

(1999) 10 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 32584 of 1998

Jakotia Plastics Private Limited (Unit II)

APPELLANT

Vs

Andhra Pradesh State Electricity Board, Hyderabad and
others

RESPONDENT

Date of Decision : 05-10-1999

Acts Referred:

Andhra Pradesh State Financial Corporations Act, 1951 — Section 29
Civil Procedure Code, 1908 (CPC) — Section 11
Electricity (Supply) Act, 1948 — Section 78

Citation : (2000) 1 ALD 776 : (2000) 1 ALT 70

Hon'ble Judges : Elipe Dharma Rao, J

Bench : Single Bench

Advocate : Mr. C.V. Nagarjuna Reddy, for the Appellant; Mr. K.N. Jwala, SC for APSEB and Government Pleader for Industries, for the Respondent

Judgement

1. The above writ petition was filed by Jakotia Plastics Private Limited, Unit-11, represented by its Managing Director, Omprakash Jakotia, to issue writ of mandamus, or order or direction declaring the action of the respondents in not extending 25% rebate in power tariff to the petitioner's unit by the Board, Hyderabad, in pursuance of the G.O. Ms. No. 108, dated 20-5-1996, issued by the Government of Andhra Pradesh, Hyderabad, as illegal, arbitrary and ultra virus of the powers of the Board and consequently direct the respondent to grant relief of 25% rebate in power tariff to the petitioner's unit for the initial three years period i.e., 15-11-1995, on which date the petitioner had gone into regular production as envisaged under the said Government Order.

2. It is stated by the petitioner that the petitioner's company was established as a New Unit under the name and style of "Jakotia Plastics Private Limited, Unit-II at Plot No-43/A, Phase-I, IDA, Jeedimetla with the financial assistance from the Andhra Pradesh State Financial Corporation and it was engaged in manufacture of HDPE/PP Woven sacks. It is further submitted by the petitioner, company has applied for HT connection and the same was sanctioned and released on

8-11-1995 vide service Connection No.RRD 679 by the Electricity Board. The General Manager, District Industries Centre, Ranga Reddy District is the competent authority to issue eligibility certificate for claiming rebate in the electricity charges as per the said Government Order dated 20-5-1996. Accordingly, the petitioner company made an application for issuing eligibility certificate to the General Manager, District industrial Centre, Rangareddy District, Balanagar and he issued eligibility Certificate No.10595/ A2/96 dated 18-10-1996 for claiming 25% rebate in power supply (demand and energy charges) for HT supply with effect from 15-11-1995 for a period of three years. The petitioner company made an application to the Superintending Engineer (Operations), Rangareddy District on 18-10-1996 to permit it to avail 25% rebate on power tariff with effect from 15-11-1995. But when the Superintending Engineer has not extended the benefit of rebate, and informed orally that there are no instructions from the Electricity Board for granting such rebate in accordance with G.O. Ms. No. 108, dated 20-5-1996, immediately he made a representation on 20-10-1996 to the Member Secretary, Electricity Board, endorsing copy of the said Government Order, but no rebate as envisaged by the Government in the said Government Order was extended. Under the said circumstances, the petitioner filed Writ Petition No.23253 of 1996 before the Hon"ble High Court which disposed of the same on 19-3-1997 with certain directions and the operative portion of the judgment therein reads as under:

".....Having regard to the facts and circumstances of the case, I consider that interest of justice would be met if a direction is issued to the respondents to extend the benefit of rebate as contained in G.O.Ms.No.108 dated 20-5-1996 to the petitioner, as and when the Board decides to implement the Government Order. The petitioner shall not be discriminated and the rebate shall be given to the petitioner if it is decided to extend the said benefit to similarly situated industries..."

