(2003) 03 KAR CK 0097

In the Karnataka High Court

Case No : Writ Appeal No''s. 8107 to 8132 of 1999

Karnataka Electricity Board and Another — APPELLANT

Vs

Lakshmi Keshava Chemicals (P) Ltd. and Others — RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:
Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49 (1), 78 A

Citation : (2003) 4 KCCR 2983

Hon'ble Judges : S.R. Nayak, J;K. Ramanna, J

Bench : Division Bench

Advocate : N. Krishnananda Gupta, for the Appellant; A.V. Amarnathan, for Respondents 1 to 14 and 16 to 28., for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The Karnataka Electricity Board (for short the ''Board'') being aggrieved by the order of the learned Single Judge dated 15.10.1999 in WP Nos. 22241-42 of 1997 and the batch of cases has preferred these batch of writ appeals. The Respondents herein are the writ Petitioners.

2. The background facts of the case are as follows:

The writ Petitioners are the consumers of electricity supplied by the Board and they fall under L.T. 5 category. The Board in the year 1997 revised and refixed the tariff. Being aggrieved by fixation of tariff, the above writ petitions were filed in this Court in Writ Petition Nos. 22241-42 of 1997. The Petitioners prayed for the following reliefs:

WHEREFORE, the Petitioner prayed that this Hon''ble Court may be pleased to issue a writ or order in the nature of mandamus directing the Respondent not to collect the line minimum charges as the same is illegal and without authority of law.

(b) And pass such other order this Hon''ble Court deems fit on the facts and circumstances of the case in the interest of equity and justice.

3. In the writ petitions, the Petitioners/consumers contended that the Board has no legal authority to fix line minimum charge, which is also called ''fixed charge''; the Board in fixing the tariff breached the direction issued by Government of Karnataka u/s 78A of the Electricity (Supply) Act, 1948 (for short the ''Act''); the fixation of line minimum charge is contrary to Clauses 6 and 8 of the agreement entered into between the parties.

4. The writ petition was opposed by the Board by filing a detailed statement of objections. In the statement of objections, the Board inter alia contended that the power tariff comprises of two parts, namely, ''fixed charges'' and ''energy charges''; the ''energy charges'' are levied according to the agreement for the energy consumed, whereas, the ''fixed charges'' are levied as per the conditions prescribed in the tariffs and they are levied for the reason that the Board has to generate power and keep the same in readiness for supply of energy to the different categories of consumers and therefore, revision of tariff for the year 1997 was in order and in accordance with law.

5. Learned Single Judge of this Court who heard the writ petitions did not agree with the contention of the Petitioners that the Board lacked legal authority to revise the tariff. Learned Judge having perused the materials placed before him on the basis of which, the Board had worked out the economics to determine the ''fixed charge'' has held that prima facie the statistics placed by the Board before the Court would justify the fixation of the ''fixed charges''. While holding so, the learned Judge, was pleased to observe thus-

10. In other words, the Board has the power to frame uniform tariffs for supply of electricity. This uniform tariff can certainly include all the expenses that is incurred by the Board for supply of power. Hence, clearly the collection of fixed charges cannot therefore be described as ''tax'' nor ''fee''. Therefore, the statutory authority of law for collection of fixed charges is clearly traceable to Section 49(1) of the Act, referred to above. As such, the argument of the learned Counsel that it is unauthorised and is not supported by law has therefore, to be rejected.

6. Having so opined, the learned Judge, however, has stated-

I am of the view that the Respondents (the Board) have laid stress to distribute the losses incurred by them in other fields uniformly and thus to strike a balance.

7. Having so felt, learned Judge disposed of the writ petitions directing the Board to reconsider the fixation of ''fixed charge'' for the year 1997 in a pragmatic way and in the light of the guidelines issued by the Government of Karnataka. At this stage itself, it is appropriate to notice that it was also contended before the learned Single Judge that when the Government had directed the Board to increase the tariff rates by 13% only, the Board chose to increase the tariff by 18%. That seems to be the reason why the learned Single Judge has directed

reconsideration of the ''fixed charge'', keeping in view the guidelines issued by the Government u/s 78A of the Act.

8. We have heard Sri N.K. Gupta, learned Standing Counsel for the Appellant-Board and Sri A.V. Amarnath, learned Counsel for Respondents-consumers.

