
(2008) 02 MP CK 0014
In the Madhya Pradesh High Court

Jaypee Rewa Cement

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Madhya Pradesh Electricity Duty Act, 1949 — Section 3

Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 — Section 2

Citation : (2008) ILR (MP) 681 : (2009) 4 MPHT 69

Hon'ble Judges : R.S. Garg, J;Prakash Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.S. Garg, J.—The appellant M/s. Jaypee Rewa Cement a Division of Jai Prakash Industries Limited, being aggrieved by the order dated 23-3-2006 passed in W.P. No. 3734/1998 passed by learned Single Judge of this Court dismissing the writ application have filed this appeal u/s 2 of the M.P. Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005. The appellant M/s. Jaypee Rewa Cement is producer of cement and is in control of certain captive mines. The question raised before the learned Single Judge was whether the consumption made in the colonies held, managed and possession by the petitioner is to be clubbed into the consumption of the energy by the industry under the phrase "cement industry including its captive mines" or it is liable for duty under the head of other non-industrial purposes. The learned Single Judge after referring to the table attached to Section 3 of the M.P. Electricity Duty Act, 1949 providing rates of duty came to the conclusion that separate provision for the colonies run by the industry in the earlier provision and non-inclusion of the colonies in the notification of 1985 would not make any difference because the Court is only concerned with the entry which provides "cement industry including its captive mines" and the consumption of the electrical energy "for non-industrial purposes not included under any of the other categories". After giving his thoughtful consideration the learned Single Judge held that the respondents were justified

in proposing the recovery against the present petitioner.

2. The Madhya Pradesh Electricity Duty Act, 1949 (Act No. 10 of 1949) (hereinafter referred to as the "Act" for convenience and brevity) is an act to provide for levying of duty on sale or consumption of electrical energy. Section 2 is the definition clause while Section 3 relates to levying of duty on sale or consumption of electrical energy. Section 3 provides that subject to the exceptions specified in Section 3-A every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rates specified in the table appended to Section 3 on the units of electrical energy sold or supplied to a consumer or consumed by himself for his own purpose or for purposes of his township or colony during the preceding month. It is not in dispute before us that the table appended to Section 3 has undergone various amendments from time to time. The Act was amended under 1972 Act, 1975 Act, 1978 Act, 1984 Act and 1985 Act and was also amended by subsequent Acts. The table provided different tariffs for domestic consumption and the industrial consumption. By the Act of 1972 it was provided that particular rate of duty would be chargeable on different types of consumption. In the year 1978 by M.P. Act No. 21 of 1978 the Act was again amended and Clause 2 provided as under:

(2) Electrical energy sold or supplied for consumption in premises of a factory excluding energy supplied for consumption for domestic or non-factory purposes where the connected load--

(a) does not exceed 100 HP 1.5 paise per unit per energy. (b) exceeds 100 HP 3 paise per unit of energy.

(4) Electrical energy sold or supplied for consumption in--

(a) township or colony attached to 10 paise per unit of a factory, Mines or Institution energy.

The amendment of 1978 clearly provided that when the consumption is in the township or colony attached to a factory etc. then the electricity duty would be 10 paise per unit of energy. In the year 1984 the table was again amended though the Clause 4 remained unamended but Clauses 5 and 6 were amended. By Act No. 15 of 1985 the table appended to Section 3 was again amended and the material amendments were as under:

(2) Electrical energy sold or supplied for consumption in premises of a factory including energy supplied for consumption for domestic or non-factory purposes where the connected load--

(a) does not exceed 100 HP 3 paise per unit of energy (b) exceeds 100 HP 4 paise per unit of energy.

(4) Electrical energy sold or supplied for consumption in:

(a) Township or colony attached to 11 paise per unit of a Factory Mine or

Institution, or energy (b) a premises getting supply of high voltage or extra high Voltage but not covered under item (1) and (2) above (5) Electrical energy sold or 26 paise per unit of supplied for consumption in a energy mine

It is to be seen that, under Paragraph 4(a) it was provided that 11 paise per unit for energy would be charged as duty if the consumption is in the township or colony attached to a factory or institution etc. The table appended to Section 3 was again amended by Act No. 21 of 1986. The amended table is as under:

TABLE RATES OF DUTY PART-A

Electrical Energy sold or of 2 paise per unit energy supplied in bulk by a Producer or distributor of electrical energy to another distributor of electrical energy excluding electrical energy supplied for his township or colony. PART-B

Electrical energy sold or supplied for consumption for purposes as shown below:

(1) For Domestic purposes 8 paise per unit of energy receiving electricity at low tension upto 200 units of energy tariff sold or supplied in a month; 15 paise per unit for each additional unit sold or supplied in a month in excess of 200 units of energy. (2) For Non-Domestic and 12 paise per unit of Commercial purposes including X- energy upto 100 units of ray plants receiving electricity at energy sold or supplied in low tension tariff. a month; 15 paise per unit for additional unit sold or supplied in a month in excess of 100 units of energy. (3) For water and sewage pumping 3 paise per unit of energy. installation of Municipalities, Corporation and other local bodies used for public utility water scheme. (4) For Mines other than captive 50 paise per unit of mines of a cement Industry. energy. (5) For Cement Industry including 10 paise per unit of its captive Mines. energy. (6) For Mini Steel Plant, Calcium 4 paise per unit of energy. Carbide Plants, and for consumers receiving energy under electro chemical tariff. (7) For other industries not covered 5 paise per unit of energy. under above categories. (8) For non-industrial purposes not 15 paise per unit of included under any of the above energy: categories.

