

(2014) 04 MP CK 0089
In the Madhya Pradesh High Court
Case No : W.P. No. 768 of 2014

General Manager (O and M Circle), M.P. Madhya Kshetra
Vidyut Vitran Co. Ltd.

APPELLANT

Vs

AVN Tubes Ltd.

RESPONDENT

Date of Decision : 09-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2014) 4 MPJR 242 : (2014) 3 MPLJ 223

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

Sujoy Paul, J.—This petition filed under Article 226/227 of the Constitution challenges the order passed by the Electricity Ombudsman of Madhya Pradesh dated 13-1-2014. The said authority in Case No. LOO32113 allowed the appeal of the respondent/consumer. Brief facts necessary for the adjudication of this matter are as under:--

The respondent preferred an application Annexure P/3 dated 17-10-2011 before the Executive Engineer of petitioner's department praying for reduction of contract demand from 600 KVA to 100 KVA. Admittedly, this application was submitted before the Executive Engineer on 22-10-2011. In turn, the matter was sent before the competent authority i.e. Chief General Manager (GR). The said authority by order dated 24-11-2011 (Annexure P/5) decided the application dated 2-11-2011. The said authority accepted the request for reduction in contract demand from 600 KVA to 100 KVA subject to certain conditions. Thereafter by communication dated 21-12-2012 petitioner informed the respondent that since he did not fulfil the conditions of the order Annexure P/5 and therefore, the permission letter is automatically cancelled. Respondent

feeling aggrieved by this order, preferred complaint/representation before the Electricity Consumer Grievances Redressal Forum (Forum). The petitioner filed their reply before the Forum. Forum by order dated 17-4-2013 Annexure P/2 rejected the complaint of the respondent/consumer. Feeling dissatisfied with this order, appeal was preferred before Electricity Ombudsman by the respondent. Petitioner filed their response before the Ombudsman. Ombudsman by the impugned order dated 13-1-2014 allowed the appeal and directed that as per clause 7.11 of M.P. Electricity Supply Code, 2004 it will be presumed that deemed permission was granted to the respondent herein for reduction of contract demand from 600 KVA to 100 KVA. Thus, it was directed that from 1-12-2011 the consumer/respondent will be entitled to get the benefit of reduction of load up to 100 KVA. However, it was made clear that if consumer has consumed the electricity more than aforesaid limit, it will be open to the petitioner to recover the amount of excess tariff.

2. Shri Vivek Jain, learned counsel for the petitioner, criticized the order passed by Ombudsman. It is contended that Annexure P/5 makes it clear that an express permission was granted to the respondent. However the said permission was subject to fulfilling certain conditions. Those conditions were not fulfilled, therefore, permission cannot be enforced. By taking this Court to clause 7.11 of Supply Code, it is contended that the Ombudsman has erred in holding that respondent received deemed permission after 30 days. He submits that respondent has not submitted any written notice to the licensee after 15 days of his earlier application. In absence thereto, clause 7.11(b) cannot be pressed into service. He urged that the Ombudsman has committed an error of law in assuming grant of deemed permission after 30 days from the date of submission of application i.e. 22-10-2011.

3. Shri Jain further submitted that as per clause 1.9 of M. P. Electricity Regulatory Commission (Security Deposit) (Revision-I) Regulations, 2009 (hereinafter called as "Electricity Regulation") petitioner has not committed any error of law in directing the respondent to deposit Meter Security Deposit (MSD). In absence of depositing said MSD, the conditional permission so granted cannot be made applicable. It is further submitted that respondent preferred yet another application dated 26-12-2012. In this application the respondent prayed that the contract demand be reduced from 600 KVA to 300 KVA. This application was considered vide Annexure P/8 and permission was granted to reduce the load. Pursuant to this permission, the respondent is getting benefit of reduction of load from 600 KVA to 300 KVA. Shri Jain submits that interestingly, the application dated 26-12-2012 is preferred for reducing load from 600 KVA to 300 KVA and on the same date complaint was preferred before the Forum. He submits that even if respondent succeeds in this matter, by no stretch of imagination the benefit of Annexure P/5 or deemed permission can be extended and continued after the date of permission granted by Annexure P/8. Putting it differently, it is contended that the petitioner has granted express conditional permission vide Annexure P/8 dated 14-1-2013, whereby contract demand is reduced from 600

KVA to 300 KVA. This order has already been made applicable. This order although was brought to the notice of Commission and Ombudsman, the Ombudsman has not considered the impact of Annexure P/8.

4. Per Contra, Shri Chandil drew attention of this Court on clause 1.9 of Electricity Regulation. He submits that a bare perusal of this clause makes it crystal clear that MSD is required to be deposited at the time of new installation of meter. In the case of respondent/industry, admittedly, the meter was already functional. This contention is fortified by relying on para 5.13 of the writ petition wherein the petitioner himself has mentioned the load which was recorded by the meter installed in the respondent's industry. He submits that condition of depositing MSD runs contrary to clause 1.9 and Ombudsman has not committed any error of law in holding that such condition was arbitrary and unjustifiable.

