(2009) 09 AHC CK 0093

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40579 of 1996

Meerut Cement Company Pvt. Ltd. Through its director, Meerut — APPELLANT

Vs

Regional Appellate Committee (Assessment), U.P. State Electricity Board, Meerut Zone, Meerut and Others — RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:
Electricity Supply (Consumers) Regulations, 1984 — Section 17(ii), 17(vi)

Citation : (2009) 09 AHC CK 0093

Hon'ble Judges : Tarun Agarwala, J

Judgement

Tarun Agarwala,J.

1. Heard Sri P.K.Jain, the learned senior counsel for the petitioner and Sri H.P.Dubey, the learned counsel for the Electricity Board.

2. The petitioner was initially sanctioned an electricity connection of 235 KVA in the year 1983 and a formal agreement was entered between the parties to that extent. On 29.7.1994, the electricity load was reduced to 170 KVA and a fresh agreement was executed between the parties. The petitioner applied and was granted a permanent disconnection on 27.8.1994. It has also been stated that the petitioner had cleared all its dues upto 27.8.1994. Subsequently, a demand of Rs. 3 Lacs and odd was issued directing the petitioner to pay this amount. The petitioner filed a writ petition which was disposed of directing the petitioner to make an appropriate representation to the authority. Based on the said direction, the petitioner filed a representation, which was duly considered and rejected by the authorities demanding Rs.2,95,000/ as minimum charges for the period August, 1994 to February, 1995. The authorities contended that since a new agreement was executed on 29.7.1994, the petitioner was required to pay the minimum charges, for six months as required under Section 17(ii) of the Electricity Supply (Consumers) Regulations, 1984. The petitioner, being aggrieved by the said order, filed a writ petition, which was dismissed on the

ground of alternative remedy. The petitioner, thereafter, preferred an appeal which was also dismissed and consequently, the present writ petition has been filed.

3. After hearing the learned counsel for the parties, the bone contention is whether the provisions of Section 17(ii) or Section 17(vi) is applicable. For facility, the provision of Section 17 of the Regulation is quoted herein:

"17. Agreement. (i) The consumer shall enter into a formal declaration/ agreement for a minimum period of two years for taking electrical energy before the release of supply. After expiry of the above period of two years, the declaration/agreement will continue on year to year basis on the same terms and conditions unless terminated in accordance with the provisions of the declaration/ agreements.

All consumers shall execute declaration/agreements governing supply of energy in the form prescribed by the Board from time to time.

(ii) If the supply to a consumer is disconnected on request or in default before compulsory period of two years is over, he shall be liable for payment of minimum charge for the remaining period by which it falls short of two years or for the period of six months from the date of disconnection whichever is less, together with the estimated expenditure on the erection and demolition of the substation and the line (not paid by the consumer) actually dismantled due to the disconnection, together with the estimated expenditure on the cartage of the salvaged materials to stores and the cost of unsalvaged materials plus 15% supervision charges on the labour and cartage only.

(iii) If after expiry of compulsory period of two years, a consumer is disconnected in default and he fails to get his connection reconnected within six months, the Supplier shall serve one month''s notice to the consumer to get the connection reconnected failing which the service could stand permanently disconnected, the consumer shall be liable to have been permanently disconnected.

(iv) In the event of no formal declaration/agreement having been entered into between the Board and the consumer, the later shall from the date the supply of electricity has commenced, be bound by the further subject to the orders issued by the Board from time to time.

(v) The assessment in the cases of permanent disconnection shall be further subject to the orders issued by the Board from time to time.

(vi) If the consumer, after execution of declaration/agreement, reduces or increases his load, or changes the process or shifts his connection, he shall have to execute a fresh declaration/agreement before doing so but shall be deemed as an old registered consumer of the Supplier and a clause in the fresh declaration/ agreement shall also be incorporated accordingly."

4. The learned counsel for the petitioner submitted that upon a reading of the

provisions of Section 17(vi) of the Regulation, it is clear that the the petitioner would be deemed to be treated as an old consumer upon a change of the load factor even though the petitioner was required to execute a fresh agreement. On the other hand, the contention of Sri H.P.Dubey, the learned counsel for the Electricity Board is, that the petitioner would be treated to be an old registered consumer for such other purposes, namely, for reduction or increase of the load or for change of the process or for shifting the connection. But, once a formal agreement is again executed, the minimum consumption charges for a minimum of six months becomes applicable as provided under Section 17(ii) of the Regulation. In this connection the learned counsel has also invited the attention of the provisions of Clause 11 and 17 of the agreement, which was executed on 29.7.1994 upon the reduction of the load, which provides as under:

"11. This agreement shall subject herein before provided be and remain in force for two years from the date of commencement of supply (hereinafter/called the initial period of supply) and thereafter from year to year basis on the terms and conditions herein contained.

Provided that either party shall be at liberty to determine this agreement at any time after the expiration of the initial period of supply on giving one month''s notice in writing of such intention, and on the expiration of such notice, this agreement shall absolutely ceases and determine, but without prejudice to the rights and remedies, if any of either party,which may have accrued or arisen hereunder in the meantime.

Provided further that if the consumer ceases taking supply of electrical energy due to any reason, he shall be liable to pay to the supplier necessary charges as per provision made in the Regulation framed by the Supplier under Sections 49 and 79 of the Electricity (Supply) Act, 1948.

17. (a) In case of shifting of the connections, change or addition of process, the consumer hereby covenants that for all purposes he shall be deemed as old registered consumer of the Supplier and the Supplier shall treat him accordingly.

(b) In case of reduction/addition of loads, the consumer hereby covenants that for all the purposes he shall be deemed as old registered consumer of the Supplier having taken supply for different loads before execution of this agreement. The Supplier shall treat him accordingly."

5. Upon a reading of Clause 11 and 17 of the agreement read with Section 17(ii) and 17(vi) of the Regulation of 1983, it is clear that once a fresh agreement is signed after the reduction of the load, he is required to pay a minimum charge for six months, in the event he terminates the contract. In the present case, a fresh agreement was executed on 29.7.1994 and the petitioner applied for permanent disconnection on 27.8.1994. Since the period of 2 years had not elapsed, the petitioner was required to pay the minimum charges for six months under Regulation 17(ii) of the Regulations of 1982.

6. In view of the aforesaid, the demand raised by the respondent does not suffer from any error of law. The writ petition fails and is dismissed.

7. It has been brought to the notices of the Court that pursuant to the interim order certain amount has been deposited by the petitioner. In view of the aforesaid, the remaining amount shall be paid by the petitioner.