3. It is further stated by the petitioner that the Board issued Proceedings under B.P.fOP Commt) Ms. No.88 dated 29-11-1997 in purported exercise of its powers conferred by Section 49 of the Electricity (Supply) Act, 1948 extending the relief of 25% rebate to eligible new industries, that the Board in Annexure-II of the said BP specifically deleted the units manufacturing the HDPE/PP/Woven sacks from the list of ineligible industries for grant of rebate earlier included in the ineligible list contained in G.O. Ms. No. 117, dated 17-3-1993 and B.P. Ms. No.51 dated 24-5-1993. Therefore, in view of the specific deletion from the list of ineligible industries the petitioner unit which manufactures the items covered under the abovementioned description, is entitled to the rebate of 25% in power tariff. Though the G.O. Ms. No.108 was issued on 20-5-1996, but the power rebate was confined to only those units which went into regular production with effect from 1-4-1997 as against the date 15-11-1995 fixed in the said Government Order. In clause 2 of the said BP it is provided that the units which were declared as ineligible for 25% rebate under B.P. Ms. No.51, dated 24-5-1993, but were made eligible by the Government by G.O. Ms. No.108, dated

20-5-1996 for the rebate and which went to production after 15-11-1995 can make a claim for rebate and such claims may be referred to Board for examining the case for consulting with Government. Therefore, the action of the Board in prescribing the date different from one prescribed by the Government for eligibility to get rebate is ex facie illegal and ultra virus the powers of the Board and therefore, the petitioner was constrained to file with petition for redressal of its legitimate grievances.

4. It is further submitted that in the face of the judgment of the High Court in WP No.23253 of 1996, the Board cannot deny the grant of 25% rebate in power tariff to the petitioner company and the respondent is not entitled to change the cut off date for eligibility. It is contended on behalf of the petitioner company that as per the authoritative pronouncements of the High Court the Government can take policy decisions as to the entitlement of power concession to the industries and issuing the directions, recommending the date of concessions and the date on which the industry has gone into regular production. Therefore, once the State Government has exercised its powers u/s 78A of the Act in public interest or in the interest of the economy of the State, the Electricity Board is obliged to be guided by such directives; unless such directives are outside the framework of the Act or the Board has raised a dispute under sub-section (2) of Section 78A. Therefore, in view of that, the respondent Board cannot fix a different date from the one which was fixed by the eligibility of the industries for the rebate. Therefore, it is contended that fixing the date of entitlement, the Board is seeking to deny the benefit of rebate for those units which went into production between 15-11-1995 and 31-3-1997 and it is against the directives issued by the Government. Therefore, B.P. Ms.No.88 dated 29-11-1997 to the extent it has altered the cutoff date for eligibility from 15-11-1995 as prescribed in G.O. Ms. No.108, dated 20-5-1996 to 1-4-1997 is illegal, arbitrary and ultra vires the powers of the Board. That there is no rationale behind the fixation of 1-4-1997 as the cut off date for the eligibility and such a fixation has resulted in discrimination between the units which went into production before 1-4-1997 and those went into production after 1-4-1997. Therefore, the petitioner sought for interference of this Court.

5. In reply to the above facts and averments made in the petition, the respondents filed a counter affidavit on 23-12-1998 sworn by G. Venkat Rao, Superintending Engineer, Operation, Rangareddy Circle, Mint Compound, Hyderabad, stating that the petitioner addressed letter to the Member Secretary, Electricity Board, vide his letter No.JPPL/ APSEB/94-95 dated 29-3-1995 requesting the Board to issue instructions to the Divisional Engineer, not to insist the payment of old arrears in respect of M/s. Egfo Packaging Private Limited as they have taken the property from Andhra Pradesh State Finance Corporation u/s 29 of the Andhra Pradesh State Finance Corporation Act. Thereafter the Member Secretary informed the petitioner through his letter No.CC(Comm)/I/26/87-419 dated 17-5-1995 that the power supply can be restored to his unit as a fresh connection subject to the following conditions:

"(a).....you have to pay the service line charges and development charges as per Board Rules.

(b) the consumption Deposit should be paid equivalent to estimated 3 months CC charges.

(c) you are not entitled for 25% rebate as applicable for fresh applicants..."