5. Shri Chandil further submits that clause 7.11(c) of the Code makes it clear that the reduction in contract demand comes into effect automatically from the first day of month following the month in which the decision for reduction in contract demand is communicated or deemed permission is granted. He further submits that clause 7.11(b) employs the word "may" for the consumer, who at his choice may prefer his representation/notice before the licensee. Whether or not such representation/notice is preferred by the licensee, after 30 days the permission shall be deemed to have been granted. In other words, it is urged by Shri Chandil that the word "may" used in clause 7.11(b) shows that it is optional for the consumer to prefer representation/notice after 15 days. It is not mandatory on his part to undertake the aforesaid exercise of preferring representation/notice. He further submits that whether or not such representation/notice is preferred by the consumer after 15 days, after completion of 30 days from the date of initial application, deemed permission shall be treated to have been granted.

6. No other point is pressed by the parties.

7. I have heard learned counsel for the parties and perused the record.

8. The permission dated 24-11-2011 (Annexure P/5) shows that it was subject to following conditions:--

(i) The effective date of reduction in Contract Demand would be 1-12-2011.

(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 lakh) 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 and M), Morena for record.

9. It was made clear that subject to fulfilling aforesaid conditions, the permission is granted/application is accepted. On fulfilling the conditions aforesaid, the effective date of reduction in contract demand would be 1-12-2011. Learned Ombudsman opined that demand of Meter Security Deposit (MSD) is wholly unjustified. The clause 1.9 (page 22), which deals with MSD, reads as under:--

"1.9. The Licensee may collect Meter Security Deposit (MSD). In respect of new installations, Meter Security Deposit is payable after communication of sanction of power supply and before servicing of the installation towards the Meter/Metering equipment at the rates as per schedule of rates prescribed by the Licensee from time to time with approval of Commission. If the applicant for a new connection fails to deposit such Security, the Distribution Licensee may, if he thinks fit, refuse to commence the supply of electricity for the period during which the failure continues."

10. A simple reading of aforesaid provision shows that MSD can be made applicable in respect of "new installations". It is not in dispute that the respondent was already having a meter/installation. It is not the case of the petitioner that on reduction of load the respondent was required to put a new installation/change the existing installation. In other words, no provision is pointed out to the Court to show that on reduction of load; consumer needs to change the meter. Apart from this, para 5.13 of the petition shows that the measurement of load is recorded by the petitioner in the industry of respondent on the basis of existing installation/meter. Thus, the demand of security deposit is rightly held to be unjustifiable by the Ombudsman. The finding of Ombudsman to this extent is affirmed.

11. Interference is made by Ombudsman by interpreting clause 7.11 of the Code. It is opined that the respondent preferred an application for reduction in contract demand on 22-10-2011 and w.e.f. 1-10-11 by operation of clause 7.11(b) of the Code, the permission shall be treated to be granted w.e.f. 1-12-2011. To analyze this finding, it is apt to quote 7.11 of the Code.

"7.11 On receipt of application for reduction in contract demand, the Licensee shall take the following steps:

"(a) The licensee shall consider the grounds stated in the application and allow the application or convey the reasons for non-consideration in writing within a period of 15 days.

(b) If the application is not decided by the licensee within above mentioned period of 15 days, the consumer may, by a written notice to the licensee, draw its attention to the matter and if no decision is still communicated to him within

the period of further 15 days, the permission of reduction of contract demand shall be deemed to have been granted.

(c) The reduction in Contract Demand shall take effect from the first day of the month following the month in which the decision for reduction in contract demand is communicated or deemed permission is granted."

Similarly, clause 7.14 reads as under:--

"7.14 When reduction of contract demand is agreed to or deemed permission is granted, a supplementary agreement shall be executed."

12. Reverting back to the conditional permission dated 24-11-2011 (Annexure P/5) would show that respondent was required to execute a supplementary agreement with the company within one month from 24-11-2011 and in addition, was required to deposit MSD. Even if the condition of MSD is ignored by treating it as unjustifiable, the condition Nos. 2 and 4 aforesaid, in Annexure P/5, shows that respondent was required to execute a supplementary agreement with the company and it was made clear that actual act of reduction in billing would apply only on finalization of supplementary agreement.

13. A minute reading of clause 7.14 aforesaid makes it clear that it is in two fold. First portion deals with the aspect when reduction of contract demand is "agreed" whereas, second portion deals with "deemed permission". The petitioner by issuing Annexure P/5, infact "agreed" to the request of respondent but it was subject to condition that respondent will execute a supplementary agreement. Such condition imposed is not outside the scope of clause 7.14. In absence of fulfilling the said condition, the express conditional permission cannot take effect.

