courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 02/09/2026

(1996) 01 AP CK 0026

In the Andhra Pradesh High Court

Case No : Writ Petition No. 225 of 1988

M/s. Andhra Ferro Alloys (Pvt.) Ltd. APPELLANT

Vs

A.P. State Electricity Board and others RESPONDENT

Date of Decision : 31-01-1996

Acts Referred:

Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision (Amendment) Act, 1962 — Section 3, 4
Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 13, 14, 49, 49(1), 49(2)(a)

Citation : AIR 1996 AP 362

Hon'ble Judges : Syed saadatulla Hussaini, J

Bench : Single Bench

Advocate : M. Chandrasekar Rao, for the Appellant; C.V. Nagarjuna Reddy for APSEB, for the Respondent

Judgement

1. It is submitted by the learned counsel for the petitioner that the petitioner is a private limited company incorporated under the Indian Companies Act. It has established a factory at Chintalapalem village, Kothavalasa Mandal, Vizianagaram District for the purpose of manufacturing High Carbon Ferro Chrome, Ferro Silicon and Ferro Manganese and other Alloys. It has entered into a High Tension Agreement dt. 31-10-1986 for supply of electricity. It is stated that according to clause 9 of the said agreement, the petitioner company is liable to pay maximum demand charges and energy charges etc., in accordance with the tariffs applicable and the terms and conditions of supply prescribed by the Board from time to time for the particular class of consumers to which it belongs. The petitioner''s unit is a factory which comes under H.T. Category-I. All H.T. consumers come under H.T. Category-I. The Electricity Board has also treated the petitioner''s unit as H.T. Category-I by taking an agreement and by demanding a sum of Rs. 11.69 lakhs as consumption deposit and monthly minimum charges of Rs. 5.08 lakhs in its letter dated 12-8-1987. All H.T. Category-I consumers are eligible for a rebate of 25% on demand and energy

charges as an incentive to new industries for the first three years from the date of going into commercial production as per G.O.Ms. No. 654, Industries and Commerce dt. 13-7-1976 except the 65 Industries that are specified in the said Government Order. As per the G.O.Ms. No. 654, the petitioner''s unit is eligible for 25% rebate. Earlier, the petitioner had obtained provisional registration on 21-2-86. Later, the first respondent issued an order dt. 21-9-1987 classifying the petitioner unit as H.T. Category-III and demanding an initial consumption deposit of Rs. 30,57,100/- and monthly minimum charges of Rs. 15.03 lakhs. It is further stated that the petitioner''s unit is a Small Scale Unit with a limited capital and operating mostly with man power and if the petitioner''s unit is treated as H.T. Category-III it has not only to pay higher amount of Security Deposit and minimum charges but also will become ineligible for 25% rebate. The request of the petitioner to change the unit from H.T. Category-Ill to Category-I was rejected by the Board in its letter dt. 20-10-1987. The rejection letter is impugned in this writ petition on the grounds that: (1) Classification of petitioner''s unit as H.T. Category-III is arbitrary, illegal and contrary to various tariffs, notifications as well as terms and conditions of supply of power; (2) The Board''s proceedings issued in B.P.Ms. No. 298 dt. 30-3-1988 has no retrospective effect to treat the petitioner''s unit as H.T. Category-Ill from 15-7-1987. As per the language used in the proceedings does not speak of its retrospective operation and in the absence of that, the operation of G.O.Ms. No. 298 shall be prospective and as such it will be effective from only 30th March, 1988. The petitioner''s unit has gone into commercial production from 1-12-1987, the respondent Board has issued bills treating the petitioner unit as H.T. Category-Ill from 1-12-1987 to 31-3-1988, as such the bills issued for the months of December to March, 1988 are invalid; (3) That the petitioner is entitled to a rebate of 25% from 1-12-1987 i.e. on which date it has gone into commercial production for a period of three years.