6. When the petitioner agreed for the abovesaid conditions then only the Electricity supply was made under HT tariff-I with a CMD of 160 KVA on 8-11-1995. Therefore the petitioner has approached the Board for extending 25% rebate as per the eligibility certificate issued by the General Manager, District Industries Centre and the Member Secretary, Electricity Board through their letter No.CE(Comm)PO-I058/96-I dated 5-12-1996 informed that the petitioner is not eligible.

7. It is further stated in the counter affidavit that the petitioner has approached the High Court by filing a WP No.23253 of 1996 claim in 25% rebate. Counter was filed on 1-12-1996 and the Hon'ble High Court passed orders on 19-3-1997 to extend the benefit of rebate as contained in G.O. Ms. No. 108, dated 20-5-1996 to the petitioner company as and when the Board decides to implement the Government Order. -As per the letter of the Member Secretary dated 17-5-1995 it was clearly informed that the power supply can be restored to the petitioner company as a fresh connection and subject to the condition that he is not eligible for 25% rebate, as applicable to the fresh applicants and the company has accepted the said condition. It is further stated that G.O. Ms. No.108, dated 20-5-1996 was implemented vide B.P. Ms. No.88 dated 29-11-1997 wherein the units manufacturing the items of HDPE/PP/ Wovan Sacks are made eligible for 25% rebate with effect from 1-4-1997 and it was given only to original applicants and not to the purchasers of sick units and claiming no liability for the old arrears of the old units.

8. It is further mentioned that the petitioner is the purchaser of sick unit through auction by the Andhra Pradesh State Finance Corporation. Therefore, the Board in B.P. Ms. No.(Opn-Com)I, dated 3-4-1997 considered number of representations received from the owners of the industrial units purchased from the Andhra Pradesh State Finance Corporation through auction for release of power supply to their units in the same premises without insisting for payment of arrears due from the previous owners and on a careful consideration of the above representations, the Board has decided to permit restoration of the power supply to the new owners of a unit purchased through auction by the Andhra Pradesh State Finance Corporation or APIDC in a premises in which there are arrears of CC charges or other charges due from the previous owner, subject to the following conditions:

a. The new owner shall pay development charges and service line charges as in the case of new loads. The service line charges and development charges shall be calculated as though the infrastructure created for the earlier consumer is

notionally non-existing i.e., it is dismantled and re-created;

b. The new owner is not entitled for 25% rebate on power charges.

c. xxxxx

d. xxxxx

9. Therefore, in view of the above said B.P. Ms.No.1, dated 3-4-1997, the order of the Court in WP No.23253 of 1996 dated 19-2-1997 was implemented the petitioner who purchased the unit through auction by Andhra Pradesh State Finance Corporation is treated as a new unit and it is not eligible for 25% rebate on power charges as per condition (b) of the abovesaid BP Ms., in addition to the condition prescribed in the letter dated 17-5-1995. Further the Electricity supply to the petitioner was released on 8-11-1995 on payment of service line charges/ development charges and the consumer deposit as stipulated in Board's letter dated 17-5-1995 and the petitioner agreed for the conditions that he will not be entitled to 25% rebate in power supply. Further the claim of the petitioner alongwith other similarly situated persons was also covered by B.P. Ms.No.1, dated 3-4-1997. So based on the above stated facts and circumstances of the case, let us examine the issues involved in this writ petition.

