(2005) 04 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5619 of 1986

Punjab State Electricity Board	APPELLANT
Vs	
The Municipal Corporation and Another	RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:
Punjab Municipal Corporation Act, 1976 — Section 157, 422

Citation : (2005) 141 PLR 392 : (2005) 3 RCR(Civil) 508 : (2005) 2 RCR(Civil) 508

Hon'ble Judges : J.S. Narang, J

Bench : Single Bench

Advocate : H.N. Mehtani, for the Appellant; T.S. Gujral and P.S. Chhina, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

J.S. Narang, J.—This judgment would dispose of C.W.P. No. 5619 of 1986, C.W.P. No. 1755 of 1987, C.W.P. No. 2260 of 1987 and C.W.P. No. 6959 of 1988 as the common question of law is involved with little variations of the facts involved accordingly. For bravity the facts are being taken from C.W.P. No. 5619 of 1986.

2. The Punjab State Electricity Board (hereinafter referred to as "the Board") is a statutory body and is engaged in the service for providing energy for domestic, commercial and industrial purposes throughout the State of Punjab. The Board levies tariff on the electricity consumed by the consumers and for the purpose of determining the quantity of energy consumed by the consumer, the Electric Meters at the supply end of the consumer are installed. The electric meters are purchased by the Board from different suppliers having their factories located at various places in India. The procedure and the process for placing the orders thereof are spelt out and executed accordingly. Once the supply orders are placed and the supplies are received, the said meters are stored at 15 Metering Equipment Sub Divisions of the Board located in various Towns in the State of Punjab. Generally such sub divisions are located within the limits of Municipal

Committees/Corporations of the cities. One such sub division is located within the limits of the Municipal Corporation, Ludhiana i.e., respondent No. 1.

3. The Department of the Local Government, Government of Punjab has framed Octroi Schedule which was published in the official gazette (extra ordinary) on 19.8.1983. The Schedule prescribes the rate of the octroi duty chargeable upon different categories of the goods which are imported within the limits of the Municipal Committees/Municipal Corporations. It may be observed that the goods are described under the item and the rate chargeable is also indicated against such goods. The relevant entries relating to the point at issue raised in the present petition pertains to item No. 69 contained in category No. VII and item No. 72 contained in category no. VIII. It is not necessary to refer to all the items, therefore, the aforestated items are reproduced as hereunder with the complete details:-

CATEGORY VII

SCIENTIFIC APPARATUS, INSTRUMENTS OF MUSIC AND AMUSEMENT

XX XX XX XX XX XX XX XX XX XX XX Item No. 69 All kinds of Scientific Mathematical, optical, surgical and dentistry instruments and equipments including telephone and loudspeakers and spare parts thereof, telegraphic equipment, binoculars, telescopes and opera glasses and sound transmitting equipments.

CATEGORY VIII Electric Goods

Item No. 72 All kinds of electric goods not specified elsewhere in the schedule such as electric engines, electric motors, heaters, toasters, ovens, hot plates, and irons including their spare parts, wires, plugs, bulbs, switches, meter holders, shads cables, both insulated or otherwise earthen and porcelain insulators, rotary converters, control gears and parts thereof."

4. It is the claim of the petitioner, i.e., "the Board" that prior to the change in the claim made by the Municipal Corporation, the Octroi duty was being charged under Item No. 72 of Category No. VIII upon the "Electrical Meters" imported by the Board to its sub Division situated within the Municipal Corporation Limit. Suddenly the Corporation started charging octroi duty upon the aforestated metes at the rate of Rs. 0.03 per rupee advolerm from June, 1986 defining the aforestated goods falling within the ambit of item No. 69, of Category VII whereas earlier under item No. 72, the octroi duty was being charged at the rate of Rs. 25/- per 100 kgs. In the first instance the Board had no option but to pay the duty being charged under item No. 69 as the goods were not allowed to reach the Sub Division. It was on 12.6.1986 and 18.6.1986, the payment was made but under protest. A detailed representation was submitted to. respondent No. i copy of which has been appended as Annexure P-l. No decision thereon was rendered by the Municipal Corporation. Resultantly, the petitioner has made the act of the respondents the subject matter of challenge in the present petition.

