
(1998) 10 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 29429 of 1998

Hyderabad Heavy Machining Industry, Hyderabad and others

APPELLANT

Vs

A.P.S.E.B.

RESPONDENT

Date of Decision : 23-10-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 21, 226
Electricity (Supply) Act, 1948 — Section 49, 49

Citation : (1998) 6 ALD 334 : (1998) 6 ALT 54

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. Y. Vivekananda Swamy, for the Appellant; Mr. K. N. Jwala, SC, for the Respondent

Judgement

1. At the stage of admission itself Sri K. N. Jwala, Standing Counsel for APSEB, took notice for the respondents. The writ petition was heard finally.

2. The petitioners are the small scale industries established before 1987, and they entered into an agreement with the respondent-Board for low tension power connection, and accordingly the Board installed the contracted/ connected load of 75 H.P./50 K.W. As per the tariffs that were in force at the time of entering into agreement with the Board, the petitioners were treated as L.T. Consumers. In the year 1996 the Board on the ground that there had been instances wherein many of the services were not functioning properly and the M.D. recorded is in excess of the stipulated 69% of the contracted load/connected load, issued B.P. Ms. No.149 dated 28-12-1996 in exercise of the powers conferred upon it by Section 49 of the Electricity Supply Act, 1940, to amend the existing L.T. Category-III Industrial Tariff, to remove the discrimination of continuance of some L.T. Category-III services with contracted/connected load in excess of 75 HP/56 KW in L.T. III Category and to ensure uniformity of application of provisions by the said amendment. The then existing para "D" of L.T. Tariffs, L.T. Category-III Industrial was deleted and that para was substituted by the following para:

""The tariffs are applicable for supply of electricity to L.T. Industrial Consumers with a contracted load/connected load of 75 HP/56 KW and below including incidental lighting. L.T. Category-III Industrial Services released on sanctioned prior to 15th July, 1987, with a rating of any one item of equipment not exceeding 75 HP./or 56 KW and the total contracted load/connected load not exceeding 125 HP/ 93 KW with a contracted demand not less than 60% of total contracted load/connected load subject to 75 HP/56 KW ceiling and continued after 15th July, 1987 have to make necessary arrangements for changing over to 11 KV H.T. Supply system from the existing LT3, 415 Volts system within a period of six months i.e., by 1-7-1997. Failure to make such arrangements to receive supply at 11 KV HT voltage within this specified period shall make the unit liable to pay.

(a) Energy charges at HT-I Industrial Tariffs on the recorded energy in LT Plus 3% towards transformation and transmission losses and

(b) Demand charges at HT-I Industrial Tariffs on 80% of the contracted load or connected load whichever is higher.

Industrial purpose shall mean supply "for purpose of manufacturing, processing and/ or preserving goods for sale but shall not include shops, business houses, Offices, Public buildings, hospitals, hotels, hostels, railway stations and other similar premises, notwithstanding any manufacturing processing or preserving goods for sale."

3. In pursuance of this amendment, it appears that the Divisional Engineer, Electrical (Operations), Sangareddy issued notice No.DEE/OP/SNG/COMML./F.48D.No.446/ 97 directing the petitioners to take necessary steps for changing over to 11 K.V.H.T. supply system from the existing L.T.415 old system, on or before 1-7-1997. The petitioners and others, being aggrieved by the said notice of the Divisional Engineer, filed the writ petitions in this Court assailing the validity of the notice and also B.P. Ms. No. 149 dated 28-12-1996. This Court disposed of those writ petitions with a direction to the Board to treat the impugned notice as a show-cause notice and giving two weeks time to the petitioners and others to file their objections. In pursuance of the said direction of this Court, the petitioners filed their objections and the second respondent after considering the objection rejected the pleas of the petitioners. The petitioners being aggrieved by the action of the second respondent have again filed the writ petitions in this Court and they are said to be pending. The petitioners have not given details of the writ petitions or the date and number of the order of the second respondent.

4. In the meanwhile, it appears that on a representation made by the owners of the rice mills to the Government seeking extension of time to change over to 11 KV HT supply system from the existing L.T. system, the Government directed the Board to allow time to the rice mills to comply with the requirements of B.P. Ms. No.149, dated 28-12-1996 upto June, 1998. Accordingly the Board extended the

time initially, in case of the rice mills upto June, 1998 for conversion, to H.T. category. At this stage itself, it may be pointed out that the proceedings of the Board dated 2-1-1998 extending time upto June, 1998 was not questioned by the petitioners. Further, it appears that the owners of the rice mills again made a representation to the Government to grant further time for conversion to H.T. Category and the Government again directed the Board to extend the time upto the end of December, 1998, Accordingly, the Board by its Memo No.CE/Comml.ADE-2/Rice Mills/ 681/98 dated 22-8-1998 extended the time for converting to H.T. Category upto the end of December, 1998.

