

(2022) 12 CAL CK 0074
In the Calcutta High Court
Case No : W.P.A. No. 20408 Of 2017

Kalimata Ispat Industries Private Limited And Another APPELLANT
Vs
West Bengal State Electricity Distribution Company Limited RESPONDENT
And Another

Date of Decision : 23-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 14
Electricity Act, 2003 — Section 62, 66

Citation : (2022) 12 CAL CK 0074

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Tanoy Chakraborty, Kallol Saha, Shounak Mukhopadhyay, Sujit Sankar Koley

Judgement

Sabyasachi Bhattacharyya, J

1. The petitioner no.1 is a manufacturer and supplier for the Indian Railways and has its factory at 1/98, Bidhan Sarani, Saheb Dihi, Barjora, District-Bankura. Both the Damodar Valley Corporation (DVC) and the West Bengal State Electricity Distribution Company Limited (WBSEDCL) are Distribution Licensees authorised to supply electricity to the consumers within the said command area. The petitioner no.1 is a consumer of WBSEDCL.

2. The petitioner no.2 is a Director of the petitioner no.1.

3. The petitioner no.1 has been taking electricity supply from the WBSEDCL and has preferred the instant writ petition contending that all benefits of the Scheme notified by the respondent no.1 (WBSEDCL) on October 15, 2015 have not been given to the petitioners and seeking extension of such benefits as well as refund of a sum of Rs.16,81,155/-, being allegedly the actual financial loss of the petitioners in the form of difference in revenue collected by the WBSEDCL.

4. The petitioners also claim benefits of Load Factor Rebate (including additional

Load Factor Rebate) as per the Scheme of extension of additional rebate notified by the WBSEDCL in its Notice dated February 10, 2017 on the basis of the Order dated February 8, 2017 passed by the West Bengal Electricity Regulatory Commission (WBERC).

5. It is contended that as per the Scheme Dated October 15, 2015, effect to the same had to be given from 15 days after the Notification, that is, from November 1, 2015 but with regard to the petitioners, effect has been given only from the month of February, 2016, thereby subjecting the petitioners to a loss of Rs.16,81,155/-, a chart containing the break-up of which is also given by the petitioners.

6. The petitioners applied for rebate under the Notification dated October 15, 2015 on October 29, 2015.

7. Vide Letter dated February 11, 2016, the WBSEDCL indicated that the effect of the said Notification in respect of the petitioner would be given from the month of February, 2016. The WBSEDCL reiterated such stand on April 21, 2016, refusing the petitioners' claim on the ground that no retrospective effect had been allowed by the competent authority.

8. It is argued by learned counsel for the petitioners that the petitioner no.1 is entitled to tariff at competitive rates as per the Notification dated October 15, 2015 since November 1, 2015. In view of such specific representation having been given by the WBSEDC, which is a public authority, the said authority is bound under the principles of promissory estoppel and legitimate expectation to give such benefit to the petitioners from the appointed date. However, such benefit was refused to the petitioners without any cogent reason. For such proposition, learned counsel for the petitioners relies on the Judgment reported at (2020) SCC OnLine 968 [State of Jharkhand and others Vs. Brahmputra Metalics Ltd., Ranchi and another].

9. It is next contended that vide Order dated February 8, 2017 passed by the WBERC on an application submitted by the WBSEDCL for issuance of order on a Scheme for revenue enhancement through increased sale to the industries under WBSEDCL through rationalization under Regulation 8.10 of the Regulation No.48 dated April 25, 2011 of the WBERC, it was categorically decided that the load factor rebate as proposed in the Scheme would be in addition to the rebate already allowed in the tariff order in respect of WBSEDCL for 2016-2017 for respective categories of consumers. It is also stated therein that the WBSEDCL shall publish a notification in this regard, clearly mentioning the rates of rebates and the consumers to whom those would be applicable, before introduction of such Scheme both in the newspaper and on the website of WBSEDCL.

10. Pursuant to such order, the WBSEDCL issued a Notice on February 10, 2017, whereby the Revenue Enhancement Scheme of the WBSEDCL was made effective from the consumption-month of February, 2017.

11. It is argued that the said Scheme contemplates exemption in Demand Charge for additional drawal up to 50 per cent from existing 30 per cent during off-peak period for all 33 and 132 KV industrial consumers, within which category the petitioner no.1 also comes.

12. It is argued that since the said exemption has been applied to all such industrial consumers, the WBSEDCL acted patently without authority in refusing the same to consumers enjoying competitive rates. It is argued that such action is de hors the Order of the WBERC as well as violative of Article 14 of the Constitution of India. Discrimination has been unreasonably made between the competitive rate-holders and other consumers, thereby creating a class within a class, which is not sanctioned in law.