10. The petitioner filed WP No.23253 of 1996 earlier making complaint against the respondents that they are not extending 25% rebate in Electricity charges (demand and energy) for HT power supply provided to the petitioner company and it is arbitrary and illegal and prayed to direct the respondents to extent 25% rebate in electricity charges (demand and energy) for the service Connection No.RRD-679 at Jeedimetla, Rangarcddy District. The petitioner also mentioned above G.O. Ms. No.108 Industries and Commerce (IP) Department, dated 20-5-1996 issued by the Government of Andhra Pradesh. The petitioner raised the same contentions which are raised in the present petition. But unfortunately the petitioner failed to mention the letter issued by the Board on 17-5-1995 under which some conditions were imposed for sanction of electricity supply and the petitioner agreed for the same. On the other hand, the respondents, who filed counter affidavit also did not bring to the notice of the High Court that there was an agreement preceding the letter issued by the Board imposing certain conditions. Therefore, by virtue of non-mentioning of the material fact, before the learned Judge, they induced the Court to pass the abovesaid order. Had the same been brought to the notice of the Court, it would not have passed such an order. Thus neither the petitioner nor the respondents have acted bona fide. Therefore, I am of the view that the petitioner has not approached the High Court with clean hands. On the other hand, it misrepresented the facts with a mala fide intention to induce the Court to pass an order which is favourable to him. Due to the mal-administration of officers like C, Akka Rao, Superintending Engineer, Operation, Rangareddy Circle, who filed the counter affidavit in the earlier writ petition, the Board suffered financially, and the State Government u/s 78A of the act came to the rescue and restructured the Board.

11. The contention of the learned Counsel for the petitioner, Sri C.V. Nagarjuna Reddy, that the said order in the above writ petition operates as resjudicata against the respondent is concerned, I am afraid, how the learned Counsel for the petitioner takes shatter u/s 11 of the Code of Civil Procedure. Section 11 of the Code strikes against the petitioner for the reason that earlier he filed writ petition for the same relief and he raised all the grounds which are raised in this writ petition; and he satisfied himself with the relief granted by the Court in the earlier writ petition. Therefore, he cannot, now, file the present writ petition for the same relief. Thus the principle of res judicata operates against the petitioner and the writ petition is liable to be dismissed on that ground.

12. That apart, the petitioner is also not entitled for grant of any relief applying the principle of waiver. When the petitioner has applied voluntarily to the Board for Sanction of HT power supply, claiming it to be a new industry and the Board has imposed three conditions through their letter dated 17-5-1995, which he agreed and thus voluntarily surrendered to the Board and entered into an agreement. In pursuance of that agreement, power supply was issued to the petitioner company on 18-11-1995. Therefore, when once he has voluntarily relinquished his legal rights, he cannot now claim the same due to alleged change in the circumstances. The Supreme Court, while dealing with a matter arising out of the Specific Relief Act, 1877, considered the doctrine of waiver in a decision *Madamsetty Satyanarayana Vs. G. Yelloji Rao and Others*, , and held that waiver is contractual and may constitute a cause of action, it is an agreement to release or not to assert a right. It is not possible or desirable to lay down the circumstances under which a Court can exercise its discretion against the plaintiff, but they must be such that the representation by or the conduct or neglect of the plaintiff is directly responsible in inducing the defendant to change his position to his prejudice or such as to being about a situation when it would be inequitable to give him such a relief.

13. The same principle was also considered by the Supreme Court in a decision *Associated Hotels of India Limited v. S.B. Sardar Ranjit Singh* AIR 1968 SC 993, while dealing with a matter relating to Transfer of Property Act and held that waiver is an intentional relinquishment of a known right. There can be no waiver unless the person against whom the waiver is claimed had full knowledge of his rights and of facts enabling him to take effectual action for the enforcement of such rights.

14. Therefore, if the abovesaid principle of waiver is applied to the facts and circumstances of the case on hand, as considered by the Supreme Court, the petitioner, through representation, relinquished his legal right to claim 25% rebate, treating it as a new industry, to give (he company power supply. Though there was no obligation on the respondent-Electricity Board to give power connection as the old unit failed to clear off the dues, which was purchased by the petitioner herein.

15. When the petitioner waived his legal right, to claim 25% rebate on power

supply for a period of three years, consequent to the agreement entered into by him with the Electricity Board. Therefore, when once the petitioner has intentionally relinquished his legal right by agreeing to the conditions imposed by the Board, he can not now assert the right to get 25% rebate on power supply. So on that ground also, the writ petitioner is not entitled to the relief.

