(2009) 04 KL CK 0020

In the High Court Of Kerala

Case No : O.P. No. 2773 of 2003 (E)

P.P. George and Sons APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Citation : (2009) 2 KLJ 331

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : T.M. Abdul Latheef, for the Appellant; C.K. Karunakaran, C.C. Thomas and P. Santhalingam, for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—As per G.O(MS)4/92/PD dated 6-2-1992 the Government of Kerala announced a concessioanl power tariff and electricity duty to industries, as a measure of incentive. The concessional tariff was applicable only to units that started production between 1-1-1992 and 31-12-1996. Though the petitioner did not start commercial production before 31-12-1996, he claims the benefit of the concessional tariff alleging that he had started commercial production in June 1996, using a diesel generator set installed by him, On the above basis, he challenges the denial of the concessional rate of electricity tariff to him.

2. The petitioner is running a printing press unit at Angamaly, which is registered as a small scale industrial unit. The unit had applied for electrical connection and as per Ext. P4 proceedings, the executive engineer K.S.E. Board sanctioned the work on an estimate of Rs. 1,16,640/- on 19-6-1995. Thereafter, the concerned Minister had directed the grant of electricity connection to the petitioner on priority basis, as per his letter dated 24-11-1995, which is Ewxt.P5. The petitioner alleges that the entire work for giving electric connection to the petitioner was over in 1996 itself but, supply was delayed without any justification and finally, he was granted electric connection only on 1-1-1997.

But, according to him, the petitioner started commercial production before the said date using a generator set installed by him, having a capacity of 62.5 KVA. Since the petitioner was not given electric connection before 31-12-1996, he submitted Exts. P8 and P9 representations and also filed O.P. 19444/2001 praying for the issue of appropriate directions from this Court, commanding the respondents to collect only the pre 1992 tariff rates from the petitioner. During the pendency of the said Original Petition a bill for Rs. 75,095/- was issued to the petitioner which was also challenged by him before this Court in a Miscellaneous Petition filed in the writ petition referred to above. The Court has granted an order of interim stay conditional on payment of an amount of Rs. 35,000/-. Subsequently the original petition was disposed of as per Ext.P11 judgment directing the Deputy Chief Engineer, KSEB to consider and dispose of the representations of the petitioner within a period of three months of the date thereof.

3. The grievances of the petitioner were considered in compliance with the directions of this Court and orders were passed by the Deputy Chief Engineer, KSEB which is Ext. P13. As per Ext. P13 it has been found that the petitioner is not entitled to the concessional tariff rates claimed by him. He has also been found liable to pay the amount demanded as electricity charges from him. The petitioner has filed this Original Petition challenging Ext.P13 order and claiming that he is entitled to the benefit of the concessional pre 1992 tariff rates announced by the Government of Kerala as per G.O(MS) 4/92 dated 9-2-1992. Though this petition was filed in the year 2003 no counter affidavit has been filed on behalf of the respondents. It is seen from the proceedings that though sufficient opportunity was granted to the respondents, they have not chosen to file a counter affidavit till date. No prayer for time to file counter affidavit was also made by the counsel for the respondents. Therefore, I have heard Shri. T.M. Abdul Latiff, counsel for the petitioner and the standing counsel for the KSE Board.

4. The counsel for the petitioner submitted that, the petitioner was entitled to be given the benefit of the pre 1992 concessional tariff. According to him the unit of the petitioner was started before 31-12-1996. The petitioner claims that he had executed a minimum guarantee agreement on 29-7-1995. The Electrical Inspector, Emakulam permitted energisation of his generator and the electrical installation on 27-6-1996 and the unit started commercial production immediately. The petitioner did everything on his part and started commercial production using the generator set before 1-1-1997. According to him the petitioner had invested money and established the unit on the expectation that electrical energy would be supplied to him at the pre 1992 tariff rates. He contends that the concession made available to industrial units should not be denied to him for the reason that the petitioner had done everything that was to be done by him before 31-12-1996 and it was not due to any fault of his that the energisation of electrical supply to his unit was delayed beyond the cut off date of 31-12-1996.