2. Mr. V. R. Reddy, the Standing Counsel for the Electricity Board submitted that the general common counter in a batch of writ petitions was filed denying the contentions raised by the petitioner and further it is submitted that the matter is covered by the judgment of Division Bench of this Court reported in A.P. State Electricity Board and Others Vs. Sarada Ferro Alloys Ltd., . With regard to third ground that the petitioner is entitled for the rebate of 25%, it is submitted by Sri Chandrasekar Rao that the petitioner unit has gone into commercial production on 1-12-1987 and it is not disputed by the respondent/Electricity Board. The eligibility of rebate has been considered in the judgment referred to supra. In para-11 of the said judgment it is held :

"Where in exercise of its powers under S. 49 the A. P. State Electricity Board issued order granting rebate of 25% in demand and energy charges for High Tension Industries and it was specifically mentioned therein that the rebate was to be allowed from the date of going into regular production, the doctrine of promissory estoppel cannot be applied when the Board had withdrawn the incentive given previously and the company started its commercial production

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-…

subsequent to that date. The promise or representation made by the Board if any, was directly linked with the date of commencement of production by the company. In such a case, it cannot be said that as once the company started the process of setting up an industry and had incurred expenditure, the Board was bound to keep its incentive open for the company till it started production. Only those industries were entitled to the benefit of the incentive who fulfilled the requirements during the period the incentive was operative."

Thus applying the principle laid down by the Supreme Court as it is not disputed that the petitioner unit went into commercial production on 1-12-1987, I hold that the petitioner unit is entitled for 25% rebate in the power tariff for the first three years by the Board and later two years by the Government.

3. The second point raised by the petitioner is that invalidity of billing i.e. from December, 1987 to March, 1988 basing on the proceedings issued by the Electricity Board in B.P.Ms. No. 298 dt. 30-3-1988. I have perused the said proceedings dt. 30-3-1988. Nowhere, in these proceedings it is stated that the said amendment shall be retrospective in operation. In other words, the said proceedings are not retrospective. As such, I hold that the respondent board is not entitled to charge the petitioner unit with the power tariff under H.T. Category-III for the period from 1-12-1987 to 31-3-1988, as a result the petitioner unit is entitled to pay tariff applicable of H.T. Category-I during the above period.

4. The other contention which is vehemently argued by the petitioner is that the action of the Board is discriminative in placing the petitioner''s unit in H.T. Category-III as per the proceedings bearing B.P.Ms. No. 298 dt. 30-3-1988 on par with the other eight industries mentioned in B.P.Ms. No. 671 dt. 10-6-1987 is arbitrary. The action of the Board lacks proper classification which amounts to hostile discrimination. The eight industries which were earlier categorised under the H.T. Category-III were power incentive units where electricity is raw material and enjoyed power tariff on concessional rate for a number of years and the petitioner unit did not enjoy the said concession as such it cannot be placed on par with the other industries and categorise it as H.T. Category-III. As there is no proper classification, such action is discriminative. And so far with regard to contention of the learned Standing Counsel for APSEB to the effect that the judgment of this Court reported in Ferro Alloys Corporation Ltd., Shreeramnagar Vs. A.P. State Electricity Board, Hyderabad, has no application.

The learned counsel for the petitioner Mr. Chandrasekar Rao''s contention is that the classification effected by the respondent Electricity Board to the petitioner unit as H. Category-111 suffers from reasonableness of classification. The rationale behind treating the petitioner''s industry as H.T. Category-III primarily, the petitioner''s unit is small scale unit located in a backward area for getting concessions. The petitioner unit earlier had not opted for power intensive tariff. Heavy industries were the power intensive units and enjoyed the concessions offered by the Electricity Board. Such concessions were extended to the heavy

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-...

industries by the Board in the year 1975. The petitioner''s industry is not power intensive industry.

