
(2001) 02 GAU CK 0033
In the Gauhati High Court
Case No : Civil Rule No. 241 of 1995

Murari Tea Industries

APPELLANT

Vs

ASEB and Others

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 49, 49(1)

Citation : (2001) 1 GLT 285

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : C. Baruah, S.K. Kejriwal, S. Kerjriwal and H. Rahman, for the Appellant; N.N. Saikia, J. Chutia, G. Deka and N.J. Dutta, for the Respondent

Judgement

1. In this Writ petition under Article 226 of the Constitution, the petitioner has challenged the legality and validity of the amended provisions of Clause 22(a) vide its resolution No. 24 dated 7.2.1991 of Assam State Electricity Board, here-in-after referred to as "ASEB".

2. The facts relevant for deciding this petition briefly are that the petitioner being the partnership firm carried on business of manufacture and sale of black tea. Suddenly the Asstt. Executive Engineer, REC Sub-Division, ASEB, Tinsukia issued a letter dated 3.8.1992 to the petitioner's firm informing that on checking of connected load at the petitioner's garden on 4.7.1992, it was found that the total connected load was 266 KW instead of 240 KW i.e. 26 KW excess than the connected load and that as per the terms and conditions an assessment bill for excess connected load for 26 KW amounting to Rs. 39,312.60 vide bill No. 285/87 was also enclosed for payment. The petitioner vide his letter dated 4.8.1992 requested the Executive Engineer-respondent No. 2 to visit the Tea Factory of the petitioner for physical verification, as in fact no physical verification was done as alleged in the letter dated 3.8.02 and to verify whether in fact there was any excess load and denied that there was any excess

connected load of 26 KW. But without considering the said letter of the petitioner, the ASEB issued another electricity bill dated 12.12.1994 raising the demand of earlier amount of malpractice amount to Rs. 39,312.00 as well as surcharge of Rs. 53,071.20 against the aforesaid amount of Rs. 39,312.00 calculating the same at the rate of 5% p.m. for 27th months. The petitioner submitted a Cheque dated 23.12.1994 towards the said bill for Rs. 70,910.26 under protest and duress of disconnection. But the respondent No. 4 informed the petitioner if the entire amount is not paid, the electric connection of the petitioner would be disconnected for the act of malpractice i.e. for excess connecting load by 26 KW u/s 23(e) of the Terms and Conditions of Supply, 1988. The petitioner was made liable for such payment as compensation as per the amended Clause 22(a)(iii) which adds "Tea, Coffee and Rubber Gardens besides, "Industry/Bulk" along with the surcharge at the rate of Rs. 5% p.m. Hence this writ petition.

3. I have heard Mr. S.K. Kejriwal, learned counsel for the petitioner and Mr. N.N. Saikia, learned Sr. counsel assisted by J. Chutia for ASEB.

4. The question arose in this case as to whether the petitioner is liable to pay compensation as well as surcharge as per the amended provisions of Clause 22(a) (iii) of the terms and conditions.

5. It would be pertinent to refer the relevant provisions of the Electricity Supply Act, 1949 as well as the Terms and Conditions of Supply, 1988. The relevant provisions of Section 49 of the Act reads as follows:-

"49. Provisions 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 frame uniform tariffs."

6. The ASEB in exercise of power conferred by the aforementioned section framed Terms and Conditions of Supply, 1988.

7. The term malpractice has been explained by Clause 21 of the Terms and Conditions and reads as follows:-

"21. Malpractice. - (1) Malpractice; contravention of any provision of the terms and conditions of supply, 1986 the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948, the Indian Electricity Rules, 1956 or any other law/rule governing the supply and use of electricity regulating order shall be treated as malpractice, and the consumer indulging in any such malpractice shall be liable at law/rule/order subject to the generality as above.

* * * * * (iii) Cases mentioned hereunder, shall be generally treated as Malpractice;

(a) Unauthorised supply of electricity to any service which is disconnected by the Board.

- (b) Exceeding connected authorised by the Board.
- (c) Addition, alteration and extension of electrical installation in the consumer's premises without permission of the Board or extension to any premises other than the one for which supply was connected for;
- (d) Non-compliance of orders in force imposing restriction of use of energy for rational and equitable distribution thereof.
- (e) Use of electricity for any purpose other than that for which supply is contracted for;
- (f) Re-sale of energy without the permission of the Board.
- (g) Theft of energy.
- (h) Obstruction to lawful entry of authorised officers/employees of the Board into the consumer premises;
- (i) interfering and tempering with the meter and metering system."

Clause 22 provides for payment of compensation for malpractices:-

"22. Where a consumer is found to be indulging in malpractice with regard to use of electricity and use of device to commit theft of energy the authorised officer may without prejudice to any other action that may be taken against such a consumer ask him to pay compensation which shall be assessed as stated here in below: -

A. Denotes the sanctioned load;

B. Denotes the total connected load detected at the time of inspection,

(a) Unauthorised supply of Electricity/Load exceeding sanction load; (Metered)

for such nature of malpractice, assessment bill will be made for the "energy specified below as per the formula applicable.