9. Sri Gupta, contended that there is no merit in the contention of the writ Petitioners and that the tariff could include ''fixed charges'' also and the Board did not violate any of the directions issued by the Government u/s 78A of the Act. Sri Gupta would draw our attention to what is stated in Paragraphs 3 and 4 of additional statement of objections dated 30.9.1999 and would maintain that the tariff has been fixed in consultation with and approval of the State Government. Sri Gupta also contended that even after issuance of Tariff Notification for the year 1997, when certain categories of consumers made grievance, the Chief Minister of the State constituted a Committee under the Chairmanship of the Chief Secretary to the Government to go into the revised tariffs for the year 1997 and on the recommendation made by that Committee, a marginal relief was made for ''fixed charges'' of LT industries having connected load between 67 HP to 100 HP was reduced to Rs. 40/- from Rs. 57/- per month. Sri Gupta would maintain that since the tariff has been fixed by the Board in consultation with and approval of the Government, the very ground which weighed with the learned Single Judge to issue the impugned direction is a non-existing factor. Sri Gupta would contend that if that ground is not available, the Petitioners have utterly failed to make out any permissible ground to call in question the legality of the tariffs fixed by the Board for the year 1997.

10. Learned Counsel for writ Petitioners-consumers at the threshold would point out that no prejudice has been done by the order of learned Single Judge, because, learned Judge has not quashed or set aside the impugned tariff notification and the learned Judge has only directed the Board to reconsider the fixation of ''fixed charge'' in a pragmatic way after taking into account all relevant materials and considerations, therefore, it is not a fit case where the Division Bench should step in and review correctness of the opinion of learned Judge. Learned Counsel for writ Petitioners would also contend that levy of ''fixed charge'' forming part of the tariff is unauthorised in terms of the statute as well as in terms of the agreements existing between the parties. Learned Counsel would also contend that the ''fixed charge'', in the facts and circumstances of the case, is totally irrational and exorbitant and therefore, such fixation could not be sustained on the touchstone of Article 14 of the Constitution.

11. Having heard the learned Counsel for the parties, the only question that arises for decision in these appeals is whether the fixation of ''fixed charge'' as a component of the tariff for the year 1997 is vitiated on any permissible legal ground. Having addressed this question to ourselves and reflecting on it, we do not find any flaw, factual or legal, which could vitiate the ''fixed charge'' fixed for the year 1997. The basic ground urged in the writ petition as reflected in the pleading is that the Board lacks legal power to fix the ''fixed charge'' as a

component of the tariff. The contention needs to be noticed only to be rejected. It is stated in the pleadings of the Board, that it has been the practice of the Board throughout to determine the tariff for every year taking into account not only the actual cost of the power supplied to the consumers but also the expenses to be incurred by the Board in generating, transporting and distributing energy to the consumers and the latter of which is compendiously described as ''fixed charge''. The Board while fixing the tariff is entitled to take into account the expenditure to be incurred by the Board under relevant overheads inclusive of the overhead, ''fixed charge''.

12. The other contention raised in the writ petition that the Board while fixing the tariff for the year 1997 has violated the directions issued by the Government of Karnataka u/s 78A, is also without any merit. Paras 3 and 4 of the Additional Statement of Objections filed by the Board dated 03.09.1999 read as follows:

3. It is respectfully submitted that in order to augment its financial resources and reduce losses during April 1997, it was proposed to revise the tariff to various categories of consumers including the Petitioners. As per the records for the year 1996-97, there was a revenue deficit of Rs. 704.8 crores and it was anticipated for the year 1997-98, a deficit of Rs. 398.19 crores inspite of taking into account the anticipated subsidy from the State Government to the extent of Rs. 80 crores. Board accepted the proposal to revise the tariff and made a recommendation to the State Government to permit the Board to revise the tariffs as proposed. The recommendation or revision of tariff accordingly was placed before the cabinet Sub-Committee of the State consisting of the Hon''ble Deputy Chief Minister, Hon''ble Minister for Agriculture, Hon''ble Minister for Transport and Electricity which was constituted to review the power in the State and after consideration the Cabinet Sub-Committee and the Government of Karnataka approved the proposal given by the Board for revision of tariff and on such approval Board issued Notification dated 1st July, 1997 revising the tariff.

4. It is submitted respectfully that after issuance of Notification the issue of revision of tariff came up before the legislature. There were also representations from various consumers including the representations from the Association of industries regarding revised tariffs. The Hon''ble Chief Minister therefore constituted a committee under the Chairmanship of the Chief Secretary to go into the revised tariffs including that of industries. The committee of the Chief Secretary gave its report and based on the said report only the Fixed charges of LT industries having connected load between 67 HP to 100 HP was reduced to Rs. 40/- from Rs. 57/- per HP per month.

