

(2003) 03 AHC CK 0083
In the Allahabad High Court
Case No : First Appeal No. 36 of 2003

Modipon Fibres Co.

APPELLANT

Vs

U.P. Electricity Regulatory Commission and Others

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Uttar Pradesh Electricity Reforms Act, 1999 — Section 26, 34, 36

Citation : (2003) 2 AWC 1674

Hon'ble Judges : N.K. Mehrotra, J

Bench : Single Bench

Advocate : Vishal Dixit and J.P. Bajpai, for the Appellant;

Final Decision : Dismissed

Judgement

N.K. Mehrotra, J.—This is an appeal u/s 36 of the U. P. Electricity Reforms Act, 1999 (hereinafter referred to as "Act") against the decision of the U. P. Electricity Regulatory Commission (hereinafter referred to as "the Commission") respondent No. 1 dated 25.2.2003 passed in Review Petition No. 52 of 2002 filed by the appellant.

2. I have heard the learned counsel for the appellant and the respondent No. 1 at the admission of the appeal and on C. M. Application No. 131 of 2003 for interim relief.

3. It appears that the appellant is an industry comes under H. V. 2 category and is covered under Tariff applicable to H. V. 2 category industries. The U. P. Power Corporation, respondent No. 2 is the licensee in the area of the appellant. The Commission is empowered u/s 24 of the Act for framing tariff for purchase, sales, supply, transmission of the electricity in the State of Uttar Pradesh. The Commission issued Order u/s 24 of the Act on 22.10.2002 which was made effective from 9.11.2002. So the rate schedule of the licensee U. P. Power Corporation is effective from 9.11.2002. The dispute between the appellant and the licensee U. P. Power Corporation relates to the electricity bill dated

19.10.2001 which was prepared on the basis of the 15% surcharge as on Independent Feeder which was earlier turned down by the U. P. Power Corporation itself. The appellant finding it unreasonable and Illegal, filed objection before the Commission on 31.10.2001. The petition was heard alongwith several other petitions by the State Regulatory Commission and the Commission dismissed the petition of the appellant on 12.9.2002. The appellant filed Appeal No. 78 of 2002 u/s 36 of the Act before this Court which is pending and in which there is an interim order dated 23.10.2002 that till the next date of listing, the electrical connection of the appellant, shall not be disconnected on account of the non-payment of 15% surcharge. Here, it will be relevant to mention that the total amount of arrears of the electricity dues as in November, 2002 against all the H.V. 2 consumers was Rs. 1,217.07 crores and upto December, 2002, the appellant Modipon Fibres Co. was liable to pay the dues to the tune of Rs. 1.54 crores. So the disconnection on account of this heavy amount of arrears is stayed by the interim order of this Court in Appeal No. 78 of 2002 against the order of the Commission dated 1.9.2002 Appellant filed Appeal No. 62 of 2002 before filing the Appeal No. 78 of 2002 and was given an interim order dated 9.9.2002 by which the appellant has availed the High Load Factor Rebate till 8.11.2002. The appellant also filed an Appeal No. 92 of 2002 on a similar question of dues column interpretation and in both the appeals, the order of remand were passed directing the Commission for disposal of the question of dues in the concerned tariff. Three orders passed by this Court in different appeals, filed by the present appellant are Annexures-2, 3 and 4 annexed to the application for interim relief. Since in Appeal No. 92 of 2002, there was a direction to the appellant to file a review petition, it was filed by the appellant before the Commission and it was decided on 25.2.2003 which is impugned in this appeal. The entire order has not been challenged. Only a portion of the order has been challenged. In order to understand the portion of the order which has been challenged, I quote the operative portion of the order as follows :

"(a) In case the petitioner or any other consumer in the H.V. 2 category is in arrears and has obtained an order of stay, from a Court or any statutory authority the amount of load factor rebate for which the consumer is eligible in respect of the amount of the bill shall be calculated and the same shall accrue to the account of the consumer but actual credit thereof will not be given to the consumer in his monthly bill until the case relating to the dispute regarding arrears is finally decided by the competent court/statutory authority.

(b) If the petitioner succeeds in his dispute relating to his arrear, the load factor rebate as accrued to him, for the entire period shall be paid to him with interest at the rate equal to deposit rate of the State Bank of India during that period. However, this rebate shall be payable to the consumer only when the consumer has cleared the reduced amount of arrear, if any, as decided by the Court/ Authority, in full.

