall under the non-residential supply category. The petitioners did not submit any proof that their industry was semi-industry or plot on which industry was established was industrial plot. Till that is done they were to be charged at the tariff for non-residential supply. In the replication filed by the petitioners they reiterated the stand as taken up in the was srit petition. They relied upon Annexure P.5 vide which ice manufacturing was declared as an industry. Annexure P.6 is another certificate issued by the District Industries Officer, Union Territory, Chandigarh, declaring M/s. Delite Ice Cream, 2 Bay, Shop-cum-Flat No. 1, Sector 20-C, Chandigarh, a registered small-scale unit. Annexures P.7 and P.8 are the certificates showing that shop Nos. 1 and 10 in Sector 20-C, Chandigarh were meant for General/ Semi-Industrial purposes except Chakki or such like heavy machinery which may vibrate the building. Annexure P.9 is the copy of the order of Chief Administrator, Chandigarh, in the case of resumption of 2-Bay, Shop-cum-Flat site No. 4, Sector 20, Chandigarh, showing that such buildings were meant for semi and general industrial purposes.

2. At the time of arguments, learned counsel for the respondent-Chandigarh Administration vehemently argued that though the stand taken up in the written statement was slightly confusing with respect to nature of the premises the determining factor for applying the tariff for the supply of electricity, however, during arguments it has been stated that the notification Annexure P. 3 is validly issued categorising supply of electricity into three heads : residential, non-residential and industry. The nature of the industry carried on by the petitioners squarely falls in the category of non-residential category which has been covered by the notification Annexure P.3 and the Chandigarh Administration is legally and validly entitled to charge tariff accordingly. We have given due consideration to the respective arguments addressed by the parties and we are of the firm view that the stand taken up at the arguments with respect to the interpretation of the notification Annexure P.3 is correct. At the outset it may be stated that the case of the petitioners will not fall in the category of residential consumers. Their

cases could certainly fall within the category of industry as well as non-residential. If new category of non-residential supply had not been created, obviously the cases of the petitioners would have been covered by the last category i.e. industry. The manufacture of ice cream or ice candy would be covered by the word "industry". Annexure P.3 notification dated May 30, 1991 has been issued u/S. 23 read with S. 51A of the Indian Electricity Act, 1910. This notification is to be given effect from July 1, 1991 and that the electricity is to be charged on the tariff as per Schedule annexed as I and II. The extract of schedule annexed as II which is relevant for the; purposes of the present case reads as under:--

"(v) Schedule N.R.S. Non-residential supply.

1. Availability -- Available for lights, fans, appliances like pumping set/central air conditioning plant/ lift/ welding set/ small electric drill/ heater/ battery charging/ embroidary machine/printing press/ice candy/dry cleaning machines/power press/small motors in non-residential premises such as business houses, cinemas, clubs, public offices, hospitals, Hostels/Motels, Pepartmental stores, shops, Guest Houses, Restaurants, offices, indoor stadium etc.

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3. Tariff :-- 123 paise per KWh for first 100 KWh per month 133 paise per KWh for all above 100 KWh per month."

3. The contention of the learned counsel for the petitioners is that the case of the petitioners would not be covered by non-residential supply category as defined above as the nature of the premises as explained therein would only apply to the installation of small motors and not with the installation of other articles mentioned therein. This contention cannot be accepted. Definition, of non-residential premises as given in the notification reproduced above is not exhaustive. Some of the premises which were intended to be included in the definition have been mentioned. Such like other premises would also be included in the definition of non-residential premises. Furthermore the clause aforesaid applies to non-residential premises wherein such like articles mentioned therein are installed. The premises which are being used by the petitioners are shops situated in Sector 20, Chandigarh. They are known as Bay shops. To have ice candy manufactured in such premises which are non-residential premises would attract applicability of the tariff as described above. The intention of the Government appears to be to create special category with respect to semi-industrial units which are working in non-residential premises as described above. Otherwise the premises used by the petitioners are not residential. The incidence of tariff is consumption of electricity. Primarily it is the purpose for which electricity is used that determines the tariff applicable. Categorisation is made on that principle. It is incidental as to where such purpose is being carried carried on. The clause as a whole is to be read to give correct interpretation that was intended to be given which would make it workable.

4. The contention of the learned counsel for the petitioner is that different kinds of works mentioned in the clause aforesaid indicates that the clause is to apply to semi-industrial units for which Chandigarh Administration had been charging tariff provided for industry. It was in this context that the stand of the Chandigarh Administration in the written statement was that the petitioners'' concerns were not semi-industrial units. Learned counsel has referred to certain certificates issued by different departments of the Chandigarh Administration declaring units of the petitioners as semi-industrial. Carving out of new category as has been done in the impugned order prescribing higher tariff for non-residential supply is arbitrary as other industrial units continue to be charged at a lesser tariff provided for industry. This contention is devoid of merit. The respondents were justified in carving out a sub-category out of a big category. When a category as such is carved out, there would be no discrimination between the consumers covered by such category. Classification of consumers keeping in view the purpose for which electricity is consumed by installation of small machines etc. and that too in non-residential premises cannot be held to be arbitrary. The cases of semi-industrial units as above cannot be compared with big industries who use bulk load of electricity.

5. For the reasons recorded above finding no merit in the writ petition, the same is dismissed. There will be no order as to costs.

6. Petition dismissed.

