(2009) 04 UK CK 0005

In the Uttarakhand High Court

Flex Foods Ltd. APPELLANT

Vs

Appellate Comittee and Another RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Citation : AIR 2009 Utt 58 : (2011) 1 UC 163

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—The petitioner is a limited company incorporated under the Indian Companies Act, 1956. The company is engaged in cultivation of mushrooms, which is done at a farm In Village Chhiddarwala, Dehradun. The mushrooms, which are subsequently processed and packed in a factory needs continuous supply of electricity. Therefore, in the year, 1991, the petitioner had applied for two power connections; one for 1600 KVA for its mushroom cultivation at Village Chhiddarwala and another for 900 KVA for preservation and processing of mushroom fruits and vegetables at Lal Thappar. Both these places are in Dehradun, Uttarakhand.

2. According to the petitioner for technical reasons, but primarily due to fear of overloading, he was not given electricity connection directly from Bhaniawala sub-station. Consequently, the petitioner pleaded before the Power Corporation that it may be given connection by extending 33KV Independent feeder of M/s. Birla Yamaha Limited. At this juncture, It is necessary to elaborate the very concept of an ''independent feeder'' as it goes to the root of the matter. ''Independent feeder'' is generally used by factories which need a constant and uninterrupted high voltage supply of electricity and in order to make it feasible, the only method is that such factory should not be connected with usual common feeders such as the urban feeder or the rural feeder, which transmit electricity to ordinary consumers, but a special facility is given, whereby the power supply of a particular capacity is directly given to such factory from a sub-station.

3. All the same, before such a facility could be given to the petitioner, the erstwhile power department (now the Uttarakhand Power Corporation Limited and for the sake of convenience will be referred to as "Corporation") made a feasibility report and the feasibility report gave a finding that the petitioner''s factories can be given electricity by tapping electricity from the Birla Yamaha Ltd., which was getting electricity by an ''independent feeder''. The requirement was a "No Objection Certificate" from Birla Yamaha Limited in favour of the petitioner, which was done and submitted before the Corporation, an agreement was signed between the petitioner and the Birla Yamaha Limited, whereby this special arrangement could be made possible after the petitioner deposits a cheque of Rs. 15,00,000 (Fifteen Lacs) as interest free refundable deposit with Birla Yamaha Ltd. All this was in the year, 1991. The petitioner subsequently started getting the supply of electricity through "Birla Yamaha Limited", which in turn was getting electricity by an "independent feeder".

4. Meanwhile, a great number of reforms were made in the field of electricity and the law relating to electricity underwent a major change inasmuch as the tariff was now to be fixed by the body known as a Regulatory Commission. On 9th August, 2000, the Regulatory Commission imposed 15% surcharge on all those consumers, who were getting electricity through an "independent feeder". It is this surcharge of 15% by which the petitioner is aggrieved and the main contention of the petitioner is that he is not liable to pay 15% surcharge as it is not consuming electricity through an independent feeder. Reference has been made before this Court of Uttar Pradesh Electricity Supply Code, 2002, whereby the word ''independent feeder'' has been defined as follows:

Independent Feeder means a feeder constructed at the cost of a consumer and supplying electricity to only that consumer

5. The thrust of argument of Sri V.K. Kohli, Senior Advocate appearing for the petitioner, therefore, is that an ''independent feeder'' would be a feeder in which electricity is supplied only to a single consumer at his own cost relying upon the words "to only that consumer". Now since in the present case, the direct supply of electricity from a sub-station is for Birla Yamaha Limited, which is then extended to the petitioner''s factories, the petitioner would not be called as using electricity through an "independent feeder". This special category of service from the sub-station is primarily to "Birla Yamaha Limited" and only "Birla Yamaha Limited" can be called as a consumer getting electricity by an "independent feeder" as the definition of an "independent feeder" states from a sub-station "to only that consumer". Petitioner would then argue that "that consumer" is "Birla Yamaha Limited". Petitioner is not covered under that definition and hence no surcharge can be levied against it. Before this Court there is no dispute between Birla Yamaha Limited and the petitioner. The presumption is drawn that Birla Yamaha Limited is being treated as a consumer getting electricity as an independent feeder. What Is to be seen here is as to whether the petitioner can be treated as that special class or not?

6. Undoubtedly, a straight jacket dictionary meaning and as defined under the electricity code, the petitioner may not be covered under the definition of ''independent feeder''. But will it save the petitioner? This is the question. The short answer to this is that it is not a narrow dictionary meaning which has to be applied in the present case, but what has to be seen is the kind of service, the kind of status and in fact the quality of service, the petitioner was enjoying and whether it takes the petitioner to a different, or a special class. If the petitioner is getting a special treatment, then the narrow straitjacket definition of ''independent feeder'' will not come for the rescue of the petitioner.

7. The senior counsel for the Corporation, Sri Alok Singh, has submitted that under the tariff imposed by the Regulatory Commission, which the petitioner has annexed as Annexure 6 to the writ petition, a rate of charge is given as (A), (B) and (C). There are different rates for different categories of consumers. For consumers getting power supply on an independent feeder emanating from 400/200/132 KV sub-station, further 15% surcharge was to be taken in case they have the assured supply of minimum 500 hours in a month and in case of short fall in the guaranteed hours of the power supply, a rebate at the rate of 1% per ten hour or part thereof is admissible on the total amount as computed under rate of charge. Now, it is not the case of the petitioner that it was not getting the assured supply of minimum 500 hours in a month. The case of the petitioner is that it is not getting the electricity from an independent feeder as the word ''independent feeder'' is only limited to one single individual, who consumes electricity directly from sub-station. Inter alia it has been the case of the Corporation that the Corporation vide its Circular dated 16-6-1980 had declared that more than one consumers can be given a facility from an independent feeder and they will be liable to pay charges applicable to an independent feeder. However, merely because the definition of an "independent feeder" has been widened vide a circular, no benefit will be given to the Corporation as what has to be seen is the qualitative difference between an "ordinary feeder service" and an "independent feeder service".