5. Learned Commissioner, Municipal Corporation, Ludhiana had conveyed vide letter dated 25.6.1986 that the duty shall be chargeable under item No. 69 and not under item No. 72 as the electric meters are mathematical instruments for recording the electricity consumption. The aforestated communication was received in the office of the Executive Engineer, M.E. Division, PSEB, Ludhiana on 8.7.1986, copy Annexure P3. All the representations against such act remains unanswered. The plea submitted by the petitioner before the Commissioner of the Corporation was that the Octroi duty upon the Electric meters was being levied under item No. 72 as yet by the other two Corporation i.e., Amritsar and Jalandhar. Additionally, it was submitted before the Commissioner that let the octroi duty be charged under item No. 72 with the undertaking that if the State Government decides that the octroi duty on electric meters is chargeable at ad-velorem rate of Rs. 0.03 per rupee, the payment shall be made accordingly. The respondent No. 1 i.e., Government of Punjab conveyed its decision vide communication dated 2.9.1986 to the effect that the octroi duty on electric meters is leviable under item No. 69 of Octroi Schedule, therefore, is being correctly charged. A copy of the communication has been appended as Annexure P-7. Thus, the corporation started charging octroi duty upon the electric meters as aforestated.

6. The action of Government of Punjab and resultantly that of the Municipal Corporation, Ludhiana has been made the subject matter of challenge. The petition was admitted vide order dated 12.1.1987 but no stay was granted with a rider that in the event of success of the petition, the respondent-Corporation shall return the amount within two months with interest at the rate of 18% P.A. thereon. For ready reference, the order reads as under:-

C.W.P. No. 5619 of 1986

Present: Mr. H.N. Mehtani, Advocate for the petitioner.

Mr. H.S. Riar, D.A.G., Punjab for the respondent-State.

Mr. T.S. Doabia, Advocate for respondent No. 1.

Admitted. No stay. In the event of success of the petition, the respondent-Corporation shall return the amount within two months with interest @ 18 per cent per annum thereon. In the circumstances of this case, we direct that the petition be listed for hearing within one year.

Sd/- D.S. Tewatia, Judge Sd/- M.R. Agnihotri,

12.1.1987 Judge"

7. The aforesaid order has never ever been challenged by the respondents.

8. The respondents have contested the claim of the petitioner and a detailed written statement has been filed controverting the pleas of the petitioner. The plea taken is that the Octroi duty on electric meters is being correctly charged subjecting them and accepting them to be falling within the ambit of Item No. 69

of the Octroi Schedule as the said instrument is scientific and mathematical instrument, therefore, the description of the article fairly and squarely fails within the ambit of the aforestated item of the Octroi Schedule. It has also been controverted that the date of the official gazette is not August 1983 but is 10.11.1983. It has also been pleaded that the petitioner itself admits that the electric meter is used for the purpose of recording the electricity/energy consumed by the consumer. Therefore, recording such consumption, is a mathematical process. It is on the basis of this measure, the tariff is being charged. An example of a thermometer has also been quoted in support of the plea that the temperature is recorded, therefore, such instrument also falls within the ambit of Scientific instrument. Thus, the electric meter falls fairly and squarely within the ambit of item No. 69. However, it has been conceded that the meter holder and other fittings to install the electric meter are certainly electric goods and not scientific or mathematical instruments like electric meter. So far as the reference to C.W.P. No. 1051 of 1979 is concerned, a bald statement has been made that the same is not relevant to the facts of this case and is squarely distinguishable.