The Board has no absolute discretion in classification of the categories. Apart from that, the classification cannot be arbitrary. As the petitioner unit is a small scale unit, it did not enjoy the concessions of tariff for longer period and the petitioner''s unit is not power gazzlers. The main-attack is on the B.P.Ms. No. 671 dated 10-6-1987 which has been made applicable to the petitioner unit as arbitrary and suffers from vice of discrimination and reasonable classification, which offends Article 14 of the Constitution of India. The learned counsel for the petitioner Mr. Chandrasekar Rao relies on a judgment with regard to doctrine of classification of the Apex Court reported in Khandige Sham Bhat and K. Krishna Bhatta v. Agricultural Income Tax Officer AIR 1963 SC 591. In para 7 of the judgment, their Lordships have stated the doctrine of classification as under:

"It is now well established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be furnished, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and, (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the act under consideration. It is also well established that Art. 14 condemns discrimination not only by a substantive law but also by a law of procedure.

Though a law ex facie appears to treat all that fall within a class alike, if in effect it operates unevenly on persons or property similarly situated, it may be said that the law offends the equality clause. It will then be the duty of the court to scrutinise the effect of the law carefully to ascertain its real impact on the persons or property similarly situated. Conversely, a law may treat persons who appear to be similarly situate differently; but on investigation they may be found not to be similarly situate. To state it differently, it is not the phraseology of a statute that governs the situation but the effect of the law that is decisive. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception to this doctrine vide Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others, and Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another, . But in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification, so long it adheres to the fundamental principles underflying the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-…

said doctrine. The power of legislature to classify is of "wide range and flexibility" so that it can adjust its system of taxation in all proper and reasonable ways."

Further in para 8 of the judgment, the court has held the object of making classification was not to discriminate against the agriculturists of the Madras area, but to bring them into line with the agriculturists from the rest of the Kerala State in so far as the liability to pay agricultural income tax was concerned. The existing law had therefore to be appropriately adopted for securing this end. In these circumstances, can it be said that there was no reasonable nexus between the classification and the object of the legislation. The object of the legislation thus was to impose agricultural income tax on assessees in the Madras area and also in respect of the period between November 1,1956 and March 31, 1957 which could not be done under the pre-existing law. The differences between the two parts of that State have reasonable nexus to the said object. Becuase of the said differences, the legislature thought that the definition of "previous year" should be so amended in respect of the Madras area that the assessees in that area may not escape payment of agricultural income tax in respect of the period after the said area formed part of the Kerala State. Later, the court held that the classification in the present case is founded on an intelligible differentia between the assessees of the two parties of the State, and that the said differences have rational relationship to the object of the amending Act.

Further, he relied on the decision reported in the State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others, . In this case their Lordships were dealing with Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act (22 of 1962) as amended by Andhra Pradesh Land Revenue (Additional Assessment) & Cess Revision (Amendment) Act (25 of 1962), Ss.3, 4 -- Classification based on ayacuts is unreasonable -- No machinery provided for assessment -- Act violates" Art. 14 of Constitution.

He relies on a passage in para 18 of the judgment which is to the following effect:

"Prima facie we do not see any reasonable relation between the extent of the ayacut and the assessment payable in respect of an acre of land forming part of that ayacut. The system of periodical ryotwari settlement held by the British Government on a scientific basis of quality and productivity of the soil with marginal adjustments on the foot of the duration of water supply in the case of wet lands and grouping of villages in the case of dry lands was given up. The scheme of surcharge on pre-existing rates, earlier accepted, was not adopted. The recommendation of the committee that the assessment should be based on the duration of water supply among others was not followed. Instead the Act introduced in the case of both dry and wet lands an unscientific and arbitrary method of assessment imposing a minimum flat rate irrespective of the tarams. In the case of wet lands an additional irrational factor is laid down, viz., the rate is linked with the extent of the ayacut. In the case of wet land, a minimum flat rate with some variations within different groups in Classes I and II and a

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-…

minimum flat rate in respect of the groups in Classes III and IV is fixed without any rational connection between the two. Mr. P. A. Choudhury contended that the scheme accepted by the Act was hit by Art. 14 of the Constitution in as much as it gave up practically the principle of tarams and bhaganas and accepted a flat rate irrespective of the quality and productivity of the land and therefore suffered from want of reasonable classification. He further contended that the alleged justification for the classification, namely, the extent of ayacut, had no reasonable relation to the objects sought to be achieved by the Act, namely rationalisation, of the revenue assessments on land in the entire State".