13. Learned counsel for the petitioners further contends that as per the first proviso to Clause 2.1.1 of Chapter-II of the 2011 Regulation, which speaks of determination of tariff in case of distribution of electricity in the same area by two or more licensees, the Commission may, for promoting competition among licensees, fix the maximum ceiling of tariff for retail sale of electricity. It is further argued that as per Clause 8.10 of the same Regulation, if any difficulty arises in giving effect to any order based on the Regulations, then the Commission, by subsequent supplementary order, may remove the difficulties keeping consistency with the provisions of the Act and the Regulations.

14. It is submitted that the WBSEDCL acted in contravention of such provisions in refusing to extend the rebates-in-question to the petitioners.

15. Learned counsel for the WBSEDCL argues that as per the first proviso of Section 66 of the Electricity Act, 2003 (for short, "the 2003 Act") as well as the third proviso to Clause 2.2.2 of the 2011 Regulations, the appropriate Commission may, for promoting competition among Distribution Licensees, fix only the maximum ceiling of tariff for retail sale of electricity and not further.

16. Inasmuch as the grant of rebates is concerned, nothing is provided in the said provisions to justify the present challenge.

17. It is further argued that the competitive tariff holders already enjoyed preferential rates of tariff, due to which the rebate in respect of load factors, as per the Notification of 2017, was given to the other consumers. As such, the basis of such classification is reasonable and there is no violation of Article 14 of the Constitution of India.

18. It is next argued that although the Notification was published on October 15, 2015, the application was filed by the petitioners only on October 30, 2015. About three months were taken to process the said application, due to which the effect thereof was given from the month of February, 2016. As such, it is argued that in the absence of any retrospective provision in the Notification of 2015, the effect of the same could not be given from any prior date.

19. Upon hearing learned counsel for the parties, it is quite evident from the first

impugned Notification dated October 15, 2015 that the competitive rates stipulated therein were to be effective after 15 days from the date of the said Notification. The application in that regard was made by the petitioners on October 29, 2015, which was, one day prior to expiry of the 15 days after issuance of the Notification.

20. Irrespective of the time taken by the WBSEDCL for processing the said application, such time cannot have any bearing upon the entitlement of the petitioners, since the petitioners cannot suffer for such delay.

21. There is no conceivable reason as to why the WBSEDCL flouted its own Notification, which is the source of the grant of competitive tariff, by giving effect to such competitive rates for the petitioners from February 1, 2016, that is, three months after the date of commencement of such rates.

22. A period of 15 days after the issuance of the Notification dated October 15, 2015 brings us to October 30, 2015 and, as such, the petitioner no.1 could legitimately claim the rates on and from November 1, 2015 itself.

23. Thus, such action of the WBSEDCL is violative of Article 14 of the Constitution of India as well as patently contrary to its own Notification and cannot be sustained in law.

24. Insofar as the first proviso to Section 62 of the 2003 Act is concerned, the same provides that the appropriate commission may, for promoting competition among the Distribution Licensees, fix only maximum ceiling of tariff for retail sale of electricity.

25. Neither the said proviso nor any of the provisions of the 2011 Regulations leaves any scope of discrimination between consumers. As such, there is no reason why the petitioner no.1 should be deprived of getting the competitive rates of tariff from November 1, 2015 itself.

26. With regard to the Order dated February 8, 2017 passed by the WBERC, the same is squarely in consonance with Clause 8.10 of the WBERC Regulations of 2011. The said clause provides that if any difficulty arises in giving effect to any order based on these Regulations, the Commission, by subsequent supplementary order, may remove the difficulties keeping consistency with the provisions of the Act and the Regulations.

27. The said provision was invoked as the source of power for issuance of the Order dated February 8, 2017. The order, in fact, was issued by the Commission, which is authorised under Section 62 to determine the tariff.

28. It is seen from Clause 6.0 of the Order that sub-clause (b) thereof stipulates that the load factor rebate as proposed in the Scheme will be in addition to the rebates already allowed in the tariff order in respect of the WBSEDCL for 2016-2017 for respective categories of consumers.

29. As such, the line of distinction sought to be drawn between consumers

enjoying competitive rates as per the 2015 Notification and those not enjoying such rebate is artificial and not sanctioned by the Order itself.

30. Sub-clause (d) of Clause 6.0 says that the WBSEDCL shall publish a Notification in that regard clearly mentioning the rate of rebates and the applicable consumers before introduction of the Scheme, both in the newspaper and the website of WBSEDCL.

