

(1971) 08 AHC CK 0023
In the Allahabad High Court
Case No : Civil Misc. Writ No. 3180 of 1969

Mirzapur Electric Supply Co. Ltd.

APPELLANT

Vs

U.P. State Electricity Board, Lucknow and Another

RESPONDENT

Date of Decision : 17-08-1971

Acts Referred:

Electricity (Supply) Act, 1948 — Section 36

Citation : AIR 1972 All 127

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Advocate : A. Kumar and S.C. Khare, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—This is a petition under Article 226 of the Constitution. The petitioner is a private limited company carrying on business in the name of Mirzapur Electric Supply Co. Ltd.

2. Since 1929 the petitioner held a licence from the State Government under the Indian Electricity Act, 1910, for supply of electricity to the towns of Mirzapur and Vidhyachal. The petitioner had its own generating plant. The first respondent, the U. P. Electricity Board, Lucknow by an order dated January 15, 1962, directed the petitioner to close down its generating station and to take the supply of electricity from the Board. The generating station was closed on February 20, 1962 and the Board has been supplying electrical energy to the petitioner since then. The total load of electrical energy which was being supplied from the Board from time to time has been increasing and went up about 3,000 KVA. In June 1961 the petitioner demanded an increase in the load by 1000KVA. The Board wrote back to the company saying that the increased demand will be met only when the petitioner delivered to the Board a duly signed and executed agreement, a draft whereof had been sent to the petitioner several years back. The draft agreement contains a clause which requires the company to deposit a

security and says that this demand of the Board is wholly unauthorised and illegal. The company has prayed for a writ of mandamus directing the respondents to supply the enhanced demand without requiring the petitioner to deposit the security of rupees one lac.

3. The short ground upon which the petitioner objects to the deposit of the security is that the relationship between the petitioner and the Board is governed wholly by Section 36 and Schedule III of the Electricity (Supply) Act, 1948. There is no provision, according to the petitioner, in that Act authorising the Board to demand a security from the petitioner. The respondent's case is that the relationship between the petitioner and the Board is not governed exclusively by Section 36 and Schedule III of the Act. The relationship should be governed by mutual agreement and the Board is within its right to demand a security to safeguard its own interest. It has been stated in the counter-affidavit filed on behalf of the respondents that the monthly bill for the supply of electrical energy to the petitioner company comes to about Rs. 1,40,000/- and the Board shall be put to an additional expenditure of about Rs. 40,000 per month when the increase in the load is sanctioned. It has been further alleged that the petitioner company is already in arrears to the tune of Rs. 7 lacs and the Board is not prepared to increase its commitment without safeguarding its own financial interest. It has further been stated on behalf of the respondent that u/s 26 of the Act Board has all the powers and obligations of a licensee under Act 9 of 1910 and the Board as a licensee has the power and the authority to demand a security from the petitioner company whose status is no better than that of a consumer.

4. Now, turning to the rival contentions to me it appears that the approach of both sides is wrong. It is true that the relationship between the Board and the petitioner company is governed in certain matters by Section 36 and Schedule III. Similarly the Board does enjoy the rights of a licensee according to the provisions contained in Section 26 of the Act. But this position does not provide an answer to the question that falls for consideration in this case. The first thing to be determined is as to the nature of the transaction between the Board and the petitioner company. The Board holds a monopoly for the production and supply of electricity. It is engaged in what is essentially a commercial enterprise like so many State-owned, enterprises. The petitioner company is also engaged in business; its sole purpose being to earn profits from the business of supply of electricity to its consumers. In other words, the relationship between the parties is that of seller and purchaser of goods. Such a relationship is essentially governed by a contract between the parties. By virtue of statutory provisions already noticed above, the ambit of contract is controlled in certain respects. The control is two-fold. The first control is that the petitioner company cannot purchase its requirement of electricity from any other source than the Board. The second control is with regard to the price. The Board cannot charge price higher than that is provided in Schedule III. But that is about all. The Act is not exhaustive and it does not purport to restrict the right of the parties to negotiate

and agree upon other vital conditions governing such a contract. For instance there is nothing in the Act which precludes the parties from agreeing and to the manner and time of the payment of the price of electricity. Likewise there is no provision in the Act which prohibits the parties from agreeing upon a condition meant to safeguard the mutual interest under the contract. If one may say so, the Board is like the producer of goods and the petitioner company is its distributor or selling agent. Such a relationship between the parties is invariably governed by a mutual contract. It is not uncommon in a transaction of this nature that the producer of goods takes from its distributor a security with a view to safeguarding the payment of the price of the goods supplied and for ensuring the fulfilment of the other conditions of the contract. It is, therefore, not correct to say that the demand of the Board to require the petitioner company to sign an agreement and to furnish a security in accordance with one of the terms of the contract is unauthorised or illegal.

5. From the counter-affidavit filed on behalf of the respondents it appears that the monthly bill for the supply of electricity to the petitioner company is to the tune of Rs. 1,40,000 and the Board expects to incur an additional expense of Rs. 40,000/- per month, if the supply load is increased as demanded by the petitioner company. The petitioner company is already in arrears to the tune of Rs. 7,00,000/-. In such circumstances the Board, in my opinion, is perfectly justified in insisting that the petitioner company should furnish security. From the counter-affidavit it further appears that the petitioner company has already signed the agreement and has delivered it to the Board, but it has added a note against Clause 23 relating to the security. The note reads:--

"The question of security deposit as demanded should be kept in abeyance, pending negotiation and final decision is reached and as agreed to by the licensee in due course does not arise since there was not a condition at the time of closing down of generating station under the instruction of Government of U. P."

6. This note clearly amounts to refusal on the part of the petitioner company to furnish the security. As has already been pointed out, there is nothing in the Act which prohibits the Board from demanding the security. It is not the case of the petitioner company that similar security is not being demanded by the Board from other licensees and the petitioner company is being subjected to discriminatory treatment, or that the amount of security is unreasonably high. In any event, the matter is entirely to be decided by the parties by mutual agreement and I do not see how this Court can be called upon to interfere.

7. The petition appears to be misconceived. It fails and is dismissed with costs.