(c) On the other hand, if U.P.P.C.L. succeeds in establishing that that amount of

arrears, as claimed by it, was correct, the consumer shall not be eligible for load factor rebate and will be liable to pay the arrears along with the late payment surcharge.

(d) If any consumer is aggrieved by the orders of U.P.P.C.L., in giving effect to the directions above, it will be open to him to approach this Commission for redressal of his grievance after exhausting all the channels of the licensee under the provisions of the Supply Code, 2002."

4. The appellant prays, in this appeal, for modification of the decision of the Commission in the impugned order dated 25.2.2003 to the extent that the amount of the concerned load factor rebate will be released to the appellant on monthly basis after furnishing the adequate security other than the cash and Bank guarantee and rate of interest allowed by the Commission should be increased from the Bank interest to the interest @ 1.5% per month. The main grievance of the appellant is that in case the demanded dues are disputed and stayed by any Court or Authority then in that case, the appellant should be permitted the load factor rebate in cash too and it should not be treated as an arrear and if there is a delay in payment of load factor rebate, the appellant should be awarded Interest @ 1.5% per month by U. P. Power Corporation instead the rate equal to the deposit rate of State Bank of India as held by the Commission in the aforesaid operative portion of the impugned order.

5. The Commission has decided the five review petitions by one and the same order in compliance of the directions given by this Court in the earlier appeals filed by the appellant. In the review petitions, the appellant prayed before the Commission to modify the impugned Clause 8 (a) of the H. V. 2 Category Tariff Rate Schedule of Tariff Order dated 22.10.2002 by replacing dues with "if dues are stayed by the Court, consumer shall be provided rebate" and also to modify Clause 7.125 of H. V. 2 Category Tariff Rate Schedule of Tariff Order dated 1.9.2002 by placing the words "if consumers are having disputed dues, they should not be debarred from the rebate". In order to understand the prayer in the review petition of the appellant, I quote Clause 8 (a) of H. V. 2 Category Rate Schedule of Tariff Order as follows :

"8 (a) Load factor rebate.--For all consumption in excess of the defined KVAH. per KVA. (of contracted demand) a rebate is provided on the energy charges for such excess consumption, as given in the tables below. This rebate will be available only on monthly basis. Consumer with arrears shall not be eligible for this rebate.

Consumer opting for supply during restricted hours :

Description

Rebate on Energy Charges

For all consumption over 360 K.V.A.H. per K.V.A. upto 432 K.V.A.H. per K.V.A. per month

10% on the consumption over 360 K.V.A.H. /K.V.A.

For all consumption over 432 K.V.A.H. per K.V.A. upto 576 K.V.A.H. per K.V.A. per month

15% on the consumption over 432 K.V.A.H./K.V.A.

For all consumption In excess of 576 K.V.A.H. per K.V.A. per month

25% on the consumption over 578 K.V.A.H./K.V.A.

Consumer not opting for supply during restricted hours :

Description

Rebate on Energy Charges

For all consumption over 300 K.V.A.H. per K.V.A. upto 360 K.V.A.H. per K.V.A. per month

10% on the consumption over 300 K.V.A.H. /K.V.A.

For all consumption over 360 K.V.A.H. per K.V.A. upto 480 K.V.A.H. per K.V.A. per month

15% on the consumption over 360 K.V.A.H./K.V.A.

For all consumption in excess of 480 K.V.A.H. per K.V.A. per month

25% on the consumption over 480 K.V.A.H./K.V.A.

6. The relief with regard to the modification of Clause 7.135 of H. V-2 Category Tariff Schedule of Tariff Order dated 1.9.2002 was not the subject matter of the Appeal No. 92 of 2002, so the Commission did not prefer to decide the review on that point.

7. As per the case of the appellant, in the earlier first appeals and in the review petitions filed before the Commission, they want that the load factor rebate as per Clause 8 (a) of the Tariff Order dated 22.10.2002, may continue to be paid to them in case a dispute is raised about any arrear and there is stay order in whatever terms it may be.