With the foregoing, it is respectfully submitted that while revising the tariffs the Board and the Government have taken into consideration the revenue deficit of the Board and the expected revenue to be realised, the points raised in the legislature and representations made in this regard. Therefore, the revision of tariff cannot be termed as arbitrary.

13. Learned Counsel for the writ Petitioners would tell us that the Petitioners had no opportunity to traverse or controvert the statements made in the additional statement of objections, because, that statement was filed when the main writ petitions were being heard finally by the learned Single Judge and in addition to that circumstance, the Petitioners and their Counsel had no access to the proceedings, documents and records to which reference is made in the said additional statement of objections, therefore, it cannot be taken that whatever is stated in the said statement of objections are actual state of affairs. Learned Counsel for the Petitioners would maintain that it is a fit case where the Court should secure all the connected records again and see whether the submissions made by the Board in the additional statement of objections are true. This request of the learned Counsel for writ Petitioners is not acceptable to us for more than one reason.

14. We have no good ground to doubt the integrity of the sworn statements made by the Board in the additional statement of objections. Admittedly, well before the Judgment was handed down by the learned Single Judge, a copy of the additional statement of objections was served on the writ Petitioners through their Counsel and if the writ Petitioners had any good reason to doubt the integrity of the sworn statements of the Board or if they found any incorrect statement in the statement of objections, without any loss of time, they ought to have brought it to the notice of the learned Single Judge by filing an appropriate rejoinder. The writ Petitioners did not avail of such a legitimate course open to them at the appropriate stage. Alternatively, even accepting the statement of the writ Petitioners that they had no sufficient time to file rejoinder before the learned Single Judge as correct, the fact remains that even in these appeals, the writ Petitioners have not filed any pleading to contest the correctness of any of the statements made in the additional statement of objections. Therefore, we hold that the contention raised by the writ Petitioners that in fixing the tariff for the year 1997, the Board violated the directions/guidelines issued by the Government u/s 78A of the Act is not well-founded.

15. This takes us to the last contention of the learned Counsel for writ Petitioners meekly putforth before us that the fixation of ''fixed charge'' is irrational and exorbitant and it attracts the wrath of the postulates of Article 14 of Constitution. The above plea remains as a plea only without any supporting factual matrix much less the proof in support of the same. It is true that the validity of a tariff could be decided on the touchstone of Article 14 of Constitution of India and if the Court were to find that the fixation is arbitrary, unreasonable and irrational, it would step in and correct the error crept in the tariff fixation. But, in order to do that, the Court should find not only necessary factual matrix in the form of pleading but also the proof in support of the plea taken in the pleading.

16. We have carefully perused the averments made in the writ affidavit in our attempt to know whether necessary factual matrix is laid in that regard. The allegations are as vague as they could be. The main ground urged in the writ

petition was only with regard to the legal authority of the Board to fix the ''fixed charge'' as a component of the tariff. In other words, the pleadings are totally lacking with regard to the plea now raised that the ''fixed charge'' is irrational, arbitrary and exorbitant. In the absence of pleading and the proof to establish the factual plea, the last contention of the learned Counsel has also to be rejected as devoid of merit.

17. It is true that learned Single Judge has not issued mandamus to fix the ''fixed charge'' as a component of the tariff for the year 1997 at a particular rate and the learned Single Judge has only directed the Board to reconsider the fixation of ''fixed charge'' as a component of the tariff for the year 1997 pragmatically and after taking into account all relevant considerations. Nevertheless, it needs to be noticed that an entitlement to consider for a grant/ sanction of a thing is also a legal right and unless the applicant for the writ makes out a case that he has a right to be considered in law, the Court will not be justified in issuing direction to an authority to consider a non-legal claim of the applicant or to reconsider its decision earlier taken on such claim. In order to direct an authority to reconsider its decision, it becomes necessary for the reviewing Court to find some or the other flaw or error, factual or legal, on account of which the decision taken by the authority is vitiated. Since we do not find any flaw, legal or factual, in the decision-making by the Board, which has ultimately culminated in the fixation of the tariff for the year 1997, issuance of mandamus to the Board to reconsider fixation of the tariff for the year 1997 would not arise. It is trite, the Court shall not issue futile writs. Our above observations would dispose of the contention of the learned Counsel for the writ Petitioners that no prejudice is caused to the Board by the direction issued by the learned Single Judge and, therefore, it need not be interfered.

18. In conclusion, with respect, we cannot sustain the direction issued by the learned Single Judge. The writ appeals are, therefore, allowed and the order of the learned Single Judge is set aside and the Writ Petition Nos. 22241-42 of 1997 and the batch are dismissed with no order as to costs.