And also para 23 which is to the following effect:

"The scope of Art. 14 has been so well settled that it does not require further elucidation. While the article prohibits discrimination, it permits classification. A statute may expressly make a discrimination between persons or things or may confer power on an authority who would be in a position to do so. Official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of a statutory discrimination one knows where he stands, but the wand of official arbitrariness can be waved in all directions indiscriminately. A statutory provision may offend Article 14 of the Constitution both by finding differences where there are none and by making no difference where there is one. Decided cases laid two tests to ascertain whether a classification is permissible or not, viz., (i)the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question."

Nextly, he relies on a judgment of the Supreme Court reported in New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Others Vs. Municipal Corporation of The City of Ahmedabad and Others, , wherein their Lordships have held with regard to imposition of property tax under Bombay Provincial Municipal Corporation Act on textile mills, factories, buildings of universities, etc., levy of flat rate, method according to floor area adopted for determining the rent for fixing rateable value -- such method is held to be against law and violative of the Art. 14 of the Constitution of India.

Further, he relies on a judgment of the Supreme Court reported in M/s. Hindustan Zinc Ltd. etc. Vs. Andhra Pradesh State Electricity Board and others, . The said passage in para 24 is to the following effect:

"It was also contended on behalf of the appellants that the generation of electricity by the Andhra Pradesh Electricity Board is both thermal as well as hydro, the quantity from each source being nearly equal and the entire electricity generated is fed into a common grid, from which it is supplied to all categories of consumers. On this basis, it was argued that the rise in the fuel cost which led to the fuel cost adjustment applicable only to the H.T. consumers was unreasonable and discriminatory since the burden of rise in fuel cost was placed only on the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-…

H.T. consumers. In our opinion, this argument has no merit. The H.T. consumers, including the power intensive consumers, are known power guzzlers and in power intensive industries, electricity is really a raw material. This category of consumers, therefore, forms a distinct class separate from other consumers like L.T. consumers who are much smaller consumers. There is also a rational nexus of this classification with the object sought to be achieved. Moreover, the power intensive consumers have been enjoying the benefit of a concessional tariff for quite some time, which too is a relevant factor to justify this classification. Placing the burden of fuel cost adjustment on these power guzzlers, who had the benefit of concessional tariff for quite some time and have also a better capacity to pay cannot, therefore, be faulted since the consumption in the power intensive industries accounts for a large quantity."

Mr. Chandrasekar Rao has also invited my attention to the passages and the contentions of the counsel in the Division Bench judgment reported in Ferro Alloys Corporation Ltd., Shreeramnagar Vs. A.P. State Electricity Board, Hyderabad, , in para 3 to the effect that B.P.Ms. No. 671 dt. 10-6-1987 is not one resulted to the procedure contemplated under Ss. 13 and 14 of the Electricity (Supply) Act 1948 and that the very classification of certain industrial concerns in power intensive industries lacks the rational basis to the objects sought to be achieved, in that, it suffers not only from the vice of discrimination, but also arbitrariness, and relies on:

Para 9: wherein it is stated that:

"Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification." .

Para 20: Ferro Alloys Corporation Ltd., Shreeramnagar Vs. A.P. State Electricity Board, Hyderabad, is to the following effect:

"Before parting with this aspect'' of ''classification'' it can usefully notice that some of the present appellants, including Nava Bharat Ferro Alloys Ltd., and Ferro Alloys Corporation Ltd., have earlier filed writ petitions before this Court challenging the revision of the electricity tariffs through B.P.Ms. No. 1014 dated 13-12-1983 as extended to the Power Intensive Industries through a memo dated 13-12-1983. In the affidavit filed therein it is averred:

"It may be submitted that a ferro silicon plant is a power intensive industry consuming a very large quantity of electric power."