8. Apart from the above, during the course of argument, learned Counsel for Corporation has submitted that in case a narrow definition of the phrase ''independent feeder'' is to be followed then such a definition does not stand to reason arid if such a meaning has to be adopted and followed, then for every consumer, who/wants to avail the services of an ''independent feeder'' will be given power connection by a separate "bay" which would mean a great wastage of land, manpower and equipments. Moreover there would not be enough space to accommodate so many "bays". On the other hand, the tapping of electric current from one consumer of independent feeder to another depending upon the technical feasibility of the same not only stand to reason, but is also practical as long as the consumer who is getting electricity by way of this arrangement gets an uninterrupted supply of electricity, which is the prime requirement.

9. The petitioner had earlier filed an appeal before the Appellate Committee. The

Appellate Committee before deciding the case and after hearing the parties, framed following two issues:

i) Whether the feeder supplying electricity to the units of the appellant is independent feeder and whether independent feeder surcharge Is leviable on the appellant.

ii) Whether the independent feeder surcharge levied from the appellant''s unit is to be set aside being not as per the provisions of the applicable tariff.

10. Both the aforesaid two issues were decided vide order dated 18th December, 2003 against the petitioner and in favour of the Corporation. The logic given by the Appellate Committee was that the Birla Yamaha Limited as well as two plants of M/s. Flex Foods Limited (Petitioner) are actually getting supply through 33 KV independent feeder emanating from 220 KV sub-station, Virbhadra, Rishikesh and two units of the petitioner will be treated as independent feeder as per the policy as referred by the erstwhile U.P. State Electricity Board. Since technically the electricity is being supplied to the petitioner''s units by way of an independent feeder, they are liable to pay surcharge. It also said that the definition of "independent feeder" includes the cases such as that of the petitioner as the definition of "independent feeder" stands widened by a subsequent circular.

11. Aggrieved, the petitioner has filed present writ petition. Same question, as agitated before the Appellate Committee, has been agitated before this Court, wherein it has been stated that the Appellate Committee had merely relied upon the circular of the erstwhile U.P. State Electricity Board, whereby, even if the electricity is tapped from a Unit getting electricity from an independent feeder, it will also be treated to electricity getting through an independent feeder and it has been stated that the circular cannot override the definition of "independent feeder" as given in the Code. As it has already been referred above this Court will have little reliance on this circular, not only as the definition given in the Code cannot be varied or broadened by a mere circular but also due to the reason that what would actually matter is the quality of service.

12. Much reliance has been placed by the petitioner on the strict interpretation of the definition of independent feeder given in the Electricity Code as referred above. However, this Court is not inclined to apply the strict definition of an ''independent feeder as given in the Code. It is not the phrase ''independent feeder'' which matters, but what matters is the quality of supply and the quality of service, which the petitioner''s units were getting. Indeed the petitioner was getting a special service and therefore, he is in a special class.

13. Admittedly, the petitioner was not getting electricity as a ''rural feeder'' or an ''urban feeder'', it was however getting electricity by a special or an independent feeder. In the present case the electricity was being supplied to the petitioner''s units by an Independent sub-station, although through Birla Yamaha Limited. But this is an arrangement, which the petitioner undertook on his own request and

thereafter the corporation after inspection made a feasibility report in its favour. It is the case of the petitioner that it needs a continuous supply of electricity for preservation and processing work, which goes on in its factories. It is, therefore, clear that what the petitioner requires is a special kind of service devoid of any load-shedding or power shortage. This could only be given to the petitioner by an independent feeder, a facility which the petitioner continues to take.

14. It is indeed true that in Matters relating to taxation a strict interpreation of the words and phrases in the statute has to be given. Although the present matter does not strictly relate to taxation however, it is a matter where surcharge has been levied on the petitioner and by and large the same interpretations as relating to taxing statute would apply in the present case as well. Therefore, the counsel for the petitioner would argue that a strict definition heeds to be applied in the present case and since the definition of "independent feeder" would mean only those cases where electricity supply is given from sub-station directly only that consumer, the petitioner is outside the purview of "independent feeder". It is true that a strict definition in taxing masters needs to be applied and there is no room for equity in such matters. However, the rule of strict construction does not permit the petitioner to evade a liability particularly where both prudence and logic are against the exemption of this liability will indirectly also fasten additional burden on ordinary consumers, who never had the benefit of this special facility. This Court is of the view that on a realistic interpretation of even the definition as given in the electricity code, the petitioner stands covered and therefore, he is liable to pay the surcharge. The reliance upon a straitjacket and stringent meaning of ''independent feeder'' is not acceptable and in fact incorrect. But what has been the overriding influence on this Court is the fact that the petitioner has availed a special service by way of an ''independent feeder'' by getting uninterrupted power supply. Special hence the petitioner is liable to pay the surcharge. Therefore, this Court finds no anomaly in realization of surcharge from the justified. For these reasons also there is no scope dated 18th December, 2003 passed by the respondent No. 1.

15. For the reasons stated above, writ petition stands dismissed. No. order as to costs.