(1995) 02 MP CK 0075

In the Madhya Pradesh High Court

Case No : M.P. No. - 1293 of 1987

M/s. S.K.M. Fabrics — APPELLANT

Vs

M.P. Electricity Board — RESPONDENT

Date of Decision : 28-02-1995

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49, 59, 63
Electricity Act, 1910 — Section 24

Citation : (1995) 2 MPJR 190

Hon'ble Judges : U.L. Bhatt, C.J;Rajeev Gupta, J

Bench : Division Bench

Advocate : A.G. Dhande, for the Appellant; M.L. Jaiswal, Advocate for Respondents Nos. 1, 2 and 5 to 8 and Mr. Sanjay Seth, G.A. for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.

Petitioner is a Private Limited Company owning what is described as a Textile Mill at Dewas. The petitioner claims to be manufacturing ''man-made fabrics'' in this mill. Annexure-C is an agreement entered into between the petitioner and the M.P. Electricity Board for supply of high tension electrical energy in bulk for purposes of the mill. Tariff initially governed by notification dated 1.5.1985 (Annexure-D) and tariff for category (I-D) (consumers other than those covered under I-A, I-B and I-C was applicable to the petitioner. Tariff was revised by notification dated 1.6.1986 (Annexure-E) bringing in a new category of "textile mills" as (I-D) and making (I-A) a residuary category. The petitioner claims that its mill is a textile mill coming in the category (I-D), Vide notification dated 29.11.1986, the earlier notification dated. 1.6.1986 was amended retrospectively with effect from 1.6.1986 adding a clause regarding applicability of (I-D). The new clause states that tariff of (I-D) shall apply to only such of the consumers who avail supply for manufacture of cloths whether cotton or nylon or polyester or any of the combination of cotton, nylon or polyster. The industries engaged in ginning and or opining and/or processing of cloth and manufacture of HD/PP act. shall not be entitled for this tariff. Thus, the petitioners will would continue to be under the residuary category (I-E). Being aggrieved, the petitioner has filed this writ petition challenging the last notification particularly in view of the notice issued by the Board threatening discontinuance of supply unless tariff is paid at the rate shown in the last notification.

The first contention is that the notice of discontinuance of supply violates Section 24 of the Indian Electricity Act, 1910. This provision requires not less than seven clear days notice in writing for discontinuance. It is contended that such notice is not given. This contention is not correct. Annexure-A notice dated 31.3.1987 indicates the arrears of charges due as per bill dated 3.3.1987 and states that if it is not paid within seven days from the date of receipt of notice, supply of electricity on the expiry of the seven days will be discontinued. Notice is according to the statutory provision and is valid.

It is next contended that the notification dated 29.11.1986 is volatile of Art. 14 of the Constitution of India and the classification sought to be made therein is beyond the scope of section 49 of the Electricity (supply) Act 1948.

The petitioner has no contention that the notification dated 1.5.1985 and notification dated 1.6.1986 are vitiated by any constitutional or legal infirmity. Notification dated 1.5.1985 prescribed different tariffs for the following class of industries:

(I-A) Coal Mines

(I-B) Cement Industries.

(I-C) Mini-Steel Plants.

(I-D) Consumers other than these covered I-A, I-B and I-C.

The notification dated 1.6.1986 made the following classification :

(I-A) Coal Mines.

(I-B) Cement Factories;

(I-C) Mini-Steel Plants;

(I-D) Textile Mills;

(I-E). Consumers other than those covered in I-A, I-B, I-C and I-D.

By this notification, textile mills were taken out of residuary category in the original (I-D) and retained as category (I-D). I-E became residuary category. The petitioner contends that the Mills owned by it is a textile mills entitled to the conversional tariff prescribed under notification dated 1.6.1986 and this concessional tariff is sought to be taken away by the impugned notification which makes it clear that the tariff relating to textile mill would be available only where energy is supplied for manufacture of cloth whether cotton or nylon or polyester or any of the combination of coition, nylon or polyester, and industries engaged in ginning and/ or spinning and/or of processing cloth of HD/PP sons etc. shall not be entitled for the tariff.

There was an attempt made by the petitioner to contend that cloth is manufactured in its textile mill. That is the assertion contained in the writ petition and denied in the return. Annexure-I to the writ petition is letter written by the petitioner to Superintending Engineer, Electricity Board. It states-

We would like to submit again that we are converting Grey Cloth into commercially different marketable fabrics by applying a number of processes.