Provided that if the electrical energy sold or supplied for consumption for any one purpose is used either wholly or partly, without the consent of the distributor of electrical energy or producer of electricity, as the case may be, for consumption for any other purpose for which a higher rate of duty is chargeable, the entire energy sold or supplied shall be charged at the highest rate applicable.

By Act No. 4 of 1988, following entries were substituted:

(i) In Sub-section (1) under the Table of Rates of Duty, for items (1) to (8) of Part-B, the following items shall be substituted, namely:

(1) For Domestic purposes 8 paise per unit of energy receiving electricity at low tension upto 200 units of energy tariff. sold or supplied in a month; 15 paise per unit for each additional unit sold"or supplied in a month in excess of 200 units of energy. (2) For Non-Domestic and 18 paise per unit of energy.

Commercial purposes including X- ray plants receiving electricity at low tension tariff. (3) For mines other than captive 60 paise per unit of energy. mines of a Cement Industry. (4) For Cement Industry including 12 paise per unit of energy. its captive Mines. (5) For other Industries not covered under above categories,-- (a) Industries receiving electricity 3 paise per unit of energy. at low tension tariff; (b) Other Industries. 8 paise per unit of energy. (6) For non-industrial purposes not 18 paise per unit of included under any of the above energy. categories.

By the amendment of 1985, 10 paise per unit of energy was to be charged as duty if the consumption was by cement industry including its captive mines. Clause 8 provided that for non-industrial purposes not included under any of the above seven categories the duty would be charged at 15 paise per unit of energy.

3. After finding that the present appellant/petitioner was paying the duty at the rate of 10 paise per unit for all its consumption, the Electricity Board revised the bills and raised a demand. The petitioner/appellant being aggrieved by the said demand came to this Court in the writ petition and raised various arguments. As the learned Single Judge did not agree with the contentions raised by the petitioner/appellant and rejected the writ petition the petitioner has filed this writ appeal.

4. Shri Aradhe, learned Senior Counsel for the appellant/petitioner submits that the colony or township attached with the industry, factory etc. was all through taken to be a different entity and identity and consumption by it was charged separately, and, therefore, unless such an entry continued by the Amending Act, this Court must hold that the colony or the township attached with the industry would become a part of the industry and the industry would be justified in paying the duty at 10 paise per unit of the energy. It was also submitted that without a township or a colony the industry would be incomplete, therefore, also the township/colony managed and operated by the industrial unit should be taken to be a part of the industry only. It was also submitted that Clause 8 which provides for duty for non-industrial purposes would not take out the colony or the township from the sweep of Clause 5 which relates to "cement industry including its captive mines". Placing his strong reliance upon certain judgment which we may refer to and discuss at appropriate stage it was vehemently contended that the learned Single Judge was not justified in not appreciating the distinction between a domestic use and consumption by an ordinary colony and a colony and mine managed by the industry.

5. On the other hand learned Counsel for the State and the Electricity Board submitted that a fair understanding and reading of the different amending Acts it would clearly appear that the State Government always treated the colony or a township differently, as a different entity and different from the industry itself. It is submitted that for all these years different duty has been levied on the colonies and townships managed and managed by the industry, therefore, at this stage the petitioners cannot be allowed to say that the colony/township managed

by the industry would become an integral part of the industry. They also submitted that if there is a colony which is not attached with a industrial unit then all the consumers would become domestic consumers and they would be extracting energy for domestic purposes and in such an event they would be required to pay 8 paise per unit of energy upto 200 units of energy sold or supplied in a month and 15 paise per unit for each additional unit sold or supplied in a month in excess of 200 units of the energy. It is also submitted by them that the domestic charges would be applicable where the supply is from the low tension line and the tariff is low tension tariff.

6. It is also submitted by the learned Counsel for the respondents that duty leviable on consumption of energy by a cement industry including its captive mines is for industrial consumption while under Clause 8 the duty is leviable for non-industrial consumption or purposes not included under any of the categories as provided in the table. It is not in dispute before us that the colonies/townships are getting the supply from the high tension line.

7. The word industry has not been defined in the M.P. Electricity Duty Act, 1949. Section 2(j) of the Industrial Disputes Act, 1947 defines industry as:

"industry" means business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

If we accept the definition of industry as given in the Industrial Disputes Act, 1947 then the colony or the township manned and managed by the industry would not be a part of the industry. However, it would also be necessary to refer to definition of industry as given in different dictionary. Chambers 21st Century Dictionary defines industry as under:

industry 1. the business of producing goods; all branches of manufacturing and trade. 2. a branch of manufactory and trade which produces a particular product-- the coal industry. 3. organized commercial exploitation or use of natural or national assets, such as historical buildings, famous people etc.-- the tourist industry. 4. hard work or effort, diligence-- from Latin industrial diligence.