16. The learned Counsel for the petitioner contended that the Government issued G.O. Ms. No.108, dated 20-5-1996 prescribing the cut off date as 15-11-1995 for the industries who started production are entitled for 25% rebate. But unfortunately, the Board prescribed the cut off date as 1-4-1997 for the industries which started regular production only are entitled to, is contrary to G.O. Ms. No.108, dated 20-5-1996. To this the learned Counsel for the respondent has submitted that u/s 59 of the Electricity (Supply) Act, 1948; which contemplates General Principles for Board's Finance; the Board shall after taking credit for any subvention from the State Government u/s 63, carry on its operations under this Act and adjust its tariffs so as to ensure that the total revenues in any year of account shall, after meeting all expenses properly chargeable to revenues, including operating, maintenance and management expenses, taxes (if any), on income and profits, depreciation and interest payable on all debentures, bonds and loans, leave such surplus as is not less than three per cent or such higher percentage, as the State Government may, by notification in the Official Gazette, specify in this behalf, of the value of the fixed assets of the Board in service at the beginning of such year. Therefore, as per the direction of the Government the Board has to leave a surplus not less than three per cent or higher percentage in each year. Therefore, to meet the abovesaid exigency of maintenance of a definite fund, as directed by the Government from time to time, the Board has to take certain measures. Therefore, keeping in view Section 59 of the Act, the Board has fixed the cut-off date for awarding 25% rebate on power supply from 1-4-1997. Therefore, according to me, the Board is justified in fixing the abovesaid cut off date. Thus the petitioner cannot agitate that the power exercised by the Board is illegal and contrary to law.

17. To summarise, the petitioner company, who claimed to be a new industry purchased the unit through auction taken by the Andhra Pradesh State Finance Corporation and obtained power supply by making application to the Board treating it as a New Unit and voluntarily relinquished his legal right of claiming 25% rebate on power supply by acceding to the conditions imposed by the Board in their letter dated 17-5-1995 and entered into an agreement which was held as an agreement entered by the Board and its customers u/s 49 of Electricity (Supply) Act, as statutory agreement, by the Supreme Court in M/s. Hyderabad Vanaspathi Limited Vs. Andhra Pradesh State Electricity Board and Others, . Therefore, the principle of estoppel is not applicable against the statutory agreements. When the petitioner claimed relief of 25% rebate on power supply, as per the Government Order issued u/s 49 of the Act, he approached the Hon'ble High Court by filing Writ Petition No.23253 of 1996 suppressing the fact of acceding to the condition imposed by the Board and entered into agreement;

thus mis-represented the facts to the Court with a mala fide intention to induce the Court to pass an order favourable to him. Thus he has not approached the Court with clean hands. Once he has approached the Court, raising the same conditions which are raised herein, he cannot file a second writ petition for the same relief. Therefore, the principle of resjudicata strikes against the petitioner. The principle of waiver also operates against the petitioner as he voluntarily and intentionally with a knowledge relinquished his legal right and induced the respondent to change his position and release power supply to him. Therefore, he is not entitled for grant of any relief as prayed for.

18. Further the complaint of the petitioner is that the order of the Court granted in the WP No.23253 of 1996 is violated by the Board. For that the petitioner should have initiated contempt proceedings instead of filing this writ petition. On this ground also, the writ petition is liable to be dismissed.

19. Moreover, when once the Board has issued B.P. Ms. No.1 dated 3-4-1997, the petitioner should have questioned the same. Though the said B.P.Ms, was issued on 3-4-1997, he kept quiet for all these days. On this ground also the petitioner is not entitled to the relief. Further as per the Government Orders, benefit of 25% rebate has to be awarded from the date of commencement of production. As asserted by the petitioner, he started production from 15-11-1995. The object of grant of that benefit of rebate is to encourage new industries at the initial stage of production to stand to the competition in the market. The petitioner company has started this industry and production from 15-11-1995 and he has survived all these years and hence, it is not at the initial stage to award the relief of rebate inasmuch as already four years have elapsed. On that ground also, the petitioner company is not entitled to any relief.

