(1997) 01 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 2387 of 1996

M/s. Shreeram Construction and another APPELLANT

Vs

Maharashtra State Electricity Board RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226
Electricity (Supply) Act, 1948 — Section 18, 28, 59

Citation : AIR 1997 Bom 167

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : Dr. D.Y. Chandrachud and Miss Sujata Naik, instructed by M/s. Ambubhai and Diwanji, for the Appellant; V.A. Gangal, Special Counsel, M.N. Zambre, A.G.P., V.J. Patil, M.A. Rane, Atul Rajadyakshai, instructed by M/s. Little and Co., for the Respondent

Judgement

A.P. Shah, J.—By this petition under Art. 226 of the Constitution, the petitioners are seeking the following reliefs:

(a) to declare that the revision in the condition and miscellaneous charges for supply of electricity particularly by revising notes 5 and 6 as per public notice dated 8th Nov. 1985 of the respondent Maharashtra State Electricity Board (MSEB) is illegal, null, void and unconstitutional;

(b) to issue writ of mandamus directing the respondent to withdraw and /or cancel the impugned revision in the conditions and miscellaneous charges under public notice dated 8th Nov. 1985; and

(c) to issue writ of mandamus to withdraw and /or cancel their demand on the petitioners to pay Rs. 3,27,800/- as non-refundable capital cost towards the cost of laying high tension line and erecting sub-station equipment in the petitioners'' property and to make electricity supply available to the petitioners for their building "Shree Ram Apartment Complex" on payment of only cost of low tension service lines laid in the petitioners'' property.

2. The petitioners are builders and developers. The petitioners have constructed a building with three wings consisting of 84 residential flats at Mulund, Mumbai, The petitioners applied to the respondent for supply of electricity for their building by submitting requisitions for the same in the standard form of the respondent at their Mulund Division Office. The requisitions were registered by the respondent under No.M-690 to 701 dated 25th July, 1984. Some time in March, 1985 the respondent informed the petitioners that the petitioners will have to provide free of cost a sub-station building in their plot for the use of the respondent. Accordingly, the petitioners submitted to the respondent the site plan drawing for the substation building. By his letter dated 26th March, 1985 addressed to the petitioners, the Executive Engineer of the respondent approved the site plan. The Executive Engineer further stated in the said letter that the sub-station will be constructed by the petitioners at their cost and the same will be handed over to the Board free of cost and electricity supply to the petitioners'' building will be released after equipping the sub-station. The petitioners'' plan for construction of the sub-station was approved by the Bombay Municipal Corporation (BMC) sometimes in July, 1985. The construction of the sub-section building was completed some time in Dec.1985. According to the petitioners, they incurred cost of approximately Rs. 76,000/- on construction of the sub-station building. By their letter dated 20th Dec. 1985 the petitioners intimated to the respondent that the construction of the sub-station building was complete and requested the respondent to take over the possession. A reminder to the same effect was sent by the petitioners to the respondent on 28th January, 1986.

3. The Executive Engineer of the respondent by letter dated 30th April, 1986 called upon the petitioners to make payment of Rs. 3,27,800/- as non-refundable capital cost towards extension of high tension cable and distribution transformer sub-station etc. It was further stated in the said letter that the petitioners will have to bear in addition the cost towards the low tension service cables and other charges such as security deposit etc. It seems that the petitioners wrote letters to the officers of the Board complaining that the demand is unreasonable, particularly, in view of the previous commitment made by the respondent. In reply, the Executive Engineer informed the petitioners that the respondent had revised their conditions and miscellaneous charges for supply of electrical energy with effect from 8th Nov. 1985 and as per the revised conditions the total cost (non-refundable) involved in extension of high tension lines, distribution transformer sub-station and low tension line etc. is payable by the consumer. The Executive Engineer along with his letter enclosed copy of the public notice dated 8th Nov. 1985 prescribing revisions in respect of the conditions and miscellaneous charges for supply of electrical energy which were made effective from 8th Nov. 1985. It seems that the petitioners made a further representations to the Chairman of the respondent. However, there was no response. Finally, the petitioners approached this Court by filing the present writ petition claiming various reliefs.

4. The petitioners are challenging the impugned public notice dated 8th Nov.

1985 and the consequential demand made by the respondent Board mainly on the following four grounds:

(i) The impugned public notice dated 8th Nov is ultra vires of the Electricity (Supply) Act, 1948 and the Indian Electricity Act, 1910 and the proposed revisions are violative of the fundamental rights of the petitioners under Arts. 14 and 19 of the Constitution.

(ii) The respondents are not entitled to apply the revised conditions of the public notice dated 8th Nov. 1985 in view of the agreement between the parties which is reflected in the correspondence between the parties and particularly the letters annexed at Exs. "A" and "B".

(iii) The respondents are under legal obligation to decide the requisitions of the petitioners within one month from the date of registration i.e., 25th July, 1984 and without any delay, and as the respondents have failed to discharge their legal obligation, they are estopped from asking the petitioners to pay the charges as per the public notice dated 8th Nov. 1985.

(iv) Even under the public notice dated 8th Nov. 1985 it has been provided that where the consumers have been served firm quotation / estimates prior to the date of issue of this ''Public Notice'' i.e. before 8th Nov. 1985 in pursuance of the conditions in force till 7th Nov. 1985, then such consumers will get electric connections or services without applying to them the changes provided they pay or have paid the amount of demand within the validity period of the estimate / firm provided quotations of 1st Dec. 1985 whichever is earlier and that the petitioners'' case falls under the exception carved out in the notification of 8th Nov. 1985.

