
(1998) 05 GAU CK 0036
In the Gauhati High Court
Case No : Writ Appeal No. 56 of 1998

Nanagram Bhikamchand Rice and Oil Mills	APPELLANT
Vs	
A.S.E.B. and Others	RESPONDENT

Date of Decision : 25-05-1998

Acts Referred:

Citation : (1998) 2 GLT 231

Hon'ble Judges : V.D. Gyani, Acting C.J.; N. Surjamani Singh, J

Bench : Division Bench

Advocate : G.N. Sahewalla, A.K. Goswami, P. Bora and S. Senapati, for the Appellant; N.N. Saikia and J. Chutia, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Gyani, Actg. C.J.

1. This Writ appeal is directed against the judgment and order dated 27.1.98 passed by a learned Single Judge of the Court in Civil Rule No. 6409 of 1996 there by dismissing and directing the writ Petitioner-Appellant to approach the Consumer Forum for the reliefs sought by him. The impugned order is cryptic one and reproduced herein below:

Heard Mr. G.N. Sahewalla, learned Counsel for the Petitioner and Mr. N.N. Saikia, learned Standing Counsel for A.S.E.B. The Petitioner has his alternative remedy meaning thereby, he can approach the Consumer Forum for decision of the matter and the matter also involves some disputed question of fact and the Consumer Forum will be the appropriate Forum for the Petitioner to obtain appropriate remedy. Accordingly, this writ petition stands disposed of with the direction that the Petitioner shall approach the Consumer Forum for his remedy. The Consumer Forum shall not raise the question of limitation and shall decide the matter on merit.

2. Mr. Sahewalla, learned Counsel appearing for the Appellant has assailed the order as presumptive approach involving disputed question of law, whereas

according to him the only question involved was interpretation of terms and conditions of supply of 1988. He submitted that the learned Single Judge on an erroneous assumption of disputed question of facts being involved in the case had refused to exercise its writ jurisdiction. Mr. Saikia, learned Standing Counsel for the Respondent-ASEB stressing the long long litigation initiated by the Petitioner pointed out that it was the Petitioner who first approached the District Consumer Forum, it is he who had filed the writ petition 772/95 disposed of on 14.9.95. A Writ appeal was filed against the order dated 14.9.95 as passed in Civil Rule No. 772/95 and a Division Bench of this Court by order dated 10.1.96 passed in Writ Appeal No. 492/95 directed the Competent Authority to adjudicate the matter including the date from which the reduction of load will be applicable in accordance with law within a period of 15 days from the date furnishing the certified copy of the order. It may be noted here that the Appellant has also referred to these proceedings. Certified copy of the order dated 10.1.96 passed in Writ Appeal No. 492 of 1995 along with the application was submitted on 24.2.96 and the Board while processing the matter observed that although the writ Petitioner-Appellant applied for reduction of load from 130 KW to 16 KW, he did not submit the Test Report showing reduction of load to the extent of 16 KW. Accordingly, the Petitioner was informed vide letter dated 23.2.96 to furnish the relevant Test Report surrendering the excess load upto the extent of 16 KW. In response to this, the writ Petitioner-Appellant submitted the Test Report dated 28.2.96 vide letter dated 28.4.96 showing reduction of load upto 16 KW. The Respondent - Board vide letter dated 8.5.96 which was received by the Petitioner on 8.8.96 after processing the entire matter reduced the connected load of the Petitioner from 64 KW to 16 KW. A disconnection notice was also issued on 13.8.96. The writ Petitioner again filed yet another Civil Rule No. 4032 of 1996 which was rejected. A Writ Appeal (451 of 1996) was filed which was disposed of on 26.9.96 with a direction to Board to take independent decision and pass a speaking order. Accordingly, a speaking order with reason being Order No. 576 was passed on 26.11.96 deciding that the petitioner's reduction of connected load from 130 KW to 64 KW should be effective from 18th September, 1994 and the subsequent application for reduction of load from 64 KW to 16 KW should be effective from 1.5.96 as per Annexure-VII to the petition. It is in the back drop of the above facts that the Standing Counsel Mr. Saikia invited attention of Clause 7 of the Statutory Terms and Conditions of Supply, 1988 which it reads as follows:

7. Agreement and security deposit:

(a) Before commencement of supply the consumer shall enter into a formal agreement in the form prescribed by the Board and deposit with the Board cash security as per schedule of "Misc. Charges" of the schedule of tariff of the Board.

* * *

3. It is clear that no agreement can be made for supply of electric energy without Test Report. It is vitally important and essential to determine the load of a consumer. No effective agreement can be made in absence of a Test. Clause 7(g)

provides for reduction of load which reads as follows:

(g) If any consumer wants to reduce his load he can do so only after the expiry of two years from the date of first agreement and he shall have to make an application to that effect and enter into fresh agreement after submitting fresh Test Report and he shall have to pay necessary cost required by the Board for such alteration.

4. While Mr. Sahewalla stressed that the Test Report can only be asked for after entering into a fresh agreement as contemplated by Clause g. Mr. Saikia argued that it is a cardinal rule of interpretation that such terms and conditions can always be read as a whole and not in isolation. On a plain reading of the provisions under Clause 7 of the terms and conditions insisting for Test Report is a requirement for reduction of load cannot be filled with on any legitimate ground. Therefore, the impugned order dated 26.11.96, Annexure-VII to the writ petition stands, it is a reasoned order as directed by this Court vide order dated 26.9.96 in Writ Appeal No. 451 of 1996. The following finding as recorded in the impugned order is worth noting:

Like-wise for his subsequent application for reduction of load to the extent of 15.25 KW rounded off 16 KW the above facts, will show that although the application was made on 25.7.94 no Test Report was submitted showing surrendering of load to the extent of 16 KW. The facts and circumstances discussed above, would reveal that it was only on 28.4.96 that he submitted a Test Report dated 20.2.96 showing reduction of load to the extent of 16 KW. Therefore, for the purpose of giving benefit of load reduction as per Clause 7(g) of the Terms and Conditions of supply, 1988 the effective date is to be taken as 31.5.96 i.e. on expiry of 90 (ninety) days from the date of submission of his Test Report on 28.4.96.

5. Two glaring facts came to light from the impugned order itself. It was the Writ Petitioner Appellant who first approached the Court of Munsiff, Boigaigaon by filing Title Suit No. 14 of 1994, and Misc. Case No. 7 of 1994, this suit was dismissed for default on 17.4.94. Thereafter, again a fresh suit was filed being T.S. No. 21 of 1994 along with Misc. Case No. 17 of 1994 and this suit was dismissed as withdrawn on 2.8.94. Now dismissal of these suits may be either on default or on withdrawal itself operate as a bar to the maintainability of the Writ petition, it was rightly dismissed.

The Writ Appeal, therefore fails, it is accordingly dismissed.