
(2014) 06 SHI CK 0105
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 4465 of 2009

Deluxe Enterprises

APPELLANT

Vs

H.P.S.E.B.

RESPONDENT

Date of Decision : 06-06-2014

Acts Referred:

Citation : (2014) 06 SHI CK 0105

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Advocate for the Appellant; Satyan Vaidya, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—The petitioner is an industrial Unit. It receives power supply from the respondents. The petitioner is aggrieved by the orders comprised in Annexures P-1 dated 18.4.2007, P-2 dated 29.1.2008, P-3 dated 5.8.2008 and P-8 dated 19.11.2009. The petitioner prays that the annexures, aforesaid, be quashed and set aside. The petitioner prays, that a further direction be rendered to the respondents, to, levy tariff on the electricity consumed by the petitioner-unit from 1.11.2001 to 20.8.2004, on, the basis of maximum recorded demand during any of the months in the years falling, in, the aforesaid period.

2. The respondents resist and repudiate the contentions of the petitioner. The controversy inter-se the parties at contest before this Court, is qua, the tenability of tariff, on, the electricity consumed by the petitioner-unit. Admittedly, the petitioner, is, a consumer of electricity under the respondents. In an agreement concluded inter-se the parties, existing at page 109 of the paper book, the petitioner-unit, had, agreed/accepted, to pay electricity tariff to the respondents as would come to be levied, by them, in, accordance with the operable rules, at, the prevalent time. The petitioner, too, does not controvert or contest the fact, that, it was under an enjoined legal obligation to defray to the respondents/suppliers, of electricity to its unit at Nalagarh, tariff at, the prevalent rates. In

face thereof, now it is imperative to determine, as, to whether the respondent, had levied tariff consumed by the petitioner-unit, in, accordance with the prevalent rates. The tariff, as, demanded by the respondent from the petitioner-unit, for, consumption of electricity by it, is, on the strength, of, Annexure RS-A. A perusal of the reply of the respondents and of the aforesaid annexures, divulges, the fact that the annexures aforesaid ordain the levy, of, electricity tariff by the petitioner-Unit, on a two way basis, in as much, as, the petitioner-unit was obliged to pay both demand charges and energy charges. Demand charges have been conveyed, in, Annexure RS-A, to, imply that it would be levied, on, the actual maximum recorded demand, in, a month in any 30 minutes interval, in, a month or 80% of the contract demand whichever, is, higher.

3. The petitioner-Unit does not contest the fact that it was legally obliged, in, consonance with the terms of the concluded contract inter se the parties, to defray the electricity tariff to the respondents at the prevalent rates, however, it, contests the fact of it being under a duty under law, to, defray to the respondents, the demand charges at the rate, as, contemplated, in, Annexure RS-A. For clinching the contest qua the facet aforesaid, it is imperative to determine whether the petitioner-unit had agreed or contracted to defray to the respondents the electricity tariff, as ordained in Annexure RS-A. The Prevalence of Annexure RS-A, at the apposite stage, has, to be determined, on, the strength of the given fact, whether, it was in vogue or in-force during the disputed period, in as much, as, from 1-11-2001 till August, 2004. On a perusal of the contract entered inter-se the parties, comprised, at, page 111 of the writ book, discloses that the assured contracted demand by the petitioner Unit, for, supply of electricity, to it, was 495 KVA. The said agreement remained, in force, as well, as, in operation during the disputed period.

4. Even though, there, also, exists another agreement at page 113 of the paper book, which, too, comprises a concluded contract inter-se the parties at contest, manifesting the fact of the petitioner-unit demanding an assured contracted supply of electricity to it to the extent of 600 KVA, on, which nature of demand the concomitant charges, as, envisaged in Annexure RS-F, were to be levied. Nonetheless, yet it having come to be concluded after the expiry/elapse of the disputed period, levy of tariff by the respondents on the assured demand of 600 KVA by applying the principle of tariff applicable, to, demand charges, is, of no relevance.

5. On a consideration of the above material on record, this Court, is, of the firm and confident view that given the acceptance, by, the petitioner-Unit, to defray to the respondents, prevalent rates of electricity tariff, which acceptance is comprised, in, the operable contract qua the disputed period, existing at page 109 of the paper book, whereby, the petitioner-unit had sought assured contract demand of supply of electricity to the tune of 495 KVA. Hence, given the acceptance by the petitioner-unit in a concluded contract inter-se the parties and it hence, displaying its readiness and willingness, as well, as, accepting the tariff

rates, as, applicable. In sequel when Annexure RS-F, which also portrays the mode of raising or levy of tariff by the respondents qua the electricity consumed by the petitioner-unit, as such, given the factum of the petitioner agreeing to or abide by the prevalent rates of electricity tariff conveys, its acquiescence to hence, accept the rates of electricity tariff postulated, in, Annexure RS-F. The respondents by applying the two way mode, of levying electricity tariff, in as much, as, by raising demand, both, qua the energy charges, as well, as qua demand charges, its, hence, constituting and comprising the prevalent rates of levy of tariff which mode of rates of tariff has been accepted by the petitioner in a concluded contract inter-se the parties at contest. Therefore, the petitioner-unit is estopped from contending that the levy of tariff on the prevalent rates comprised, in Annexure RS-F are either arbitrary or capricious, rather the raising of electricity tariff by the respondents for the electricity consumed by the petitioner-unit is anvilled upon firm and formidable material existing on record. Obviously the tariff as raised by the respondents is to be defrayed by the petitioner-unit. Consequently, there is no merit in the writ petition, same is accordingly dismissed alongwith all pending applications.