14. A plain reading of clause 7.11 shows that it has three necessary steps. Firstly, the consumer needs to prefer application for reduction in contract demand. Licensee needs to consider the ground stated in the application and allow application or inform the reasons for non-consideration in writing within 15 days. Secondly, if application is not decided by licensee within aforesaid period of 15 days, the consumer may sent a written notice to the licensee by drawing his attention to the matter and if no decision is still communicated to him within the period of further 15 days, the permission of reduction of contract demand shall be treated to have been granted. Thirdly, the reduction in contract demand shall be from the first day of the month following the month in which the decision is expressly or otherwise granted.

15. A minute reading of clause 7.11(b) shows that if application of consumer is not decided by the Licensee within 15 days, it enable the consumer to submit a written notice. However, the provision does not prescribe any time limit for undertaking this exercise of submission of written notice by the respondent. Putting it differently, at the first place as per clause 7.11(b), the licensee needs to take a decision on the application for reduction in contract demand within 15

days. Thereafter remaining portion of this provision enables the consumer to submit a written notice to the licensee. However, after completion of initial 15 days, which are fixed for taking a decision by the licensee, no time limit is prescribed for the consumer to submit a written notice. Thereafter it is mentioned that if no decision is still communicated to him within the period of further 15 days, the permission of reduction in contract demand shall be regulated by deeming clause.

16. A microscopic reading of aforesaid provision makes two things clear. Firstly, it is open to the consumer to submit a written notice before the licensee after giving 15 days time to the licensee to take final decision on his application. Secondly, no time limit for submitting such written notice is prescribed. It is important to note that words "further 15 days time" employed in this provision makes it clear that these 15 days are to be counted from the date of submission of such written notice. In other words, 15 days time needs to be counted from the date written notice is submitted by the consumer. In the present case, admittedly, no written notice is submitted by the consumer. Even if I agree with the contention of Shri Chandil that it is not mandatory for consumer to submit the said written notice, yet it is clear that clause 7.11(b) will not take effect, unless such written notice is submitted by the consumer. Thus, this provision would be applicable only when consumer completes his part of exercise.

17. No doubt plain meaning of word "may" sounds like directory or optional. As stated by Cotton, L.J.: "May" can never mean must, so long as the English Language retains its meaning; but it gives a power and then it may be a question, in what cases, when any authority or body has a power given it by the word "may", it becomes its duty to exercise that power (See; In re, Nichols vs. Baker, 59 L.J. Ch. 661, p. 663). As observed by Lord Cairns: "There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so" (See: Julis vs. Lord Bishop of Oxford, (1874-80) All ER Rep. 43). Lord Blackburn stated that "the enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right." (See: Ibid, p.49; referred to in Punjab Sikh Regular Motor Service, Moudhapara Vs. The Regional Transport Authority, Raipur and Another, In the words of Beg, J.: "If the conditions in which the power is to be exercised in particular cases are also specified by a statute then, on the fulfilment of those conditions, the power conferred becomes annexed with the duty to exercise in that manner (See: The Official Liquidator Vs. Dharti Dhan (P) Ltd., (See page 468 and 469 of Principles of Statutory Interpretation, 12th Edition, 2010, by Justice G.P. Singh)

The Apex Court in L. Hirday Narain Vs. Income Tax Officer, Bareilly, opined as

under:

"Even if the words used in the statute are prima facie enabling, the Courts will readily infer a duty to exercise its power which is invested in aid of enforcement of a right -public or private - of citizen."

18. In the context the word "may" is used in clause 7.11(b) it would be clear that it gives a duty to the consumer to submit a written notice if he wants to enjoy the benefit of deemed permission. If no such notice is given by the consumer, there would be no question of counting further 15 days therefrom and hence, the exercise which is necessary for grant of deemed permission, would not be satisfied.

19. In view of aforesaid legal position, it is clear that when the statute prescribes to submit the written notice in a particular manner, only on fulfilment of that condition, the exercise would be complete and deemed permission can be assumed. Learned Ombudsman has not dealt with this important aspect and assumed that after submission of first application Annexure P/3, dated 22-10-2011, no decision was taken and one month was over on 22-11-2011, thus, by invoking clause (c) of 7.11 treated it to be a deemed permission. To my understanding this finding is incorrect. Clause (c) can be pressed into service only when conditions of clause a and b are satisfied. At the cost of repetition, it is made clear that respondent/consumer has not satisfied the condition of submission of written notice and therefore, the necessary ingredients for assuming deemed permission were not satisfied.

20. Thus, in my view, learned Ombudsman has erred in assuming that deemed permission is granted under Clause 7.11(b) aforesaid. For this reason, the impugned order became vulnerable and liable to be interfered with. Since this question, which goes to the root of the matter, is decided against the respondent, I find no reason to deal with other contentions raised by the parties. On the basis of aforesaid, impugned order dated 13-1-2014 (Annexure P/1) is set aside. Petition is allowed no costs.