31. The concerned Scheme, a copy of which is annexed at page 32 of the Writ Petition, clearly stipulates that the exemption contemplated therein was intended for all 33 and 132 KV industrial consumers. As such, the expansive language of the Scheme, read in conjunction with the Order dated February 8, 2017, does not leave scope for discriminating between consumers enjoying competitive tariff rates and other consumers. The principle envisaged in sub-clause (b) of Clause 6.0 of the Order provides clearly that the load factor rebate contemplated in the latter scheme would be in addition to and not alternative to the rebates already allowed in the tariff order of WBSEDCL for 2016-2017.

32. Hence, the said competitive rates of 2016 could not be a relevant yardstick for discriminating against the competitive tariff consumers inasmuch as the extension of the 2017 relief is concerned.

33. In the absence of any such distinction being shown by the WBSEDCL, it has to be deemed that all consumers of electricity fell within the category of entitlement for Load Factor Rebate as proposed in the Scheme of 2015, irrespective of whether they enjoyed competitive tariff rates or not.

34. The competitive tariff rates in respect of command areas where more than one distributors operate and the load factor rebate given to consumers operate in two different fields and are distinct in scope of operation. Therefore applicability of one cannot exclude any consumer, if otherwise entitled, to be deprived of the other benefit.

35. However, since Clause 6.0 (e) of the 2017 Notification stipulates that the Scheme would be effective on and from the consumption month in which the Notification was published, there is no irregularity in the effect to the same being given from the month of February, 2017, since the date of publication of the concerned Notification was February 10, 2017.

36. Nothing in the Regulations of 2011 empowers the WBSEDCL to discriminate between the consumers enjoying principle tariff as per the 2015 Notification and the others. As such, the refusal to extend such additional rebate as per the 2015 Scheme to the petitioner no.1, on the ground that consumers enjoying competitive tariff Scheme were not entitled to get such additional rebate, as communicated vide Letter dated May 15, 2017 (annexed at page 43 of the Writ Petition) is palpably de hors the principles of Natural Justice as well as the concept of equality as enshrined in Article 14 of the Constitution of India.

37. Such discrimination contravenes the extant law and the Regulations of the

WBERC as well as the Order dated February 8, 2017 passed by the appropriate Commission (that is, the WBERC) in consonance with the statutory provisions.

38. Insofar as the decision in Brahmputra Metalics Ltd., Ranchi (supra) is concerned, the same lays down that promissory estoppel and legitimate expectation principles are to be applied even in case of public authorities. Such ratio is apt for the present adjudication and applies squarely to the parties herein as far as the rebates-in-question are concerned.

39. After having notified the conferment of a right by way of rebate/competitive tariff, the same cannot be resiled from by the authorities themselves. Such deviation violates the principle of promissory estoppel as well as the doctrine of legitimate expectation and ought to be set aside.

40. Insofar as the quantification of the financial loss suffered by the petitioner no.1 for not getting the benefit of the 2015 Scheme to the tune of Rs.16,81,155/- is concerned, a chart showing the corresponding break-up of extra payments made by the petitioner no.1, in the form of difference in revenue collected by the respondent no.1, has clearly been given in Annexure P-12 at page 44 of the Writ Petition.

41. There being nothing on record to controvert the veracity of the said chart and/or such quantification, the WBSEDCL ought to refund such excess payment made by the petitioner no.1 in order to compensate for the unlawful act of the WBSEDCL in not extending the benefit of the 2015 Notification to the petitioner no.1 on and from November 1, 2015 till January 31, 2016.

42. In view of the above considerations, W.P.A. No.20408 of 2017 is hereby allowed, thereby directing the WBSEDCL to apply the benefit of the Competitive Tariff Rate Notification dated October 15, 2015 to the petitioner no.1 and, accordingly to refund the amount of Rs.16,81,155/- to the petitioner no.1 by January 31, 2023.

43. The WBSEDCL is further directed to extend the Scheme of additional rebate (including additional load factor rebate) notified in the Notice of the WBSEDCL dated February 10, 2017, on the basis of the Order dated February 8, 2017 passed by the WBERC to the petitioner no.1. The amount due on such count shall be calculated by the WBSEDCL within January 15, 2023 and intimated immediately thereafter to the petitioners. In the event the petitioners have any grievance in respect of such calculations, it will be open to the petitioners to approach the WBSEDCL-Authorities with the suggested corrections as pointed out by the petitioners.

44. If and when such approach is made by the petitioners, the WBSEDCL shall resolve the issue upon giving an opportunity of hearing to the petitioners and/or their authorised agent within January 31, 2023. The amount found payable shall be disbursed in favour of the petitioners by March 31, 2023.

45. There will be no order as to costs.

46. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.