(i) Domestic- $M(B.A) \times 6 = \text{Rupees.}$

(ii) Commercial- $2MX(B.A.) \times 6 = \text{Rupees}$

(iii) Industry/Bluk- $3XNX(B.A. \times 6 = \text{Rupees.}$

Means relevant minimum charge as per tariff in force. This will be in addition to the normal bill. The excess load will be removed from ASEB's mains. However, he may apply for the regularisation of the Load.

In case any damage of transformer or any other appliances of ASEB due to this unauthorised extension of load the cost will be realised from the consumer in addition to the assessment bill."

Clause 23(e) reads as follows:-

" Disconnection of supply for malpractice.

(i) Where a consumer is found indulging theft of energy or supply energy to any service which is disconnected by the Board, the officer authorised in this behalf by the Board may without prejudice to its other rights, cause the supply of energy to such consumer to be forthwith cut-off or disconnected without any notice.

The concerned authorised officer, however, shall immediately after such action inform the concerned consumer in writing (in form appended hereto as Appendix-C) about his action and reasons thereof.

(ii) In case of other malpractice mentioned in Clause-21(ii) above before discontinuance of supply of energy to the service connection of the alleged malpractitioner, he/she shall be served with notice of not less than 24 hours (in form appended here to as Appendix-D) before making the discontinuance of Electricity Supply."

Clause 27 provides for Saving Rights:

"27. (i) The decision of the Board shall be final with regard to the interpretation of terms and conditions,

(ii) The Board reserves the right to amend, subtract from or add to any of the above terms and conditions at any time. Provided that prior notice of not less than 30 days shall be given for amendment subtraction and addition to these terms and conditions of supply."

8. Adverting to those provisions mentioned above, Mr. Kejriwal, learned counsel for the petitioner put forward his arguments mainly on two grounds:- 1stly, that the amended provisions of Clause 22(a)(iii) was illegal and void due to non-compliance of Clause 27(ii) and secondly, that the petitioner is not liable to pay any compensation as well as surcharge at the rate of 5% p.m. since there is no allegation of any malpractice with regard to use electricity by way of theft energy by the petitioner.

9. Elaborating his arguments, the learned counsel for the petitioner submits that Clause 27(ii) specifically provides for "Prior notice of not only less than 30 days shall be given for amendment/subtraction and addition to those terms and conditions of supply". In the instant case, no such prior notice was given by the respondents to the petitioner. Adverting to the Circular dated 15.3.1991 annexed as Annexure-9 to the Affidavit-in-opposition filed by the ASEB, the learned counsel for the petitioner states that the said Circular could not be said to be the amendment in true sense inasmuch as the same is made in clear violation of Clause 27(ii) which requires prior notice of not less than 30 days for amendment/subtraction and addition to those terms and conditions of supply. The learned counsel also draw attention to this Court to the Annexure-10 by which the ASEB issued reminder as regards to the Amendment to Clause 22(a)(iii) of the terms and conditions of Supply, 1988 published on 30th November, 96 in Assam

Tribune. The said reminder was a general information to all consumers under the category of Tea, Coffee and Rubber Gardens" besides Industry/Bulk.

10. As regards to the second point the learned counsel for the petitioner tries to impress upon this Court to the fact that since there was no allegation of theft, the petitioner is not liable to pay any payment of compensation under Clause 22 nor the supply of electricity could be disconnected under the provisions of Clause 23(e).

11. As regards the payment of surcharge also, the learned counsel for the petitioner submits that the petitioner is not liable to pay surcharge at the rate of Rs. 5% p.m. as fixed by the ASEB. It is stated that if the petitioner is liable to pay compensation, he could be held liable only to the extent of 18% p.a. In support of his said contention, he has relied upon a decision of the Division Bench of this Court reported in National Board Limited v. ASEB 1991 (1) GLR 242 wherein their Lordship directed to pay surcharge at the rate of 18% p.a.

12. Mr. N.N. Saikia, learned Sr. counsel appearing on behalf of the ASEB on the other hand vehemently opposed the contentions of the petitioner and states that there was no illegality in making the amendment of Clause 22(a)(iii) of the terms and conditions vide Circular dated 15.3.1991. It is stated that the said amendment was affected by the Board itself, who was the competent authority in terms of Clause 27. As per the Clause 27 "The Board reserves the right to amend, subtract from and to add to any of the above terms and conditions at any time." Non-issuance of prior notice as alleged is merely an irregularity but not illegality. The said Circular was an communication to the Superintendent Engineer, Dibrugarh Electrical Circle, ASEB with copies to all Executive Engineers under Dibrugarh Electrical Sub-Divisions under which jurisdiction the petitioner falls, informing the Resolution No. 24 dated 7.2.1991 adopted amending inter alia the Clause 22(a)(iii) of the terms and conditions on "Tea, Coffee and Rubber Garden besides" Industry/Bulk, making it effecting from the date of issuance of the said letter dated 15.3.1991.

