

(2005) 09 AP CK 0102

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23445 of 2004

M.K. Gold Paints (P) Ltd.

APPELLANT

Vs

Assistant Accounts Officer, Electricity Revenue Office, Eastern
Power Distribution Co. of A.P. Ltd.

RESPONDENT

Date of Decision : 28-09-2005

Acts Referred:

Citation : (2006) 1 ALT 255

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : N. P Anjana Devi, for the Appellant; V. Ajay Kumar, S.C. for A.P. TRANSCO, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is a private limited company engaged in manufacture of paints. The company obtained electricity connection from A.P. Transmission Corporation in April 2002 duly paying the necessary charges for laying transmission lines and installation of transformer. At the time of availing power supply, the petitioner entered into agreement for purchase of electricity (the Agreement, in brief) on 15-03-2002. Clause 10 of the Agreement provides that the consumer shall pay minimum charges every month as prescribed by terms and conditions of supply and tariff order even if no electricity is consumed for whatever reason or if the electricity consumed is less than guaranteed minimum. Clause 11 of the Agreement casts an obligation on the consumer to pay special annual charges every year, if during any year falls short of the guaranteed minimum. It appears for the year 2002-2003, the consumption of the petitioner fell short of annual minimum guarantee (AMG) and therefore issued a letter dated 08-10-2004 calling upon the petitioner to pay a sum of Rs. 19, 5047- towards AMG charges for the year 2002-2003 and a sum of Rs. 20,5247- towards AMG charges for the year 2003-2004. This letter is challenged by the petitioner as illegal, arbitrary, unjust and violative of principles of natural justice.

The petitioner also seeks a consequential direction to restore power supply, which was disconnected on 18-11 -2004 as the petitioner failed to pay the demanded AMG charges.

2. This Court initially; while ordering Notice Before Admission passed interim order directing the respondent to restore power supply on condition of the petitioner depositing half of the demanded amount. The respondent filed W.V.MP. No. 1809 of 2005 along with the counter affidavit opposing the writ petition and also praying for vacating the interim order. The matter was heard at that stage itself and is being disposed of finally by this order.

3. In the counter affidavit, it is stated that the petitioner has to pay minimum guarantee of Rs. 8007- per HP per year. The petitioner has 40 HP contracted load and he has to pay minimum guarantee amount of Rs. 32,0007- , if the annual consumption of electricity falls below the value of Rs. 32, 0007-. For the period April 2002 to March 2003, the petitioner consumed electricity, only to a tune of Rs. 12,4967-, which falls short of minimum guarantee amount by Rs 19,5047-. Even for the year April, 2003 to March 2004, the petitioner consumed electricity of the value of Rs. 11,4767- thus fell short of AMG by Rs. 20,524 and therefore the impugned letter was issued demanding the amount after duly giving credit to electricity consumption charges paid.

4. The learned Counsel for the petitioner, Sri P. Satyanarayana, submits that the respondent demanded a sum of Rs. 30,7427-for the year 2002-2003 towards electricity consumption charges which was paid and therefore the short fall is only Rs. 1,2587-. He also submits that for the year 2003-2004, the respondent demanded a sum of Rs. 29,4327-which was paid and therefore the short fall is only Rs. 2,568/-. The respondent while calculating the electricity consumption charges has ignored the surcharge on electricity, meter rent, fuel charges etc., which were paid by the petitioner and took into consideration the actual electricity charges for the purpose of calculating AMG charges, which is illegal and arbitrary. He placed strong reliance on clause 11 of the Agreement in support of the said submission.

