(2012) 01 KL CK 0135

In the High Court Of Kerala

Case No : W.A. No. 1991 of 2011

Kerala State Electricity Board and Others APPELLANT

Vs

M/s. KSE Ltd. Dairy Division and Another RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 1 KLJ 584

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P. Santhalingam and K.N. Sreedevi, for the Appellant; Julian Xavier, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—This Appeal is filed against the judgment of the learned Single Judge declaring that the 1 "respondent is entitled to HT-I tariff for the electricity supply taken by them from Kerala State Electricity Board v. M/s. KSE Ltd., Dairy Division (C.N. Ramachandran Nair, J.) 585 the KSEB. We have heard learned Standing Counsel for the KSEB and also Learned Counsel appearing for the 1 "respondent, who took notice on admission.

2. After hearing both sides, and on going through the judgment of the learned Single Judge, we notice that the learned Single Judge only followed two judgments of this Court, which again are based on the order the Electricity Regulatory Commission fixing the tariff applicable to M/s. Milma. The relevant order of the Electricity Regulatory Commission is as follows:-

In view of the foregoing, the Commission Orders the following:

4.1. The Dairy plants of KCMMF engaged in production of milk and milk products in a given premise having HT Electricity service connection shall pay electricity charges applicable to the HT-I, Industrial category, as per the bills raised on these plants by the Board in line with the Tariff Orders in force from time to time.

4.2. KCMMF Units engaged in chilling and/or cold storage unit(s) under a given

HT Electricity service connection shall pay electricity charges applicable to the HT-IV, Commercial category, as per the bills raised on these Units by the Board in line with the Tariff Orders in force from time to time.

4.3. The Board shall allow interest free installments to KCMMF in the case of arrears payable, thereof, if any."

3. The contention of the learned Standing Counsel for the KSEB is that the 1st respondent is not only engaged in production but also in marketing, and so much so, the 1st respondent is atleast partly liable for payment of tariff at commercial rate. However, the appellant''s counsel submitted that the 1st respondent falls under the category 4.1 above because like M/s. Milma the 1st respondent is engaged in production and distribution of milk products. It is specifically stated that the main activity is pasteurisation of fresh milk, packing and stocking of the same for distribution. The 1st respondent is stated to have a separate icecream manufacturing unit also. There is nothing to indicate that the 1st respondent is given separate connections though it is on record that the 1st respondent is a High Tension consumer of power. After hearing both sides, we dispose of the Writ Appeal by holding that the judgment of the learned Single Judge following the decision of the Regulatory Commission will apply so far as the chilling unit, packing unit as well as the manufacturing unit of milk and ice cream and other products. However, if the 1st respondent is engaged in marketing of the products and is maintaining a sales division, such activity will independently constitute a commercial activity for which applicable tariff could be charged. If any wholesale or retail sales outlet is maintained by the 1st respondent, which is a matter to be found out on verification at site, then it is for the Board to consider whether separate connection is called for the sales outlet whether it be LT or HT, and if there is sales unit, KSEB can charge commercial tariff whether under HT or LT. We make it clear that production and stocking of milk, ice-cream and other products will squarely fall under industrial tariff and only sales outlet will go under commercial tariff.

Accordingly, this Writ Appeal is disposed of modifying the judgment of the learned Single Judge as above.

