

(2017) 12 KAR CK 0034
In the Karnataka High Court
Case No : 39132 of 2012 (GM-KEB)

**M/S. D GIPRO SYSTEMS PVT. LTD, Vs THE BANGALORE ELECTRICITY?
SUPPLY COMPANY**

Date of Decision : 11-12-2017

Acts Referred:

Citation : (2017) 12 KAR CK 0034

Hon'ble Judges : Dr.Vineet Kothari

Bench : SINGLE BENCH

Advocate : TANVEER AHMED SHARIFF, G.C. SHANMUKHA

Judgement

1. Both the learned counsels submit that the controversy involved in the present case is squarely covered by the decision of this Court in the case of Talisma Corporation Pvt. Ltd., & Others vs. BESCOM & Others passed in W.P.Nos.57324-325/2015 & connected matters decided on 27.11.2017 and this Court is held as under:-

"15. I have heard the learned counsels at length and perused the records.

16. In the considered opinion of this Court, the present writ petitions deserve to be allowed with costs.

17. It is surprising that the Respondent- BESCOM, a Govt.Company for distribution of power chose to disregard the Certificate issued by the District Industries Centre to the effect that the petitioners-industries were engaged in the Software Development business only. There is no material at all on record brought by the Respondent-BESCOM before this Court or otherwise to indicate that these petitioners were engaged in any other business other than the Software Development.

18. From the facts given above, it is clear that these petitioners had not only obtained the relevant Certificates about their business activities of being engaged in Software Development in the contemporary period when they commenced the business from the District Industries Centre but also from the Director of IT & BT even though later in the year 2006 (Cognizant Technology) and in the year 2011 (Talisma Corporation) and in none of these Certificates issued by the Director of IT & BT, he has found anything contrary to the petitioners viz., that they were throughout not engaged in the business of Software Development only or that they were carrying on any other incidental or ancillary business other than the Software

Development also, so as to segregate their power consumption into two or more parts to contend that they would be entitled to the concessional Tariff under HT2(a) only partly and not for other categories falling under "commercial" category under HT2(b) category.

19. Merely insisting upon the petitioners to obtain such Certificate from the Director of IT & BT in the year 2002 itself, when the said Policy was announced by the Government of Karnataka, does not demolish the case of the petitioners when they claim that their industry was through out engaged in the Software Development only. If the benefit of concessional rate of tariff under HT2(a) is sought to be denied by the Respondent- BESCO to these petitioners industries, the burden was upon them (BESCO) to bring on record any such evidence and allow the petitioners to controvert the same.

20. Nothing of this sort has been done by the Respondents in this case. No reason has been assigned before this Court by the Respondents-BESCO to brush aside the Certificates issued by the District Industry Centre in the case of Talisma Corporation in the first instance, much less, there is any justification for them to ignore the Certificate issued to another

petitioner namely M/s.Cognizant Technology by the Director of IT & BT himself in the year 2006 as quoted above.

21. This Court cannot appreciate the reasons assigned by the Ombudsman of Electricity in his order dated 24.06.2013 nor by the Asst.Executive Engineer in the impugned orders passed against these petitioners. These authorities have not at all cared to give any reasonable, plausible or sufficient reason to ignore or brush aside the Certificates issued by the other Departments of the State Government which itself has issued the Millennium Policy 2002. The authorities of the Respondent- BESCO cannot be permitted to take arbitrary stands in the matter, contrary to the documents and Certificates issued by other Departments of the State Government in an arbitrary manner.

22. There was no dispute from the side of the Respondent-BESCO that Software Development Industry as an "industry" falls within the category of HT2(a) of Tariff Schedule, but the only submission made before the Court was that since the petitioners did not produce the Certificates issued by the Director

of IT & BT initially, soon after the announcement of the Millennium Policy by the Circular of 2002, they cannot be held entitled to the said concessional rate of power Tariff.

23. This contention of the Respondent- BESCO has no merit at all and this Court does not find any substance in the same and the same is liable to be rejected.

24. This kind of typical bureaucratic attitude on the part of the Authority at the level of Asst.Executive Engineer (Elec.) of Respondent-BESCO of turning the tables of the concessional rates of Tariff on the petitioners after so many long years and raising huge demands against the petitioners, which definitely has an impact of discouraging and dampening of the industries in the State, not to talk of the unnecessary litigation landing on the Boards of this Court, wasting precious public time of the Courts, man hours and litigation expenses. Before taking such a stand of reversal of policy of the State itself in the impugned orders, the Respondent-Asst.Executive Engineer (Elec.) did not even take care to seek any approval from his own higher authorities, so that such orders could reflect a responsible stand taken by the Respondent-BESCO, as an Organization, rather than the individual view of

an Officer at the lower echelon like that of Asst.Executive Engineer.

25. This even reflects badly on the internal working and hierarchical discipline of the Respondent-BESCO itself, where such policy decisions were also taken by the lower officials, perhaps even without the higher authorities being taken into confidence. Such a casual, non- chalant and arbitrary attitude of the Respondents-Authorities creates more havoc rather than doing any public good or public service in the matter.

26. The writ petitions therefore deserve to be allowed with costs to be paid by the Respondent-Asst.Executive Engineer in his personal capacity and the same is quantified at Rs.25,000/- for each of the petition. The impugned orders passed by the Electricity Ombudsman on 24.06.2013 as well as the Asst.Executive Engineer are quashed and set aside and it is further directed that any amount paid under such impugned orders by these petitioners shall be liable to be refunded/adjusted against their future bills in a phased manner with interest at the rate of 9% p.a. from the date of deposit till the date of adjustment/refund. The petitioners Software

Development Industries are entitled to concessional Power Tariff under HT2(a) throughout.

27. If the Respondent-BESCO chose to refund the excess charges paid, it is free to do so, otherwise, to the extent of 50% regular Power Tariff bills against the petitioners industries, the adjustment out of the amount already deposited by them under the impugned orders shall be liable to be adjusted with interest and computation in this regard of the entitlement of their refund/adjustment shall be

made by the Respondents-Authorities of BESCOM within a period of one month from today, for which, the petitioners may make their claims with the relevant documents before the Respondents- BESCOM, who will determine the amount of adjustment/refund due to the petitioners with the aforesaid simple interest of 9% p.a. within a period of one month from today and costs to be paid by the Respondent-Asst.Executive Engineer (Elec.) shall be paid separately by him from his personal resources to the each of the petitioners within a period of one month from today.

28. The Writ Petitions are accordingly allowed with costs.

2. In view of the fact that the learned counsel for the Respondents Mr.G.C.Shanmukha has fairly agreed to dispose of the writ petition, the present writ petition is also disposed of in the same terms in view of the aforesaid judgment and the impugned order Annexure-T dated 29.06.2012 passed by the Electricity-Ombudsman is hereby quashed and other orders adverse to the petitioner in this regard are also hereby quashed. However, the direction with regard to the payment of personal costs by the concerned Asst.Executive Engineer is waived in the present case. No costs.