
(2013) 06 MP CK 0073
In the Madhya Pradesh High Court
Case No : W.A. No. 599 of 2012

K.S. Oils Ltd.

APPELLANT

Vs

Madhya Pradesh Kshetra Vidyut Vitran Company Ltd. and
Others

RESPONDENT

Date of Decision : 19-06-2013

Acts Referred:

Citation : AIR 2013 MP 167 : (2013) 5 MPHT 160 : (2013) 3 MPJR 153 : (2013) 3 MPLJ 688

Hon'ble Judges : B.D. Rathi, J;A.K. Shrivastava, J

Bench : Division Bench

Advocate : Mahesh Goyal, for the Appellant; Vivek Jain for respondent Nos. 1 to 3, for the Respondent

Judgement

1. By taking the aid of section 2(1) of Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, the writ petitioner who has lost from the Writ Court has filed this appeal against the order dated 28-8-2012 passed in Writ Petition No. 5677/2012 [reported in K.S. Oils Ltd., Morena Vs. Madhya Pradesh Kshetra Vidyut Vitaran Company Ltd. Bhopal and Others,]. The petitioner is running the unit M/s. K. S. Oils Ltd., Morena, which is a company registered under the provisions of the Indian Companies Act, 1956. In order to save the unit from power cut and to earn profit and looking to the scarcity of the electricity which is being supplied by respondents, the petitioner installed a dedicated feeder to the licensee/respondents. Since the respondents are not ready and not permitting to use the said dedicated feeder solely by the appellant to run its unit, therefore, it made a cause to the appellant to file a Writ Petition.

2. The sole grievance which was raised by the learned counsel for the appellant before the learned Writ Court as well as in this Court is that because the petitioner has given a dedicated feeder to the licensee from his own hard money, he can only use it and the respondents/licensee should not give any connection from the said feeder to any other consumer. However, the learned Writ Court by

considering the scope of Clause 5.3 of M.P. Electricity Supply Code, 2004 (in short "the Code") which pertains to the dedicated feeder, has dismissed the Writ Petition of the appellant. Hence, this Writ Appeal has been filed.

3. Indeed, Shri Mahesh Goyal, in his usual vehement has raised the same grievance and same argument which was raised before the learned Writ Court and submitted that if the Clause 5.3 of the Code is interpreted in its stricto sensu, the only inference which can be drawn is that the consumer who had provided the dedicated feeder can only use it and the licensee/respondents should not permit to provide electric connection from the said feeder to any other consumer.

4. On the other hand, Shri Vivek Jain, learned counsel for the respondents has argued in support of impugned order and has submitted that cogent reasons have been assigned by the learned Writ Court and looking to the limited scope of intra Court appeal this Court should not interfere in the impugned order and prayed that this appeal be dismissed.

5. Looking the rival contention of the parties, it would be germane to quote the Clause 5.3 of the Code which reads as under:--

5.3. Consumers desirous of getting power supply from dedicated feeders may request for such facility to the licensee. The dedicated feeder shall be extended from the Power Substation to the consumer's point of supply. In such cases the consumers shall be liable to pay the cost of Bay and all protection Switchgears and its accessories provided at the power substation for this feeder in addition to the cost of the feeder. On receipt of such request, the licensee will check the feasibility based on merits of providing a dedicated feeder to the consumer's premises. If found feasible, the consumer will be provided with a dedicated feeder and the consumer will be liable to pay additional charges as indicated in the Schedule of Miscellaneous Charges.

6. Despite it has been forcibly argued by Shri Goyal, learned counsel for the appellant by reading the aforesaid Clause from different angles, we are of the firm view that the argument of learned counsel for appellant cannot be accepted. The ambit and scope of Clause 5.3. of the said Code if considered in true perspective it will be as clear like a noon day that merely because the dedicated feeder is provided by consumer like appellant to the licensee/respondents, his act would not straightway entail to use the said feeder solely by him to run his unit which in the present case is owned by the company/appellant. Had it been such an intention of the legislature Clause 5.3 would have been altogether differently enacted. According to us, merely the words "consumers" and "feeders", used in aforesaid clause are plural words would in itself not mean that a dedicated feeder can be used only by single individual who had provided it to the licensee/respondents to obtain uninterrupted electricity supply. Clause 5.3. of the said Code cannot be interpreted in such a manner and fashion in which learned counsel has argued. If such an interpretation is accepted, the aforesaid

Clause would become otiose and would lose its sanctity. According to us, by providing the dedicated feeder by the respondents/licensee, the only right which would be conferred in the appellant/company, would be to get the uninterrupted electricity supply to run the Unit of his company, but, it would not mean that the licensee/respondents are estopped to give connection from the said feeder to the other consumers.

7. Indeed Clause 5.3. is to be read in juxtaposition and conjointly with Clause 4.9 of the Code which reads thus:--

4.9. The service connection/extension of distribution mains, notwithstanding that it has been paid for by the consumer, shall be the property of the licensee. The licensee shall maintain it at its cost and shall also have the right to use the same service connection/extension for supply of energy to any other person but such extension or service connection should not adversely affect the supply to the consumer who paid for the extension of the distribution supply network.

Bare perusal of the aforesaid Clause it would become luminously clear that the service connection/extension of the distribution mains would be property of the licensee only and the licensee shall maintain it at its cost but such extension or service should not adversely affect the supply to the consumer as the cost to purchase has been paid for by the consumer. Hence, respondents are hereby directed to provide electric power to appellant round the clock through the said dedicated feeder so that the working of appellant's unit may not be interrupted.

8. We find much substance in the submissions of learned counsel for the appellant that admittedly the dedicated feeder of 11400 KVA has been provided by the appellant/company to the licensee/respondents. Although, the electricity consumption of the appellant's unit is only 3000 KVA, hence, admittedly, the capacity of the dedicated feeder which the appellant has provided to the respondents is near about 4 times than the electricity which appellant company would consume. This would mean that the dedication which has been made by the appellant by providing such feeder with an understanding that without interruption, round the clock the electricity supply would be provided to him, therefore, we hereby direct the respondents that they may provide the connection to any other consumer from the said feeder, but not exceeding the total consumption of 11000 KVA which would mean that throughout round the clock the electricity supply of appellant's unit would not be interrupted. With the aforesaid modification in the impugned order, this appeal is disposed of. No costs.