13. Mr. N.N. Saikia, learned counsel further argued that the Terms and conditions of Supply, 1988 was framed in exercise of the power u/s 49 of the Electricity Supply Act, 1948 by which the power was given to the Board to alter any terms and conditions as regards to the supply of electricity. In the instant case, the Board exercised power of amendment in terms of Clause 27. Only an irregularity was made in not giving a prior notice of not less than 30 days and the same was deemed to be automatically rectified on 14.4.1991 after the expiry of one month notice. That apart, the impugned electricity bill was issued on 12.12.1994 which was also issued after more than 2 years of commencement of the said amendment. The publication of the said amendment was on 30th November, 96 in the Assam Tribune vide Annexure-10 to the affidavit-in-opposition was only a reminder for general information to all consumers.

14. In support of his contention as regards to the Board power to alter, additions"

unilaterally, Mr. Saika, learned counsel has relied upon the authority of the Apex Court in Hyderabad Engineering Industries Ltd. and Others Vs. A.P. State Electricity Board and Others, In the said decision it was held that Board has power unilaterally to alter the condition of supply u/s 49 of the Act. Since terms and conditions of the supply are framed in exercise of powers conferred by Section 49 of the Act, the Board can act accordingly the case in hand.

15. Challenging the contention of the learned counsel for the petitioner to the effect that he is liable to pay surcharge only at the rate of 18% p.a. the learned Sr. counsel for the ASEB stressed that the petitioner is liable for payment of surcharge at the rate of 5% p.m. in terms of Clause 18 of the terms and conditions for delayed payment. He has referred to the provisions of Clause 18 as follows:-

"18. Payment of Bills.

* * * * * (c) Surcharge for delayed payment. - Except in case of categories of consumers mentioned below surcharge of 2% p.m. (or part thereof) in simple interest shall be levied if payment is not made on or before the due date of payment specified in the bill"

Exception

(1) Commercial

(2) L.T. Industry.

(3) Medium Industry.

(4) Large Industry.

(5) Tea. Coffee and Rubber.

In case of the above consumers a surcharge of 5% p.m. (for part thereof) will be charged for delayed payment. However, for payment on or before the due date fixed therefore a rebate of 3% on the energy consumption to be admissible to the above categories."

16. In support of the said contention, Mr. Saikia, learned counsel has referred to a Single Bench decision of this Court reported in Kamrup Paper Mills Ltd. v. ASEB (1995) 3 GLR 225, This Court held that levy of surcharge @ 5% p.m. for delayed payment is not unjust, improper and unreasonable.

17. Taking into account of all the relevant provisions of law as mentioned above and after hearing the respective arguments of the parties, I find force in the submission put forward by Mr. Saikia, learned Sr. counsel for the respondent. I am inclined to hold that the impugned amendment vide Resolution No. 24 dated 9.2.1991 "was framed by the ASEB in compliance with the Clause 27(ii) of the terms and conditions of supply inasmuch as in the terms of Section 49(1) of the Act and in the light of the decision of Hyderabad Engineering Industry Ltd. v. ASEB (supra). Board has the power to alter the terms and conditions of supply

unilaterally.

18. In the instant case, non-issuance of prior notice of not less than 30 days for making the amendment of Clause 22(a)(iii) has not prejudiced the petitioner in any manner because it appears from the material on records that the impugned electricity bill was issued on 12.12.1994 after more than 2 years of the impugned amendment and as such, non-compliance of the provisions of prior notice of not less than 30 days under Clause 27(ii) cannot Invalidate the impugned amendment. I find no reason in which manner the petitioner is affected by the said amendment when the said minor irregularities automatically been rectified by the expiry of one month on 14.4.1991 from the date of eifect of amendment i.e. 15.3.1991.

19. Regarding the submission of payment of surcharge at the rate of 18% p.a, instead of 5% p.m., advanced by the learned counsel for the petitioner, I hold that in the light of National Board Limited v. ASEB (supra), the petitioner is liable to pay surcharge on at the rate of 18% p.a. for delayed payment.

20. A conjoint reading of Clauses 21, 22 and 23(e) as quoted above clearly shows that a consumer is liable for payment of compensation for malpractices not only for indulgence of theft but also for other reasons for malpractices as explained under Clause-21. In view of those provisions I have no hesitation to hold that the petitioner is liable for payment of compensation as demanded the Board by the impugned bill. But as regard to the surcharge it is ordered that the petitioner shall be liable to pay surcharge only at the rate of Rs. 18% p.a. instead of Rs. 5% p.m.

With the aforesaid discussions, observations and direction indicated above, this appeal stands disposed of.

However, I leave the parties to bear their own costs.