5. The claim of the petitioner is opposed by the standing counsel for the respondents. According to the counsel, the concessional rate was announced by the State Government as early as on 6-2-1992. Even at that time, the Government had announced that the concession would be available only to units that started commercial production between 1-1-1992 and 31-12-1996. Therefore, the cut off date was well within title contemplation of the petitioner even when he started preparations for establishing his unit. Since the petitioner''s unit was not energised before the cut off date, he was not entitled to the concession. According to the counsel, in Ext.P13, the impugned order, all the contentions of the petitioner have been considered. The counsel for the respondents contended that, it was not due to any fault on the part of the KSE board that the unit was not given electric connection before 31-12-1996. It is further contended that the petitioner had not submitted any application for availing the concessional tariff rate at any time. He has made his claim for the first time only in O.P. 19444/2001 filed by him. Therefore, it is pointed out that the original petition is liable to be dismissed.

6. It is seen from Ext. P13 order that the equipments for providing supply to the petitioner''s unit was received only on 27-12-1996. The installation work was completed on 30-12-1996 and the same was inspected by the Electrical Inspector on 1-1-1997. The installation was energised on getting oral sanction of the Electrical Inspector on 1-1-1997 itself. The Deputy Chief Engineer who considered the above contention has found that the records do not show any delay in giving power connection to the petitioner. The dates mentioned above would show that there was no delay on the part of the authorities in giving connection to the petitioner''s unit. There is nothing or record to show that the above statements in Ext.P13 are false. The above question being a pure question of fact the finding of the Deputy Chief Engineer in Ext.Pl3 on this point has to be accepted. The petitioner has also not disputed the above statements contained in Ext. P13, in the above Original Petition. In the absence of any evidence or material to show that the respondents were at fault in delaying rant of electric connection to the petitioner''s unit, the above finding in Ext.Pl3 is only to be upheld.

7. The next question to be considered is whether the claim of the petitioner that he has to be granted the Ext.P3 concessional tariff for the reason that he had started commercial production well before 31-12-1996. A copy of the G.O dated 6-2-1992 has been handed over to me by the parties, in court. It is to be noted that the concession granted by the Government is in respect of consumption of electrical energy by industrial units. The same is granted to units which started commercial production between 1-1 -1992 and 31-12-1996. Since the concession granted is in respect of electrical energy consumed by industrial units that started commercial production during the relevant period, the concession cannot be made available to units which do not commence consumption of energy during the relevant period. Admittedly the petitioner''s unit has not consumed any electrical energy before 31-12-1996. According to him, he has

commenced commercial production using a diesel generator. There is absolutely no evidence to show that he had started commercial production before 31-12-1996. Though the petitioner has produced Ext. P7 certificate of registration dated 10-7-1996 issued under the Kerala General Sales Tax Act, the same does not show that he has started commercial production. exts.P18 and P19 are also not acceptable as evidence of commencement of commercial production. It therefore follows that the petitioner has not been able to produce any evidence of commencement of commercial production before 31-3-1996.

8. Apart from the above, it is common knowledge that commercial production of an industrial unit by utilising power generated by diesel generators is not at all viable, That is the reason why all industrial units apply for regular electric connection. The diesel generators are meant only as a stand by, to prevent loss that may be caused by disruption of production due to failure of electric supply. The diesel generator installed by the petitioner does not have the capacity to meet the power requirements of the petitioner. Even if it is assumed that the unit had started production using a generator set, the same can only be presumed to have been in anticipation of getting a regular electric connection. Therefore, even if it is assumed that the petitioner had started production using a diesel generator set, the same would not entitle him to the benefit of the concessional pre 1992 tariff rates announced by the Government of Kerala.

9. I am supported in this reasoning by the decision of the Hon''ble Supreme Court reported in Southern Ispat Ltd. Vs. State of Kerala and Others, . In the said decision, the very same notification dated 6-2-1992 was considered by the Apex Court. The industrial unit in the said case claimed the benefit of the Government order alleging that production had been started before 31-12-1996 using a diesel generator set. The unit had also produced returns submitted to the commercial taxes department, the assessment order issued by the sales tax department and the balance sheet of the company as on 31-3-1997 to show that it had started commercial production. However, the said documents were all rejected as unreliable and self-serving by the Apex Court. It has also been held that the question whether the unit had started commercial production before the appointed date was a question of fact which was not liable to be interfered with.

10. In the above case also this Court had directed the Deputy Chief Engineer KSE Board to consider the greivance of the petitioner and the order passed after such consideration is Ext. P13. The authority who is the fact finding body has determined the questions of fact against the petitioner. The said findings do not call for any interference in this original petition. The Original Petition fails and is hereby dismissed. No costs.

