(2022) 07 TEL CK 0035

In the Telangana High Court

Case No : Writ Appeal No. 434 Of 2009

Central Power Distribution Company Of A.P.Ltd. APPELLANT

Vs

M/S.Shreya Pet P Ltd. RESPONDENT

Date of Decision : 14-07-2022

Acts Referred:
Electricity (Supply) Act, 1948 — Section 78A, 78A(2)

Citation : (2022) 07 TEL CK 0035

Hon'ble Judges : Ujjal Bhuyan, CJ;Surepalli Nanda, J

Bench : Division Bench

Advocate : R Vinod Reddy

Final Decision : Dismissed

Judgement

1. Heard Mr. R.Vinod Reddy, learned counsel for the appellants and Mr. Shreyas, learned counsel for the respondent.

2. This intra-court appeal has been preferred assailing the legality and validity of the final order dated 22.08.2007 passed by the learned Single Judge allowing W.P.No.4540 of 2003 filed by the respondent.

3. In the writ petition, appellants were arrayed as respondents. Respondent filed the related writ petition questioning the action of the appellants in not extending the benefit of 25% power rebate to the unit of the respondent for a period of three years from September, 1999 in pursuance of G.O.Ms.No.108, dated 20.05.1996, issued by the Industries and Commerce Department of the then Government of Andhra Pradesh. As a consequence, respondent sought for a direction to the appellants to sanction and pay 25% power rebate and to forebear from collecting the additional consumption deposit until extension of the power rebate to the respondent.

4. Writ petition was contested by the appellants by filing counter affidavit. Stand taken in the counter affidavit was that the eligibility certificate was issued to the respondent by the General Manager of District Industries Centre on 25.02.2000

which was after more than two years of the commencement of production. Therefore, in terms of the decision dated 05.11.2002, prayer of the respondent was declined.

5. Learned Single Judge examined Section 78A of the Electricity (Supply) Act, 1948 as well as relevant portion of G.O.Ms.No.108 dated 20.05.1996, whereafter a view was taken that policy decision of the State Government was not hedged by any condition that 25% of the rebate in the power tariff would be available only to those industries which had obtained eligibility certificate within two years from the date of release of supply. In that view of the matter, learned Single Judge held that the decision of the appellants denying the benefit of 25% rebate in power tariff to the respondent was legally unsustainable. Consequently, the writ petition was allowed with a direction to the appellants to extend the benefit of 25% rebate in the power tariff to the respondent from the date of production i.e., 28.10.1999 for a period of three years with a further clarification that respondent would get the consequential benefits.

6. We find that appeal was admitted on 02.04.2009, but no stay was granted.

7. In the hearing today, we queried learned counsel for the appellants as to whether appellants had extended the benefit of 25% rebate to the respondent to which learned counsel for the appellants submitted that he has no instruction regarding extension of such benefit.

8. Paragraphs 6.01 and 6.04 of G.O.Ms.No.108 dated 20.05.1996 are extracted hereunder:

“6. The following are the incentives under this “TARGET-2000” Scheme:

6.01) All New industrial units, whether large, medium or small other than those listed in the Annexure, to be located anywhere in the state of Andhra Pradesh, except within the Municipal Corporation areas of Hyderabad, Vijayawada and Visakhapatnam, and going into commercial production on or after November 15, 1995 are eligible for the following incentives.

* * * * *

6.04) Rebate in Electricity Charges:

All new industries, other than those listed in the Annexure and other than those set up in the Municipal Corporation areas of Hyderabad, Vijayawada and Visakhapatnam, will be eligible for 25% rebate in power bills (both demand and energy) for a period of 3 years from the date of commencement of commercial production. The rebate shall be allowed by the A.P. State Electricity Board in their monthly bills. The maximum total admissible rebate for the 3 years will be Rs. 50.00 lakhs in respect of Large and Medium Industries and Rs. 30.00 lakhs in respect of small scale industries.