5. The learned Standing counsel for A.P.TRANSCO, Sri V. Ajay Kumar, placed reliance on clauses 10 and 11 of the Agreement in support of the submission that while calculating the actual electricity consumption charges vis-a-vis AMG charges, TRANSCO, is required to take into consideration the actual current consumption charges only. He placed strong reliance on Form of LT agreement to be executed by the consumer and conditions 26 and 33 of revised terms and conditions of electricity supply. Reliance is also placed on the decisions of the Supreme court in Bihar State Electricity Board, Patna and Others Vs. Green Rubber Industries and Others, , Municipal Corporation of Delhi Vs. Asian Art Printers (P) Ltd. and others, etc. etc., and Orissa State Electricity Board and another etc. Vs. M/s. IPI Steel Ltd., etc., in support of the contention that the monthly minimum charges payable under clause 10 and condition No. 26 are altogether different from the special AMG charges payable under clause 11 and

condition No. 33 of the Terms and Conditions. He also contends that the Courts have upheld the dual pricing policy of the State Electricity Boards in collecting monthly payment charges and actual consumption charges. He also submits that while calculating the AMG charges under clause 11, the monthly minimum charges have to be ignored, which includes the component of fuel charges, surcharge etc.

6. The only point that arises for consideration is as to how A.P. TRANSCO has to calculate special AMG charges under clause 11 of the LT Agreement read with condition No. 33 of the terms and conditions?

7. The terms and conditions of supply of electrical energy issued by the erstwhile A.P. State Electricity Board in their B.P.Ms. No. 690, dated 17-09-1975 govern the conditions of electricity supply by the respondent to the petitioner. There is no denial of this. As per condition No. 3, every person seeking supply of electrical energy must apply to the concerned local office of A.P. TRANSCO in the prescribed form and also execute an agreement with the supplier. Appendix II to "Terms and Conditions" is the prescribed form I and appendix IV is the Form of LT Agreement to be executed by a person who wants to avail electricity at low tension below 75 HP. The petitioner executed such Agreement on 15-03-2002. Clause 11 of the Agreement, a Xerox copy of which is annexed to the writ petition, reads as under.

11. SPECIAL ANNUAL CHARGES:

In consideration of the APEPDCL arrangement for the supply of electrical energy, to me/us. I/we agree with effect from the date of commencement of this agreement for the period of five years of guarantee a minimum payment of Rs. -----(Rupees-----only) every year of guarantee a minimum payment towards surcharges, meter rents of other payment, by whatever name they may be called, for the amount actually paid towards energy charges in during any year fall short of the guarantee minimum the amount in electricity during deficit shall be deemed to be an agreement of the electricity charges and recovered accordingly.

8. However, it is brought to the notice of this Court by the learned standing counsel for A.P.TRANSCO that the Xerox copy of the Agreement filed by the petitioner does not contain the correct clause 11 as contained in Appendix IV. He produced a Xerox copy of the Agreement signed by petitioner from the official records, which reads as under.

In consideration of the APEPDCL arrangement for the supply electrical energy to me/us. I/we agree with effect from the date of commencement of this agreement for the period of five years of guarantee a minimum payment of Rs. 800/HP/year (Rupees eight hundred only) every year towards energy charges, exclusive of payment towards surcharges, meter rents of other payment, by whatever name they may be called. Actually paid towards energy charges in during any year fall short of the guarantee minimum the amount in electricity during deficit shall be

deemed to be an agreement of the electricity charges and recovered accordingly.

9. A reading of the above two clauses, one in the Xerox copy of the agreement filed by the petitioner and the Xerox copy of the agreement from the official records would not give its full meaning though clause 11 in the Xerox copy of the agreement produced by the learned standing Counsel would show that the minimum energy charges have to be calculated excluding the amounts paid towards surcharge, meter rent and other payments by whatever name they are called. This becomes clear by referring to clause 11 in Appendix IV (From of LT Agreement) to the terms and supply of electrical energy.

11. Special annual minimum Guarantee:- In consideration of the Andhra Pradesh State Electricity Board making arrangements for supplying electrical energy to me/us, I/We agree with effect from the date of commencement of this agreement for the period of-----years to guarantee a minimum payment of Rs. ----- (Rupees-----) every year towards energy charges, exclusive of payment towards surcharge, meter rents or other payments by whatever name they may be called. If the amounts actually paid towards energy charges during any year fall short of the guaranteed minimum, the amount in deficit shall be deemed to be an arrear of the electricity charges and recovered accordingly.