The matter was also carried to the Supreme Court under a M/s. Hindustan Zinc Ltd. etc. Vs. Andhra Pradesh State Electricity Board and others, . One of the contentions advanced before the Supreme Court by the learned counsel appearing for the present industrial concerns, was that:

"The G.O.S., issued in respect of the power intensive units amounted to a special

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-...

tariff for them resulting in their exclusion from the category of HT consumers."

and therefore the clause relating to fuel cost adjustment that resulted in escalation of the tariff is not applicable to power intensive industries. The pleadings as well the contention noted disclose that the appellant-industrial concerns themselves held out to be of a separate class, viz., ''power intensive industries'' -- different from H.T. Category-I -- so as to shield themselves from the onslaught of escalated tariff. As a matter of fact the industrial concerns themselves enjoyed the concessional rates of tariff as ''power intensive industries'' for about 12 years, from 1975 to 1987. By their own conduct they accepted and acquiesced themselves to be of a separate class viz, ''power intensive industries''. Therefore, it can also be put as an agreed classification, though it is fact that for purposes of getting the concessions either they have opted or acquiesced to be ''power intensive industries''."

Mr. C. V. Nagarjuna Reddy, appearing for the Electricity Board states that a point raised by the petitioner is covered by the very judgment of the Division Bench of this court reported in Ferro Alloys Corporation Ltd., Shreeramnagar Vs. A.P. State Electricity Board, Hyderabad, .

The Division Bench of- this Court has considered the power of the Board under Sections 49, 13, 14 of the Electricity (Supply) Act, 1948 and classification of industries as power intensive industries and submits that the point of classification of industries and its categorisation has been upheld by this court. As such, the classification adopted by the Board does not suffer from the vice of discrimination.

Section 49 of the Electricity (Supply) Act, 1948 is to the following effect in so far it is relevant, Electricity (Supply) Act, 1948:

(a) The nature of the supply and the purposes for which it is required.

Mr. Reddy, the learned counsel for the Electricity Board submits that the legislature has provided the guidelines for fixation of tariffs by the Board, and the Board has effected the classification under the powers vested by S. 49(1) and (2) (a) of the Act. The said classification has been effected keeping in view the nature of supply and the industrial purposes for which it is required.

The Supreme Court of India had occasion to consider the effect of S. 49 of the Electricity (Supply) Act reported in Maharashtra State Electricity Board Vs. Kalyan Borough Municipality and Another, . In para 27 of the said judgment, it is held that:

"The question of the Board showing undue preference to any person in fixing the tariffs and terms and conditions for supply of electricity will not arise when the Board frames uniform tariffs under sub-sees. (1) and (2). When the entire tariff is uniform for every consumer, there is no question of any undue preference as every customer will pay the same amount for the same benefit received by him. Sub-section (3) of S. 49 recognises the power of the Board to fix different tariffs

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-…

for the supply of electricity and it is really here, if at all, that an occasion for any undue preference being shown, may arise. Therefore, in our opinion, sub-sec. (4) will control the action of the Board under sub-sec. (3) of S. 49. We are not inclined to accept the contention of the respondents that the consumers in compact area cannot be treated as on par with the consumers in sparse area and that uniform tariffs cannot be levied on both."

And also held that S. 49 is not in any way bad on the ground that it gives unguided and arbitrary power to the Board to fix tariffs as it likes.