Note: The existing procedure of issuing eligibility certificate by the District Industries Centre and admission of claim by Andhra Pradesh State Electricity

Board will continue.”

9. Paragraph 6.01 says that all new industrial units, whether large, medium or small, except those listed in the Annexure and located in the State of Andhra Pradesh, except within the municipal limits of Hyderabad, Vijayawada and Visakhapatnam and going into commercial production on or after 15.11.1995 would be eligible for the incentives mentioned in the subsequent paragraphs, including paragraph 6.04, which we have extracted above.

10. Paragraph 6.04 says that all such new industries would be eligible for 25% rebate in power bills, both demand and energy, for a period of three years from the date of commencement of commercial production. Such rebate shall be allowed by the State Electricity Board in their monthly bills. However, a cap was put to the extent that the maximum total admissible rebate for the period of three years would be Rs.50.00 lakhs in respect of large and medium industries and Rs.30.00 lakhs in respect of small scale industries.

11. Learned Single Judge took the view that above policy decision was not hedged by the condition that 25% rebate would be given to only those industries which had obtained eligibility certificate within two years from the date of release of supply. Ultimately, the writ petition was allowed in the following terms:

“I have carefully studied both the documents. In my opinion, the so-called policy contained in letter dated 16.07.1994 cannot be made basis for denying the benefit of rebate in power tariff to the industries covered by G.O.Ms.No.108, dated 20.05.1996 on the ground that the eligibility certificate was issued after two years of releasing the connection. It is to be noted that letter dated 16.07.1994 merely communicates to the Government the Board’s disinclination to grant 25% rebate to those industries, which could not obtain eligibility certificate within two years. The Court can reasonably presume that this objection of the Board must have been considered by the State Government while issuing policy direction in terms of Section 78A of the Act. If the Board had any reservation or objection to the policy direction issued by the Government, then it could have raised a dispute in terms of sub-section (2) of Section 78A. However, the fact of the matter is that no such dispute was raised by the Board. Therefore, the Board and officers subordinate to it cannot act in violation of the policy contained in G.O.Ms.No.108, dated 20.05.1996, which is binding on them. As a sequel to this, it must be held that letter dated 23.01.2003 sent by the Superintending Engineer, Operation Circle, North, Hyderabad for denying the benefit of 25% rebate in power tariff to the petitioner is legally unsustainable.

In the result, the writ petition is allowed. The decision taken by the respondents not to extend the benefit of 25% rebate in power tariff to the petitioner is declared illegal and quashed. The respondents are directed to extend the benefit of 25% rebate in power tariff to the petitioner from the date of production i.e. 28.10.1999 for a period of three years. The petitioner shall get consequential benefits.”

12. In view of the discussions made above, we do not find any error or infirmity with the view taken by the learned Single Judge. G.O.Ms.No.108, dated 20.05.1996, contains beneficial policy decision of the State Government extending benefit to newly established industrial units in the State. The reason for providing such benefit is to encourage setting up of industries. It is trite that insofar beneficial provisions are concerned the Courts ordinarily lean towards an interpretation which is favourable to the beneficiaries. At this stage, learned counsel for the appellants has drawn our attention to page No.43 of the paper book which contains certain instructions dated 03.04.1997 of the Andhra Pradesh State Electricity Board. As per clause (b) of the said instructions, a new owner is not entitled for 25% rebate on power charges.

13. G.O.Ms.No.108, dated 20.05.1996, contains policy decision of the State. It was not open for the Andhra Pradesh State Electricity Board to dilute the beneficial provisions of the State policy by bringing in restrictive conditions which was not intended by the State. We, therefore, are not persuaded to place any reliance on the instructions of Andhra Pradesh State Electricity Board, dated 03.04.1997.

14. On due consideration, we do not find any error or infirmity in the view taken by the learned Single Judge.

15. Consequently, writ appeal is dismissed.

16. Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.