The letter proceeded to state that law relating to sales tax etc, categorized such processing as manufacture and therefore, tariff applicable to textile mills would apply to the petitioner. Thus, it is admitted that cloth is not manufactured from yarn at the petitioner''s mill at Dewas but on the other hand, grey cloth is converted into commercially different marketable fabric by applying a number of processes. Going by the impugned amendment, tariff applicable to textile mill cannot apply to the petitioner''s mills.

Learned counsel for the petitioner relied on Ann-B letter dated 17.1.1984 by the Director in the office of the Textile Commissioner, Government of India which quotes the definition of ''manufacturer and ''processor'' occurring in the Art silk Control Order 1962. According to this letter, processer of art silk cloth would be treated as manufacture for the purpose of Art silk Control Order 1962. Different statutes and different statutory regulations or rules may have different definitions of various expressions. Definition in one statute or statutory rule cannot be applied in the context of another statute or statutory rule.

Section 49 of the Electricity (Supply) Act 1948 contains provision for the sale of electricity by the Board to persons other than licensees. Section 49 reads as follows.

Sec. 49 - Provision for the sale of electricity by the Board to persons other than licensees -

(1) Subject to the provisions of this Act and or regulations, if any, made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply framed uniform tariffs.

(2) In fixing the uniform tariffs, the Board shall have regard to all or any or the following factors, namely -

(a) the nature of the supply and the purpose for which if is required;

(b) the co-ordinate development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licenses;

(c) the simplification and standard lisation of methods and rates of charges for such supplies:

(d) the extension and cheapening of supplies of electricity to sparsely developed areas.

(3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person.

Sub-section (1) of Section 49 of the Act of 1948 gives wide power to the Board to prescribe terms and conditions for supply of electricity to any person not being a licensee. The Board may frame uniform tariff. Sub-sec (2) enumerates the factors which may be considered by the Board in fixing uniform tariff. The factors arc nature of the supply and purposes for which it is required, the co-ordinate development of supply and distribution of electricity within the State in the most efficient and economical manner, simplification and standardization of methods and rates of charges and extension and cheapening of supplies of electricity to sparsely developed areas. Sub-sec (3) enables the Board to fix different tariffs for supply of electricity to any person not being a licenses having regard to the geographical position of any area, nature of supply and purpose for which supply is required and any other relevant factors. The only limitation in sub-sec. (4) is that undue preference should not be shown to any individual.

The return states that industry manufacturing cloth and industry processing cloth are quite distinct and separate and their activities are different with reference to the product. The respondents have also produced copy of resolution of the Board which led to the impugned amendment. The resolution states that by notification dated 1.6.1986, no upward revision of tariff was made in respect of "composite textile industry" as their financial condition was not sati factory. but it was observed that financial condition of spinning and processing units is generally satisfactory and as such, their categorization along with other general power consumers is correct. This would indicate that financial condition of the consumer and its ability to pay tariff at particular rate was taken into consideration while classifying processing units separately from manufacturing units. In one case, power is supplied for the purpose of manufacture of cloth and in the other case, power is supplied for the purpose of processing cloth. "Purpose for which powers is required" is a relevant factor under sub-sections (1) and 2 (a) as also sub-sec. (3) of section 49 of the Act of 1948. The contention that the impugned classification is outside the scope of Section 49 so not correct.

Section 49 of the Act of 1948 prescribes the basis for prescription of uniform tariff or differential tariff. The various factors which are to be taken into consideration are indicated therein, purpose for which power is required being one of the relevant factors. According to Section 59 of the Act 1948, the Board shall take credit for any sub section from the State Government u/s 63 and carry on its operations and adjust its tariff so as to ensure that the total revenue in any year shall after meeting all expenses properly chargeable to revenues leave such surplus as is not less than three per cent, or such higher percentage as the State Government may specify, of the value of the fixed assets of the Board in service at the beginning of such year. The legislative purpose is not to ensure that electrical energy is supplied to all consumers free of cost or at concessional costs. Tariff for supply of electrical energy is to be fixed so as to leave a small surplus of revenue over the expenditure at the end of the year and at the time to ensure public interest as made clear in section 49 of the Act of 1948. Undoubtedly, the financial ability of a class of consumers is relevant basis for classification and such classification has nexus with the object sought to be achieved. In view of the explanation offered by the Board in the resolution, it can not be said that this is a case of treating two equals unequally. We are not satisfied that the challenge on the basis of Art, 14 of the Constitution of India has been made out.

In the result, the writ petition is dismissed with costs. Advocate''s fee Rs. 500/-