The Oxford Dictionary defines industry as under:

industry 1. the manufacture or production of goods. 2. a particular branch of this; any business activity, the tourist industry, 3. the quality of being industrious.

Even from the dictionary meaning of the word "industry" it would not appear that any residential colony or the township attached with the industry would become an integral part of the industry. Even otherwise the law does not provide that the residential colony/township would become a part of the industry and would become such an integral part of the industry without which it would not be possible to run the industry. The township and/or the colony may provide some accommodation to the workers, employees and officers of the industry but that may be a facility provided by the industry either as a grace or as a service

condition but provision of such accommodation etc. would not mean that the colony/township would become a part rather an integral part of the industry. The petitioners never came to the Court with a submission that in absence of a colony or township it would become impossible for them to run the industry.

8. Referring to the judgment in the matter of Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, , it was submitted that if the books are included in the definition of the word "plant" in Section 10(5) of the Income Tax Act then the colony/township would become an integral part of the industry. In the matter of CITAP (supra), the question before the Court was whether the sanitary fittings etc. in bath rooms is one of the essential amenities or conveniences which are provided in any good hotel would be a part of the plant or is to be separately assessed. The Supreme Court observed that where the definition of a word has not been given it must be construed in its popular sense if it is a word of every day use. That popular sense means "that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it". In our considered opinion the judgment in the matter of CIT AP (supra), is no authority to say that the colony/township would be an integral part of the industry and simply because Clause 5 of the table uses the word "including" the definition would become inclusive definition and the colony/township would be included in the cement industry. When one has to interpret the statute especially a taxing statute or the statute which leads to civil law then the interpretation must be very strict. The entry in Clause No. 5 provides "for cement industry including its captive Mines". The word "including" would not mean a cement industry which would include its township or the colony. The intent of the Legislature is to include the mine in the industrial activity because without operation of the mines the cement industry cannot be run. In fact, the word "including" used in Clause 5 of the table is simply to show that captive mines would be taken to be part of the cement industry and nothing beyond that.

9. Shri Aradhe, learned Counsel for the appellant, placed his strong reliance upon yet another judgment of the Supreme Court in the matter of P. Kasilingam and others Vs. P.S.G. College of Technology and others, . In the said matter the question before the Supreme Court was that what would be meaning of the word "College" and what would be the intent and explanation of the expression "means and includes". The Supreme Court observed that a particular expression is often defined by the Legislature by using the word "means" or the word "includes". Sometimes the words "means" and "includes" are used. The use of the word "means" indicates that "definition is a hard and fast definition and no other meaning can be assigned to the expression than is put down in definition". The word "includes" when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. Taking shelter under this judgment it is contended by Shri Aradhe, learned Counsel, that Clause 5 is inclusive definition because it uses the word

"including" and the word "including" would govern everything attached including a colony or township to the industry. We are unable to concede to this argument. The intention of the Legislature is not only to be seen by use of the word "including. The intention is to be seen that whether the Legislature was creating different types of consumer for purposes of levy of different duties. Clause 5 provided for levy of 10 paise per unit for cement industry including its captive mines. We have already observed that without mines a cement industry cannot be run and if some cement industry does not have its captive mines then such cement industry would be charged at the rate of 10 paise per unit of energy. In any case Clause 5 would not include anything beyond what is intended by the Legislature.

10. Clause 8 refers to non-industrial consumption which is not included in the other seven categories. We have already observed that category No. 1 relates to domestic consumption and it relates to domestic consumption of electricity at low tension tariff. If the colony people or the township people were receiving the energy at low tension tariff then there would have been no problem but in the instant case in the undisputed facts it is clear that the colony people/township people are receiving the energy from the high tension tariff. Once it is proved that the colony people/township people are receiving the energy from the high tension tariff then they would fall under category 8 and without any hesitation it can be held that they are drawing electricity/energy for non-industrial purposes not included under any of the categories No. 1 to 7.

11. Learned Single Judge had given his thoughtful consideration to every aspect of the matter and has come to the conclusion that the cement industries were applied concessional rate of the duties as would be apparent from entry No. 5. In our opinion if the industrial undertaking like a cement industry is using the electricity for industrial purposes only then they would be liable to pay at the rate as prescribed in Clause 5 but they cannot be permitted and would not be permitted to say that any colony or the township attached with the cement factory/industry/captive mines would also be liable to pay at the rate which is applicable to the cement industry. When the Legislature provides different categories for levy of different charges, taxes or fees then unless there are very special reasons it would not be permissible for the Court to hold that a person falling under one clause or a category would be chargeable under any other category. After giving our thoughtful consideration to the totality of the circumstances we are unable to hold that the learned Single Judge was unjustified in dismissing the petition.

12. The petition is dismissed. However, there shall be no order as to costs.