Mr. C. V. Nagarjuna Reddy, the learned counsel submits that the question of petitioner industry is a small scale industry, Medium or a heavy industry is not a consideration in fixing the classification of tariff. The Board has taken into consideration while classifying into HT Category I and HT Category III, wherein the petitioners contracted maximum rate, the intensity, of consumption and the percentage of cost of power in the end products which are the criteria taken into consideration, the manufacturing products of the industrial units. The power of the Board for fixation of the tariff is controlled by Section 49 of the Act as held in the above case by the Supreme Court of India. The contention of the learned counsel for the petitioner Mr. Chandrashekar Rao, that the basis on which the Board has issued B.P.Ms. No. 671 dt.: 10-6-1987 and amended B.P.Ms. No. 298 dated 30-3-1988 is applicable only to the industries which are power intensive and have enjoyed the concessions earlier, which were by way of negotiated tariff with the heavy industries, and they are termed as power gazzlers has no force, for the Board has adopted the criteria in classification which is backed by the guidelines enshrined in Section 49 of the Electricity (Supply) Act. As such, it does not offend Article 14 of the Constitution and also does attract the vice of irrational classification, When the Board has issued B.P.Ms. No. 671 dated 10-6-1987, it was a policy decision adopted by the Board and those 8 industries which have been termed as power intensive units finds place in the proceedings, as those were the industries then in existence and consuming power as Power Intensive Units. The said proceedings were also amended adding on more item as item-9 in B.P.Ms. No. 298 dated 30-3-1988. Though they were enjoying the benefits of negotiated tariff, yet, that was not the only and the major consideration in categorisation of those industries as H.T. Category III, though it may be one of the factors. He also submits that till 1987 before the Board has issued the proceedings, it remained as negotiated tariff with the various industries which was based on only negotiation and the contract between the industries and the Board. But, after the proceedings in B.P.Ms. No. 671 dated 10-6-1987, it regulated its application as power intensive units.

Mr. Reddy relied on the case reported in Ferro Alloys Corporation Ltd., Shreeramnagar Vs. A.P. State Electricity Board, Hyderabad, referred to above lays stress on the passage in para 5 of the said judgment wherein it is stated that:

"The revised tariff covered by B.P.Ms. No. 689 dated 17-9-1975 was also

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-…

examined by an expert committee headed by Sri K. C. Rao and the report dated 6-10-1975 reveals that the incidence of cost of power in relation to the cost of product is the main basis in identifying Power Intensive Industries''. Accordingly ''8'' categories of Industries were identified as such. It is also stated in paragraph 4 of the report that for the purpose of classifying industries under the new power intensive tariff all categories of industries where the cost of power to the cost of product is 5% or more were to be brought under the head ''Power Intensive Industries''. Even the Director of Industries in his letter dated 14th October, 1976 stated that during the discussions that preceded the issuance of B.P.Ms. No. 689, it was agreed that ''8'' categories of industries would be classified as, ''Power Intensive Industries."

Further, he relies on para (9). The reasons of classification has been considered as to the following effect:

"The settled proposition of law, as was submitted by the learned counsel for the Industrial concerns in these proceedings, is that any classification made must be founded on intelligible differentia which must have rational relation to the object sought to be achieved. The validity of the classification would be upheld if only the classification has a rational nexus with the object sought to be achieved. In The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, the Supreme Court held:

"The relevant material is always admissible to show the reasons and the justification for the classification. Such reasons need not appear on the face of the rule or law which effects the classification.

Classification must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved.

Judicial scrutiny can therefore extend only to the consideration whether the classification rests on a reasonable basis and whether it bears nexus with the object in view. It cannot extend to embarking upon a nice or mathematical evaluation of the basis of classification, for were such an inquiry permissible it would be open to the Courts to substitute their own judgment for that of the legislature or the rule-making authority on the need to classify or the desirability of achieving a particular object."

In State of Kerala Vs. Kumari T.P. Roshana and Another, , the Supreme Court in paragraph 15 of the decision held:

"It is trite law that every inconsequential differentiation between two things does not constitute the vice of discrimination, if law clubs them together ignoring venial variances. Article 14 is not a voodoo which visits with invalidation every executive or legislative fusion of things or categories where there are no pronounced inequalities. Mathematical equality is not the touchstone of

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-...

constitutionality."

