
(2001) 06 JH CK 0012
In the Jharkhand High Court
Case No : CWJC No. 1603 of 2001

M.K. Refractories

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 18-06-2001

Acts Referred:

Constitution of India, 1950 — Article 141
Electricity (Supply) Act, 1948 — Section 78

Citation : (2001) 06 JH CK 0012

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : M.S. Mittal and A.K. Yadav, for the Appellant; V.P. Singh, Rajesh Shankar and Mukesh Verma, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by petitioner M/s. M.K. Refractories for direction on respondents to grant it benefit of clause 9.6 of the Industrial Policy, 1995 which inter alia provides that the industries coming into production between 1.9.1995 and 31.8.2000 shall be entitled for exemption from payment of minimum guarantee charges, if the connected load is upto 500 KVA.

2. Further prayer has been made to direct the respondents to refund the entire amount of minimum guarantee charges, earlier realised in terms of judgment of Supreme Court in the case of M/s. K.D. Industries v. Bihar State Electricity Board, reported in 2001 (1) LJLR 678 : 2001 (2) JCR 318.

3. The petitioner claims to be a L.T. consumer of respondents J.S.E.B. and has set up an industry In the State of Jharkhand for manufacturing of refractories products. It obtained electrical connection on a contract load of 50 H.P. and started production since 5.7.1997. A certificate In support of such claim has also been granted by General Manager. District Industries Centre, Dhan-bad but the Board having not allowed the benefit of exemption as per Industrial Policy, 1995.

the petitioner moved before this Court in CWJC No. 1559/99 (R). M/s. M.K. Refractories v. B.S.E.B. and others, which was heard on merit and was dismissed by learned single Judge by judgment and order dated 6.8.99.

4. Being aggrieved the petitioner preferred LBA No. 294 of 1999 (R). which was also dismissed on 21.2.2000 and the Division Bench held the benefit of exemption not applicable in the case of LTI (3) consumers.

5. Admittedly the petitioner thereafter did not prefer appeal before the Supreme Court. The aforesaid decision reached finality and binding between the parties. In some other cases similar relief was sought for by other LTI consumers, including M/s. K.D. Industries, which were also dismissed in the light of decision aforesaid.

6. Writ Petition CWJC, No. 16394/97 preferred by M/s. K.D. Industries before the Patna High Court was dismissed by learned single Judge on 29.10.99 in the light of aforesaid decision in M/s. M.K. Refractories. The LPA No. 1631/99 as was preferred by M/s. K.D. Industries was also dismissed by the Division Bench on 10.5.2000 following the decision in M/s. M.K. Refractories.

7. While the petitioner M/s. M.K. Refractories did not choose to move before Supreme Court. M/s. K.D. Industries moved before Supreme Court in SLP (Civil) No. 15307/2000, which was heard and allowed by Supreme Court with the following observations :--

"12. We see no substance in this submission. The Board is accepting the Government's directions given to it u/s 78A of the Electricity Supply Act. In its resolution it is granting exemption from payment of minimum guarantee (minimum base charge). The respondents are well aware of the difference between low tension connections and high tension connections. If, as is claimed, the term "minimum guarantee charge" is not used for high tension connections, then they would not have used that term at all in the resolution if they wanted to restrict the exemption to high tension connections. Advisedly they have used both the terms "minimum guarantee" and "minimum base charge". This itself shows that the exemption applied to both types of connections. Respondents have not stated that such exemption would not be granted to low tension connections. In our view, the respondents having adopted the direction of the Government are bound to comply with those directions. So long as the other conditions of the policy decision are complied with the exemption has to be for both high tension connections as well as low tension connections.

13. hi this view of the matter, we set aside the orders of the High Court and allow the appeals on this point It is not disputed that appellants are otherwise entitled to exemption. Thus respondents must now repay to the appellants amounts received as minimum guarantee charges, which are in excess of payments due for actual consumption. Such refund to be made within six weeks from today. In the circumstances, of the case, there will be no order as to costs."

8. In the changed circumstances and the Supreme Court decision aforesaid, the

petitioner has again moved before this Court for similar relief as was earlier sought for in CWJC No. 1559/99 (R), which was dismissed and was affirmed by Division Bench in LPA, The aforesaid facts have been accepted by respondents. However, they have raised the question of maintainability of the present writ petition being barred by resjudicata.

9. Mr. V.P. Singh. the counsel for the JSEB relied on Supreme Court decision in Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.), Andheri and Others, wherein the Apex Court held the subsequent writ petition for similar relief is barred by res Judicata.

10. The stand taken by the respondents at first instance seems attractive. However, the principle of resjudicata in the present case cannot be applied in the light of Supreme Court decision in U.P. Pollution Control Board v. M/s, Kanoria Industrial Ltd., AIR 2001 SC 787. That was a case where the consumer was asked to pay levy and cess which M/s. Kanoria Industrial Ltd. paid with protest. Against the decision of imposing levy and cess M/s. Kanoria Industrial Ltd. moved before High Court under Article 226 of the Constitution of India, which was dismissed. Subsequently, the provision of law relating to levy and collection of cess having declared unconstitutional a second writ petition was preferred by M/s. Kanoria Industrial Ltd. and the matter moved upto Supreme Court. In the said case, the Supreme Court held the subsequent writ petition maintainable with the following observations :--

"18. Another reason to defeat the claim for refund put forth is that the respondents have filed writ petitions challenging unsuccessfully the validity of levy in question and those orders have become final in as much as no appeal against the same has been filed. The contention is put forth either on the basis of resjudicata or estoppel. It is no doubt true that these principles would be applicable when a decision of a Court has become final. But in matters arising under public law when the validity of a particular provision of levy is under challenge, this Court has explained the legal position In Shenoy and Co., Represented by its Partner, Bele Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II, Bangalore and Others, , that when the Supreme Court declares a law and holds either a particular levy as valid or invalid it is idle to contend that the law laid down by this Court in that judgment would bind only those parties who are before the Court and not others in respect of whom appeal had not been filed. To do so is to ignore the binding nature of judgment of this Court under Article 141 of the Constitution. To contend that the conclusion reached in such a case as to the validity of a levy would apply only to the parties before the Court is to destroy the efficacy and integrity of the judgment and to make the mandate of Article 141 illusory. When the main judgment of the High Court has been rendered ineffective, it would be applicable even in other cases, for exercise to bring those decisions in conformity with the decisions of the Supreme Court will be absolutely necessary. Viewed from that angle, we find this contention to be futile and deserves to be rejected."

11. Admittedly, the Supreme Court held the exemption in terms with Industrial Policy. 1995 applicable to both H.T. and LTI consumers in M/s. K.D. Industries Ltd. The petitioner has already deposited minimum guarantee charges during earlier period and Is still depositing the same, no exemption having allowed. In the aforesaid background, there being continuity of cause of action and the case of petitioner being covered by Supreme Court decision in M/s. K.D. Industries, it is entitled for exemption in terms with Industrial Policy. 1995.

12. The case is, accordingly, remitted to respondents with direction to refund the amount already received towards minimum guarantee charges with further direction not to raise further bill towards minimum guarantee charges for the period of exemption, as claimed by petitioner and not disputed by respondents.

13. However, it will be open to the JSEB and BSEB to adjust the refund amount at the time of apportionment of assets and liabilities in terms with the Bihar Reorganisation Act. 2000.

14. The writ petition is allowed with the aforesaid observations and directions.

15. Writ petition allowed.