20. Before parting with the case, I am inclined to observe that the petitioner, who has tried his level best to suppress the material facts and mis-represent the Court to get favourable order, had the Court passed such an order, he would have been entitled to the benefit for a period of three years. Therefore, I am inclined to impose an amount of Rs.5000/- as costs, proportionate to the benefit claimed by him for each year i.e., 25% of rebate on electricity tariff. Accordingly, an amount of Rs.15,000/- is imposed as costs to be deposited within four weeks from the date of receipt of copy of the order, to the credit of the Chief Justice Defence Fund. This conclusion was arrived by me following the judgment of the Supreme Court in Maganlal Chaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others, ; wherein the Supreme Court has refused to reduce the costs imposed by the High Court and held that the High Court has not imposed the costs by way of penalty, but in the circumstances of the case, the Court thought that the award of costs should be on the highest permissible scale. Therefore, I am not imposing the costs by way of penalty, but the costs are imposed proportionately to the benefit claimed by the petitioner, had 25% rebate on power supply been granted, for a period of three years.

21. Further Sri C. Akka Rao, the then Superintending Engineer, Operation Circle,

Hyderabad, who filed counter affidavit in WP No.23253 of 1996 and had the knowledge of the contents of the letter issued by the Member Secretary dated 17-5-1995, which was marked to the Superintending Engineer, has not brought to the notice of the Hon'ble Court, imposing certain conditions, to which the petitioner has acceded to and entered into an agreement.

22. When a question was put to Mr. C. V. Nagarjuna Reddy, why the letter of the Member Secretary was not brought to the notice of the Honourable Court in WP No.23253 of 1996, the learned Counsel for the petitioner stated that it is for the respondents who are the legal custodians of the records, to bring to the notice of the Court. But it appears that he has forgotten the fact that the petitioner approached the Court and filed writ petition therefore, it is the duty of the petitioner to place relevant material before the Court, for grant of appropriate relief. On the other hand, when the same question was put to the learned Standing Counsel Sri K.N. Jwala, he took time to file an additional counter affidavit disclosing the reasons for not mentioning the letter of the Member Secretary dated 17-5-1995, which was marked to the Superintending Engineer, Rangareddy, in the counter affidavit filed in WP No.23253 of 1996. According to him, time was granted to enable the Counsel to go through the records and file additional counter affidavit. Though additional counter affidavit was filed by G. Venkat Rao, Superintending Engineer, instead of giving reasons for not bringing to the notice of the Hon'ble Court about the letter of the Member Secretary, dated 17-5-1995, it was mentioned with regard to the letter of the Member Secretary dated 5-12-1996 reiterating the reasons stated in the letter, of the Member Secretary dated 17-5-1995, stating that the petitioner is not entitled for the grant of 25% rebate. Thus this letter dated 5-12-1996 was not mentioned in the counter affidavit filed in the earlier WP No.23253 of 1996 on the ground that the counter affidavit was filed on 1-12-1996 whereas the office of the Superintending Engineer received the abovesaid letter on 10-12-1996. Therefore, the additional affidavit filed in the present writ petition on the fact why the letter dated 17-5-1995 was not brought to the notice of the Hon'ble Court was silent. In those circumstances, I have no hesitation to come to the conclusion that the officials of the office of the Superintending Engineer have suppressed the fact with deliberate intention to help the petitioner to obtain suitable orders. Therefore, the ends of justice would be met by directing the Member Secretary/Competent Authority to initiate disciplinary proceedings against the then Superintending Engineer, Sri C. Akka Rao, for deliberately suppressing the fact of rejecting the claim of the petitioner by the Member Secretary, in pursuance of the condition imposed in the abovesaid letter dated 17-5-1995 and the agreement entered into between the petitioner and the Board on 8-11-1995. Therefore, the Member Secretary/Competent Authority is directed to initiate departmental action against Sri C. Akka Rao, the then Superintending Engineer and impose suitable punishment after receipt of report from the Enquiry Officer and the same may be intimated to this Court -within a period of six months from the date of receipt of the copy of the order. This Court also feels that such a

direction is given with a view to prevent recurrence of the same in future.

23. For the reasons stated above, the writ petition fails and is accordingly dismissed, as per the costs hereinbefore mentioned.