5. In this writ petition, the petitioners have sought for "an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in not extending the benefit to the petitioners firms which is extended to the rice mills is illegal, arbitrary and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India besides directing the respondents to treat the petitioners firms under L.T. Category-III and charged the units consumed by the petitioners firms as per the original agreement and pass such other order or orders as mis Hon"ble Court may deem fit and proper in the circumstances of the case." Sri Y. Vivekananda Swamy, learned Counsel appearing for the petitioners contended that the action of the respondents in not extending the same treatment meted out to the rice mills to the petitioners is totally arbitrary, unreasonable, capricious and violative of Article 14 of the Constitution of India. Elaborating this submission, the learned Counsel should maintain that the petitioners and the rice mills belong to the same class and they could not be treated differently in extending the time for conversion to H.T. Category, and that the action of the Board in extending the time for conversion to H.T. Category only in favour of the owners of the rice mills amounts to an invidious discrimination violating Article 14 of the Constitution of India. On the other hand, Sri K.N. Jwala, learned Standing Counsel for the respondent-Board would at the threshold contend that the owners of the rice mills and the owners of the petitioners industrial units do not belong to the same class; there is nothing to show that the petitioners made any request to the Government or to the Board for extension of time for conversion to H.T. category whereas the owners of the rice mills made representation to the Government and to the Board for extension of time, and the Government, on appreciation of the practical difficulties of the rice mills, directed the Board to extend the time in the case of the rice mills owners.

6. At the outset it may be noted that making a demand before the respondent and refusal of such demand by the respondent, either explicitly or implicitly, is a condition precedent for invoking the jurisdiction of this Court under Article 226 of the Constitution of India for a writ of mandamus. From the affidavit averments, it seems that the petitioners never made any request to the Government or to the Board for extension of time for conversion to H.T. category. The learned Counsel for the petitioners did not submit that the petitioners made any representation to the Government or to the Board and their request was turned down. On that

short ground alone, the writ petition could be dismissed in limine. Be that as it may, even on merits, I do not find any case for the petitioners. It is true that since the guarantee to equal protection enshrined in Article 14 of the Constitution embraces the entire realm of "State Action", it would extend not only when an individual is discriminated against in the matter of exercise of his rights or in the matter of imposing liabilities upon him, but also in the matter of granting privileges, exemptions and concessions. In all these cases, the principle is that there should be no discrimination between one person and another if as regards the subject matter of the impugned action, their position is the same. In other words, the action of the State must not be arbitrary but must be based on some valid principle which itself must not be irrational or discriminatory. However, the principle of equality does not mean that every State action must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying needs of different classes of persons often require separate treatment. It is well settled that if a State action deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. It is also equally well settled that it is for the State to determine what categories it would embrace within the scope of its action and merely because certain categories which would stand on the same footing as those which are covered by the State action are left out would not render the action in any manner discriminatory and violative of Article 14 of the Constitution. When a State action is challenged as denying equal protection, the question for determination by the Court is not whether it has resulted in inequality, but whether there is some difference which bears a just and reasonable relation to the object sought to be achieved. Mere differentiation or inequality of treatment or inequality of burden does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary and that it does not rest on any rational basis. The classification need not be scientifically perfect or logically complete.

7. In the instant case nothing is placed before the Court to show that the petitioners and the rice mills are similarly circumstanced. It cannot be gainsaid that B.P. Ms. No. 149, dated 28-12-1996, a statutory instrument holds the field and under the instrument, the petitioners are obligated to change over to 11 K.V.H.T. supply system from the existing L.T. system. It is not that the rice mills are exempted from the obligation cast on them under the B.P. Ms. No.149, dated 28-12-1996; they are also obligated to change over to 11 K.V.H.T. system. If the Government and the Board on a representation made by the owners of the rice mills and on appreciation of their practical difficulties, extended the time to the owners of the rice mills upto the end of December, 1998 to change over to 11 K.V.H.T. system, it cannot be said that action is arbitrary or irrational. It may be that the petitioners as well as the owners of rice mills are covered by the B.P. Ms. No.149. In fact B.P.Ms. No.149 covers all categories of L.T. consumers. In a

broad sense, all of them may be treated as belonging to one class for the purpose of implementation of the statutory policy decision taken by the Board in B.P. Ms. No.149, but at the the time, it is a hard fact that the said general clause consists of various groups like the small scale industrial units, rice mills etc. As pointed out above, if a State action deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. If the Board were to extend the benefit of extension of time only in favour of certain rice mills excluding other rice mills, the attack would have been sustained because the rice mills constitute a well-defined group within a class of consumers covered by B.P. Ms. No.149. The petitioners and the rice mills and other categories of L.T. consumers covered by B.P. Ms. No. 149 cannot be treated as belonging to a well-defined class in all respects.

8. No ground is made out for grant of the relief to the petitioners. Writ petition fails and it is accordingly dismissed with no order as to costs.

9. However, this order shall not preclude the petitioners and the similarly circumstanced small scale industrial units from making an application to the State Government and to the Board for extension of time in their favour also for conversion into H.T. category system.