(2001) 07 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

G.M.EYEWEAR PVT. LTD. — APPELLANT

Vs

U.P.State Electricity Board — RESPONDENT

Date of Decision : 02-07-2001

Acts Referred:

Citation : 2001 1 CPC 611 : 2002 3 CPJ 69

Hon'ble Judges : C.M.Nayar , Moksh Mahajan J.

Final Decision : N.O.E. discharged

Judgement

1. THE complainant/informant is a private limited Company engaged in the business of manufacture and export of metal, carbon, and polyamide spectacle frames. It applied for electricity connection for 79.00 H.P. in 1995. This was sanctioned to it. It was however found that not only the bills issued were raised on the basis of minimum load irrespective of the number of units consumed, but also they were false and frivolous showing exorbitant sum of money and that too without deducting the payments already made. On account of overall recession in the market, the complainant/informant applied for reduction of load from 79 H.P. to 39 H.P. in June, 1998. Not only the same was not allowed, the billing charges raised were on the basis of 79 H.P. Even charging Rs. 400/- per H.P. for reduction of load is stated to be per se illegal. By its this activity the respondent authority i.e. U.P. State Electricity Board is contended to have imposed unjustified costs on the complainant/informant for which inquiry on the matter is prayed to be made and the respondent authority to be restrained from adopting and indulging in such like trade practices.

2. AFTER being satisfied that prima facie a case has been made out against the respondent authority, the Commission treated the aforesaid complaint as an information and issued a Notice of Enquiry under Section 10(a)(i) as well as under Sections 36A, 36B(a) read with Section 37 and Section 36D of the Monopolies and Restrictive Trade Practices Act, 1969 (for short the Act). Pursuant to the aforesaid notice, the respondent authority contended that the complaint is not maintainable in view of Section 37(3) read with Sections 38(I) and (K) of the

Act. The U.P. State Electricity Board has since been trifurcated on 14/15.1.2000 and the work of transmission and distribution of electrical energy has been entrusted to the U.P. Power Corporation Limited - a successor of U.P. State Electricity Board. Without prejudice to the aforesaid contention, it is further stated that in exercise of its statutory power under Sections 49 and 79, the U.P. State Electricity Board has framed Electricity Supply (Consumer) Regulations, 1984 as notified in U.P. Gazette on 14.6.1985. The regulations have statutory force as held in the case of Hyderabad Vanaspati Ltd. v. APSEB, reported in IV (1998) SLT 182=1998 (4) SCC 470. The rules are applicable to the consumers and are binding on them. Vide Regulation 10(b) of the said Regulation there are certain terms and conditions regulating the reduction of the load as requested by the complainant in its case. The party applying for reduction of load is to fulfil the necessary conditions before it is entitled to reduction of load which have not been fulfilled in the case of the complainant. Similar is a case in regard to the minimum charges which are applicable as per the tariff framed by the U.P. Electricity Supply Act. Accordingly, it is stated that the NOE needs to be discharged. After the pleadings were complete the following issues were framed : (1) Whether the respondents are or have been indulging in the restrictive trade practices and unfair trade practices as alleged in the N.O.E. ? (2) If so (a) whether such restrictive trade practices are not prejudicial to the public interest (b) whether such unfair trade practices are prejudicial to the interest of consumer of consumers generally ? (3) Relief, if any.

Mr. G.M. Doshi, Director of the complainant/informant filed its affidavit by way of an evidence. On behalf of the respondent authority Shri A.K. Pradhan, Executive Engineer, E.D.E.I., U.P. Power Corporation Ltd. filed its evidence by way of affidavit.

3. ON careful consideration of the facts of the case and the evidence brought on record, we find that the charge of the restrictive trade practice within the meaning of Section 10(a)(i) of the Act is based on two grounds, one pertaining to the chargeability of amount on the basis of minimum load irrespective of the number of units consumed and the other relating to non-allowance of reduction of load as applied for in 1998. The former relates to levy of electricity charges in two parts i.e. demand charges as well as energy charges. This is contended to be in accordance with Section 49 read with Section 59 of the Electricity Supply Act. The validity of 2 part tariff has been upheld by the Hon''ble Supreme Court of India in the case of M.C.D. v. Asian Arts Printers (P) Ltd. & Ors., reported in AIR 1995 Supreme Court 196, and Orissa State Electricity Board & Anr., reported in AIR 1995 Supreme Court 1553. Similar is the case of charging amount for reduction of load. It has been further held therein that regulations have force of law being statutory in character. As regards reduction of load from 79 H.P. to 39 H.P., we find that the same is regulated by certain terms and conditions as specified in Electricity Supply (Consumer) Regulations, 1984 as notified in U.P. Gazette on 14.6.1985. Regulation 10B lays down various terms and conditions on the basis of which the load of large and heavy power consumer could be

reduced. To name a few the applicant is to apply in the revived B&L form for the load to remain connected under the reduced contracted demand. A fresh agreement is to be executed and the additional amount of security to be deposited to bring the same at the current rates. The applicant is also to bear the cost of dismantling and erection of equipment. There are other conditions which have to be fulfilled too. The stand of the respondent that the formalities were not fulfilled has not been refuted by the complainant/informant. Accordingly on the factual matrix itself, the contention of the complainant/informant towards the reduction of the load is devoid of any force and is not acceptable. It has also not been established on the part of the complainant/informant that the respondent by its aforesaid act has indulged in any type of unfair trade practice covered under any one of the clauses of Section 36A of the Act. On the facts and the circumstances of the case, we are thus of the considered view that no charge of restrictive trade practice has been established against the respondent authority. Accordingly the Notice of Enquiry deserves and is directed to be discharged. There is no order as to costs. N.O.E. discharged.