8. Before coming to the impugned order passed by the Commission, it will be appropriate to point out that at the time of the determination of the tariff, the Commission has to act under certain statutory obligations and Commission has to be guided by the provisions u/s 10 of the Act. The Commission keeps in mind the object to promote competition, efficiency and economy in the activities of the electricity industry to achieve object and purpose of the Act and to regulate the working of the licensee and other persons who are permitted to be engaged in the electricity industry in the State and to make their working efficient, economic and equitable. With this object in mind and to maintain the sanctity of the stay order passed by any Court or Authority, the Commission decided the review

petition. The Commission is of the view that the relief sought in vague terms, cannot be granted and the matter to be determined in independent cases and after taking into consideration, the position of the stay orders in the matters of the five petitioners, Commission passed the aforesaid impugned order to save efficiency and economy in the activities of the electricity industry and to make the working of the licensee economic and equitable keeping in view the factor of stay in favour of any consumer with regard to the disputed duties, the Commission permitted that the load factor rebate for which a consumer is eligible in respect of the amount of bill, shall be calculated and the same shall be accrued to the account of the consumer. But the actual credit will not be given till the dispute regarding the arrears is finally decided by the competent court/statutory authority. Perhaps this order has been passed after keeping in view that there are dues of H. V.-2 consumers to the tune of Rs. 1,217.07 crores and the U. P. Power Corporation and other licensees are not able to run economically with efficiency.

9. Now I come to the maintainability of the instant appeal. Section 36 of the Act is as follows :

"36. Appeals from the orders of the Commission.--Any person aggrieved by an award or order of the Commission under this Act (other than an award or order u/s 34 involving a valuation of upto 50,000 rupees only) may, within sixty days from the date of communication to him of the order of the Commission, prefer an appeal to the High Court:

Provided that the High Court may, if it is satisfied that appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be preferred within a further period not exceeding sixty days."

10. A perusal of the aforesaid provision goes to show that the person aggrieved by the Award or Order of the Commission can prefer an appeal. What are the orders of the Commission, it is provided u/s 26 of the Act. Section 26 (1) is quoted hereinbelow :

"26 (1) Where it comes to the knowledge of the Commission from a complainant or otherwise that any of the terms and conditions of a licence has been contravened by the licensee or is likely to be contravened, it may by an order require the licensee to do, or to abstain from doing, such things as may be specified in such order for the purposes of securing compliance with the terms and conditions of the licence."

11. Section 34 deals with the award which is as follows :

"Section 34--Arbitration.--(1) Notwithstanding anything contained in the Arbitration and Conciliation Act, 1996, any dispute or differences arising between licensees or in respect of matters specified in Sub-section (1) of Section 30, shall be referred to the Commission for arbitration. The Commission may proceed to act as arbitrator or nominate an arbitrator to adjudicate and settle the dispute.

The arbitrator shall follow such procedure as may be in accordance with the principles of natural justice.

(2) Where the award is made by an arbitrator nominated by the Commission it shall be filed before the Commission and Commission may make an order to:

(a) confirm and enforce the award ;

(b) set aside or modify the award ; or

(c) remit the award for reconsideration by the arbitrator.

(3) An award made under Sub-section (1) or an order made under Sub-section (2) by the Commission, involving a valuation of over 50,000 rupees shall be appealable under this Act.

(4) An award made under Sub-section (1) or an order made under Sub-section (2) by the Commission, shall be enforceable as it were a decree of the civil court."

12. A perusal of the provisions of Sections 26 and 34 make it clear that the impugned order is neither an order u/s 26 nor it is an award u/s 34 of the Act. So, the instant appeal does not appear to be maintainable u/s 36 of the Act. Moreover, I do not find any illegality in the impugned order cited above which has been passed by the Commission after keeping in view the object of the Act given u/s 10 of the Act and after keeping in view the huge amount of arrears against the H. V.-2 consumers of the State.

13. In view of the above, C. M. Application No. 130 of 2003 for exemption from filing the original decree and judgment is allowed.

14. C. M. Application No. 131 of 2003 and the appeal are dismissed at the admission stage.

15. Since the two other appeals of the appellant and a number of other appeals filed against the Commission touching the same question either of payment of surcharge or load factor rebate are pending in this Court and in certain appeals, interim orders are operative and certain appeals having become infructuous, I direct the Joint Registrar (listing) to list M/s. Modipon Fibres Co. v. U. P. Electricity Regulatory Commission and Ors., First Appeal No. 62 of 2002 ; First Appeal No. 78 of 2002 : M/s. Modipon Fibres Co. and all other first appeal filed by other consumers of the electricity against the order of the U. P. Electricity Regulatory Commission to list for hearing in the week commencing 31.3.2003.