(emphasis supplied)

10. A reading of clause 11 in the prescribed form would show that the consumer agreed to pay the specified sum every year towards energy charges "exclusive of payment towards other charges by whatever name they are called". Therefore, it is not possible to accept the submission of the learned counsel for the petitioner that the amounts paid by the petitioner towards fixed charges, customer charges, electricity duty and also be reckoned for the purpose of calculating the minimum energy charges before enforcing clause 11 of the Agreement. The writ petition is filed on a misconception placing reliance on a copy of the agreement, which was obtained by the petitioner which does not reflect the correct state of affairs. As seen from clause 11 of the Agreement in the prescribed form the minimum guarantee amount of Rs. 800/- is payable by the petitioner in the event of the petitioner failing to avail minimum guaranteed electrical energy and such charges would be exclusive of other charges like fixed charges, customer charges and electricity duty.

11. As noticed supra, every consumer is bound by terms and conditions of supply of energy as well as the covenants in the agreement with A.P.TRANSCO. Condition Nos. 26.4 and 33 reveal that every consumer shall pay to the TRANSCO maximum demand charges and energy charges in addition to meter rent, surcharge and other charges. These conditions read as under

26.4 Commencement of Agreement: The Board shall after the consumer completing all the pre-requisite formalities in respect of execution of agreement and consumption deposit, payment of service connection charges etc., make arrangements to supply electricity in the manner prescribed and issue a notice

after making necessary arrangements that the Board is ready to give supply and that such supply should be availed by the applicant within a period of three months from the date of issue of the notice.

Every consumer shall pay to the Board from the date of commencement of supply of energy or from the date of expiry of three months" notice whichever is earlier, maximum demand charges, energy, charges, surcharges, meter rents and other charges, if any, as provided in the Tariffs and the terms and conditions of supply prescribed by the Board from time to time for the particular class of consumers to which he belongs or the amount of special guarantee wherever it is applicable. In case the consumer fails to avail supply within the three months" notice period, he shall have to pay monthly minimum charges or special minimum guarantee as the case may be, from the date of expiry of period of above said notice.

33. Liability for payment of minimum charges:-

33.1. Minimum charges are required to be paid by the consumers to cover fixed charges incurred by the Board for affording supply such as depreciation, general reserve, interest and salaries and wages and other fixed expenses etc. The minimum charges now prescribed do not fully cover the above fixed charges.

33.2. Minimum charges shall be payable by the consumer as specified in the tariffs for different categories of consumers. This obligation shall be absolute. The minimum charges will be payable by consumer even if no electricity is actually consumed, for any reason whatsoever and also if the charges for electricity is consumed are less than the minimum charges. The minimum charges will be payable even if electricity is not consumed because supply has been disconnected by the Board because of non-payment of electricity charges, pilferage, other malpractices or for any other valid reasons.

12. The learned standing counsel had made strenuous effort to justify two part tariff policy, which is being adopted by A.P.TRANSOCO and its precursor, under which every consumer is required to pay fixed charges and energy charges separately. When energy charges are calculated, it is based on actual consumption of electricity, whereas irrespective of consumption, every consumer is required to pay fixed charges as well as minimum charges, which is made part of the agreement. This is not seriously disputed by the learned counsel for the petitioner.

13. A plain reading of Condition Nos. 26.4 and 33 would show that there is force in the submission made by the learned standing counsel for A.P.TRANSOCO. Construing clause 11 of the Agreement and relevant Terms and Conditions, this Court holds that as per the Agreement executed by the petitioner, a copy of which is placed before this Court by learned standing counsel, the petitioner is required to pay the energy charges in addition to fixed charges and the like, and for the purpose of clause 11 of the Agreement, he cannot insist upon taking into consideration other charges by whatever name they are called.

14. The writ petition is devoid of any merit and is accordingly dismissed. No costs.