(2002) 02 KAR CK 0090

In the Karnataka High Court

Case No : Writ Petition No. 8948 of 1998

Industrial Rubber Products, Bangalore	APPELLANT
Vs	
Karnataka Electricity Board, Bangalore	RESPONDENT

Date of Decision : 25-02-2002

Acts Referred:

Citation : AIR 2002 Kar 335 : (2002) 4 KarLJ 529 : (2002) 2 KCCR 136 SN : (2002) 4 RCR(Civil) 617

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : K. Gopal Hegde, for the Appellant; N.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—Petitioner is a small-scale industry engaged in the manufacture of molded extruded rubber components, shoe soles and rubber lining of tanks, vessels, pulleys etc. Power was sanctioned to the petitioner in terms of Annexure-A. An agreement has been entered into between the parties in terms of Annexure-B. Petitioner further states that due to energy shortage, 25% energy cut was imposed in terms of Annexure-C. Petitioner has filed Annexure-D evidencing the power failure from time to time. Petitioner has also produced a record pertaining to the power cut for the period September and October 1994 as per Annexure-E and F. Petitioner states that petitioner wrote a letter in terms of Annexure-G in which it is stated that the petitioner is not to pay the charges in the light of power shortage. However in view of the threat of disconnection he has made payment under protest. Petitioner has also filed statement in terms of Annexure-K. With this material petitioner is before this Court seeking for a direction to the respondents to discontinue the minimum demand charges at the rate of Rs. 124/- per HP and to collect demand charges only at the rate of Rs. 15/- per HP. Petitioner is also seeking proportionate reduction.

2. Respondents have entered appearance and they have filed their detailed statement of objections. They say that electricity is goods and tariff is fixed by

the Board towards sale of power. They further say that in terms of the tariff condition, petitioner has to pay the tariff charges. Respondents have also referred to regulations to contend that no case is made out for my interference.

3. Learned Counsel for the petitioner took me through the pleadings in support of his plea. He also relies on the agreement between the parties and says that he is entitled for proportionate reduction. He relies on the judgment of the Supreme Court in Raymond Limited and Anr. v. Madhya Pradesh Electricity Board and Ors AIR 2001 SC 238 : (2001)1 SCC 534. Per contra, learned Counsel for the respondents took me through the regulations to contend that no case is made out. He also relies on a judgment of this Court in W.P. No. 16704 of 1996 and other connected matters DD: 18-4-2001.

4. From a reading of the petition, it is clear to me that petitioner wants to pay minimum demand charges at the rate of Rs. 15/- per HP. In support of the same, petitioner is relying on the statement of power cut during the month of September and October 1994. Petitioner also justifies his claim in terms of Annexure-J. In electricity laws, demand charges, minimum demand charges, and annual minimum demand charges, etc., have different meanings and the right of a party depends upon the regulation framed by the Board in terms of its statutory power under the Indian Electricity Act. Petitioner strongly relies on Clause 2 of the agreement to contend that the petitioner is required to pay monthly minimum charges. Petitioner relies on Clause 5 to contend that continuity of power supply has to be given without any interruption. Petitioner is relying on monthly demand charges which is increased to Rs. 124/- per HP in terms of the tariff conditions of 1996. Petitioner admittedly has not challenged the tariff conditions which provide for demand charges as applicable to the petitioner. Therefore, the petitioner in my view cannot seek any direction for payment of Rs. 15/- per HP in the absence of any challenge to the tariff conditions. Moreover, for the said purpose petitioner strongly relies on the power cut in terms of Annexure-F. Power cut is understood to mean ''cut in the energy charges''. Demand charges as mentioned earlier would be referred to contract demand. Therefore, the petitioner cannot seek a direction for payment of Rs. 15/- on the basis of Annexure-F. Even in the representation made by the petitioner, petitioner is complaining about the increased electricity charges from time to time. In these circumstances, there is no foundation or proper material available on record to grant the prayer of the petitioner in the case on hand. No statutory violation is also shown to the Court by the petitioner.

5. Petitioner is also seeking for proportionate reduction on the basis of violation of Clause 5. Clause 5 deals with continuous power supply. There is no clause providing for proportionate reduction in the contract. Therefore, petitioner cannot demand the proportionate reduction as a matter of right in the absence of any clause providing for the same.

6. Petitioner relies on a judgment in M/s. Raymond Limited''s case, supra. That judgment is clearly distinguishable on facts. That was a case in which the

agreement provided for minimum guarantee charges in terms of the contract. Petitioner cannot rely on the said judgment for the purpose of proportionate reduction. In a matter of contract, unless the contract specifically provides for proportionate reduction, it is not possible for this Court to grant proportionate reduction on the basis of minimum demand. Minimum guarantee charges stand on a different footing than the minimum demand charges.

7. Petitioner also relies on a judgment of the Supreme Court in the case of Bihar State Electricity Board and Another Vs. Dhanawat Rice and Oil Mills, , that was a case of minimum guarantee charges. On the facts of that case, Supreme Court has noticed Clause 13, which provided for proportionate reduction. No proportionate reduction is available in the case on hand in terms of the contract between the parties. Therefore, the judgment of Bihar State Electricity Board, supra, is not applicable to the petitioner.

8. I must also notice at this stage, that this Court in W.P. No. 16704 of 1996 and other connected matters DD: 18-4-2001, has upheld the tariff of 1996.

9. In these circumstances, I do not find any justifiable grounds to grant the prayers as sought for by the petitioner. Petition stands dismissed. Parties to bear their respective costs.