Before proceeding to the next decision, it has got to be borne in mind that as held in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, reasons for the classification need not be apparent and the relevant material can be scrutinised to find out whether the classification rests on a reasonable basis and bears nexus to the object in view. In the case on hand, the material produced by the learned Standing Counsel for the Board, as discussed earlier, discloses that the two basic factors that formed basis for the classification of ''Power Intensive Industries'' are (i) the intensity of the power the industries consume, more or less as raw material, and (ii) the cost of power in relation to the cost of the end-product roughly at 20%. This is the differentia evolved as the rational basis behind the classification of ''Power Intensive Industries'', as distinct from H. T. Category-1 consumers. This classification cannot be said to be ''Mini-classification based on micro-distinction'' to hold that it is a over-done classification as happened to be so in the case before the Supreme Court in The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, . So also, the differentiation brought-in is not such a mathematical or minute inequality so as to attract Art. 14 of the Constitution to strike down the differentiation rendering the classification an invalid one. These two decisions are of no help to the learned counsel appearing for the Industrial concerns in these proceedings in view of the fact that the classification of ''Power Intensive Industries'' is not only founded on an intelligible differentia distinguishing the H.T. Category-1 consumers, but the differentia has also its rational relation to the object sough to be achieved by Section 49(3) of the Act."

It has also been held in the said case that where certain industries were classified as ''Power Intensive Industries'' and the two basic factors that formed basis for the classification of ''Power Intensive Industries'' were (i) the intensity of the power the industries consume,'' more or less as raw-material, and (ii) the cost of power in relation to the cost of the end-product roughly at 20% which was the differentia evolved as the rational basis behind the classification of ''Power Intensive Industries'', as distinct from H.T. Category-1 consumers, such classification was not violative of Article 14 because it was not only founded on an intelligible differentia distiguishing the H.T. Category-1 consumers, but the differentia had also its rational relation to the object sought to be achieved by Section 49(3) of the Act. This classification could not be said to be ''Mini-classification based on micro-distinction'' to hold that it is a over-done classification. So also, the differentiation brought-in was not such a mathematical or minute inequality so as to attract Article 14 of the Constitution to strike down the differentiation rendering the classification an invalid one. Moreover, H.T. consumers were categorised into Industrial-Non-Industrial and Power Intensive Industries. Therefore, it cannot be said that H.T. category-1 and Power Intensive Industries were groups together and therefore they cannot be brought under two different classes. Further, Section 49(3) of the Act is the enabling provision for the Board to classify the consumers and fix differential tariffs. As long as the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-…

classification is not invalid and the fixation of tariff is not arbitrary, the classification and the fixation are immune from challenge.

It has also been specifically indicated that where certain industries were classified by the Board of ''Power Intensive Industries'' for fixation of a higher tariff, the classification cannot be said to be discriminatory because ''Power Intensive Industries'' come under a separate category different from H.T. Category-1 consumers and they Were so right from 1975 and therefore fixation of separate tariff for them, whether it is less or more than for the consumers under H.T. Category-1, cannot be held to be discriminatory.

In view of the above Division Bench judgment of this Court in Ferro Alloys Corporation Ltd. v. Andhra Pradesh State Electricity Board, it cannot be said that the classification of power intensive units is not based on an intelligible differentia and that the classification suffers from infirmity of lationalness or reasonableness. In view of this, the contention of Mr. Chandrasekhar Rao, the learned counsel for the petitioner that motivation of the Board for issuing B.P.Ms. No. 671 dated 10-6-1987 as amended as B.P.Ms. No. 298: dated 30-3-1988 is only based on the heavy power intensive units were enjoying the negotiated tariff benefit, is not sustainable though it must have been a relevant factor for 1 he Board to issue the said proceedings.

In view of the above judgment, there are no merits in his submissions. In the result, the writ petition is partly allowed as indicated above, and the petitioner is liable to pay the differential tariff applicable to H.T. Category III from 30-3-1988. It is submitted by Mr, Chsndrasekhar Rao, learned counsel for the petitioner that in view of the judgment, the petitioner would have to pay a large amount of arrears of tariff, as such he may be permitted to pay the same in instalments. The arrears of tariff to be paid by the petitioner is not assessed yet, and there is no clear quantum of amount stated. The petitioner will be at liberty to approach the electricity Board in this regard and the Board may consider the request of the petitioner to pay the amount in instalments. No costs.

5. Petition party allowed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/ms-andhra-ferro-alloys-pvt-ltd-...