5. I have heard Dr. Chandrachud for the petitioners and Mr. Rajadyaksha for the respondent. In my view no case is made out for interference under Art. 226 of the Constitution. My reasons for the same are as follows:

6. Re: Ground (I):

Dr. Chandrachud strenuously contended that that under the provisions of the Electricity (Supply) Act, 1948, it is statutory obligation cast upon the respondent to arrange for the supply of electricity within the State and for the transmission and distribution of the same in most efficient and economical manner, to supply electricity as soon as practicable to persons requiring supply and to generally promote the use of electricity within the State. The respondent is also a licensee under the Indian Electricity Act, 1910 and are bound by the scheme of the schedule to the said Act in dealing with the requisitions for electric supply. Dr. Chandrachud urged that the respondent can recover from the requisitionists for electrical supply only the cost of the service lines on the requisitionist''s property and such length of service line as is laid outside the property beyond first hundred feet. The capital cost of the transmission and distribution lines and the sub-station equipment is to be borne by the respondent. Dr.Chandrachud urged that under the impugned revision the respondents are seeking to build their entire distribution system at the cost of the few consumers. They are doing so because of their inefficient and uneconomic operations and management they are unable to earn any return on the capital although their tariffs for electricity supply have been enhanced from time to time. Dr. Chandrachud argued that the revisions in the conditions of supply and particularly addition of notes 5 and 6 after condition 5 are therefore clearly illegal and arbitrary and violative of Art. 14. Dr. Chandrachud also urged that the respondent is asking only some requisitionists of electric supply to bear the entire cost of distributing system to be set up by the respondent for serving the community of consumers and it is left to the arbitrary discretion of the officers of the respondent to decide for which requisitions and form whom such cost will be recovered. The impugned revisions are therefore discriminatory and violative of Article 14. They are also violative of Article 19(1)(g) as they are in effect preventing the petitioners from running their business and conducting their activities. I do not find any merit in the argument of Dr. Chandrachud relating to the validity of the public notice. It is undoubtedly true that the respondents are under legal obligation to provide electric supply on efficient and economical manner. The respondents however, explained in their affidavit in reply as to why they have called upon the petitioners to bear the capital cost of arranging supply i.e. the cost of providing sub-station and also the cost of high tension and low tension cable required for that purpose. They have pointed out that the requisition is made by the petitioners on behalf of 84 flat purchasers. But that apart the petitioners had represented to the Board that they had plans for developing the huge area of 5 acres by constructing more buildings and they would need more electricity for those proposed buildings also. The respondent had no arrangement for supply of electricity on such a large scale in the area where the supply was required as the Board''s supply system in the area of Bhandup and Mulund was already strained and it could not bear any more load without detriment to the supply of electricity to the then existing consumers and further because the Board had no adequate distribution mains on or near the land on which the petitioners were developing their land and intended to develop it further. It was pointed out by the respondent that they were unable to undertake such development of supply system at its own cost because the petitioner''s buildings were not in a stage of readiness to receive the supply of Electricity and in fact the other buildings to come up on a major portion of the land had not yet taken place and no application whatsoever was before the Board. In these circumstances, if the respondent had undertaken any development for supply of electricity at its own cost, it would not be able to earn any adequate return and its supply system would remain idle, which the Board could not afford. The petitioners were, therefore, asked to bear the cost of arranging supply. Having regard to these facts, it is difficult to find any fault with the decision taken by the respondent to ask the petitioners to bear the cost of arranging the supply. Needless to mention that the manner of fixation of tariff and determining the condition of supply of electricity and other incidental matters are within the discretion of the respondent. Unless it is demonstrated that the exercise of the discretion by the respondent is totally arbitrary or mala fide, this Court will not interfere under Article 226. Hence ground No. (i) must be rejected.

7. Re: Ground No. (ii):

Dr. Chandrachud argued that there was already a concluded contract between the petitioners and the respondent. Under the contract the petitioners were to construct the sub-station and the respondent was to install their equipment in the sub-station and release electricity supply to the petitioners'' building. Dr. Chandrachud argued that the petitioners are liable to pay only the cost of laying down of low tension cables. The argument of the counsel is required to be stated only to be rejected. After carefully going through the correspondence between the parties. I do not find any concluded contract arrived at between the parties. It is true that Executive Engineer had asked the petitioners to handover the sub-station building to the Board for installing the Board''s equipment and releasing supply to the petitioners. But surely this letter cannot be treated as an agreement on the part of the respondent to install all the equipments in the sub-station building at the cost of the Board. No such commitment has been made by the respondent to the petitioners. Hence, ground No. (ii) is rejected.

8. Re : Ground Nos. (iii) & (iv) :

Here the submission of Dr. Chandrachud is based upon principle of estoppel. It is argued that as the respondent has failed to take steps within one month, they are estopped from charging the petitioners as per the public notice dated 8th November, 1985. the argument is completely misconceived. After the receipt of the requisition, the respondent asked the petitioners to construct a sub-station. The construction was completed only in December, 1985 and thereafter a letter was written by the petitioners to the officers of the respondent to take over the sub-station. In the meanwhile, public notice was issued providing for revision of the charges and conditions. In these circumstances, the petitioners are clearly governed by the revised condition as per public notice dated 8th November, 1985 and not the old rates which were-existing at the time of the registration of the registration of the requisitions. Thus ground No. (iii) is without any merit. As regards the last ground, reliance placed on the exception carved out in the public notice is completely misconceived. That exception is applicable only to cases where the consumers have been served with firm quotations / estimates prior to the date of issue of the public notice. Surely this condition has no application because the petitioners were not served with any firm quotation or estimate prior to the date of the publication of the public notice. The lost ground is also required to be rejected.

9. In the result, petition is dismissed. No. order as to costs.

Certified copy expedited.

Petition dismissed.