C.W.P. No. 1755 of 1987

This petition has been filed by the Board against the Municipal Corporation, Jalandhar and that the point at issue is similar. The interim order has been passed in the similar terms as in C.W.P. No. 5619 of 1986. The Municipal Corporation, Jalandhar has placed reliance upon the communication dated 2.9.1986 of the Government of Punjab for charging the octroi duty under item No. 69 of the Octroi Schedule. The Corporation did not make any representation to Government of Punjab in view of the fact that the Government has already expressed its view point accordingly. Resultantly, the petition has been filed making the reference of the aforestated petition. In this case, the Municipal Corporation, Jalandhar has taken the plea that the petitioner could have approached the State Government u/s 157 of the Punjab Municipal Corporation Act, 1976 (hereinafter referred to as "the Act") and that the revisional supervisory jurisdiction of the State Government could also be invoked u/s 422 of the Act. Since the alternative remedy having not been availed of the petition is not sustainable. The plea on merit is the same as has been taken in C.W.P. No. 5619 of 1986.

C.W.P. 2260 of 1987

This petition has been filed challenging the Act of Municipal Corporation, Amritsar, in which again the reference has been made to the communication dated 2.9.1986 issued by the Government of Punjab with a specific copy to Municipal Corporation, Amritsar. In this also, the plea taken by the Corporation is similar to the one taken in C.W.P. No. 1755 of 1987. However, on merits, the plea taken is consistent with C.W.P. No. 5619 of 1986.

C.W.P. No. 6959 of 1988

This petition has been filed by M/s India Oxygen Limited. The petitioner was importing the goods classified as "Welding Electrode". The Municipal Corporation, Ludhiana started charging Rs. 25/- per 100 Kg. as Octroi defining the aforestated goods as "Electrical Goods" under Category No. VIII. The act of the Municipal Corporation was contested by way of raising the issued through communication dated 13.3.1984 vide which a specific plea has been taken that the Welding Electrodes could not be classified as Electric Goods and that these could be only classified as metal. Thus, the articles made of metal except articles under category 13, the Octroi duty chargeable would be Rs. 7/- per 100 Kgs. and not Rs. 25/- per 100 Kgs., as defined under Category VIII. In this regard, a reference had also been made to a Division Bench Judgment of Madras High Court rendered in Madurai v. Ravi Auto Stores. No reply was received. The matter was taken up with the Chief Secretary, Local Government Department, Punjab vide representation dated 9.5.1985. However, the Commissioner, Municipal Corporation, Amritsar had written a letter to Deputy Secretary, Local Government Department, Punjab communicating that the octroi had been rightly charged under item No. 72 of the Octroi Schedule. The demand of the petitioner was rejected by the Corporation vide communication dated 2.6.1987, copy Annexure P-5. The stand of the respondents has been made the subject matter of challenge in the present petition. The petition was admitted vide order dated 13.2.1989 and for interim relief the petition was ordered to be placed before an Hon''ble Single Bench. The interim relief was granted in the same terms vide order dated 13.12.1989 with a categoric direction that the petition be heard with C.W.P. No. 1755 of 1987. The petitioner had again filed C.M. No. 19564 of 1989, for additional interim relief, the said application was dismissed in default vide order dated 27.11.1989. This order was never ever questioned. The perusal of the file shows that no written statement has been field by the respondents till to date.

9. Learned counsel for the petitioner has emphatically placed reliance upon a Division Bench Judgment of Madras High Court rendered in the case of Madurai (supra), copy of which has been appended as Annexure P-2/A. It has been categorically held that the Electrodes are nothing but copper rods melted by electric power for welding. Thus, by any stretch of imagination, the Welding Electrodes cannot be accepted or defined as the electrical goods. It is clear that the Electrodes cannot be used without electrical energy in welding process and that this process would not make the electrodes to be defined as electrical goods.

10. I have heard learned counsel for the parties and have also perused the paper books and have also perused the communication/orders of the authorities passed from time to time, which have been appended as Annexures. I have also perused the octroi Schedule with specific reference to item No. 69 and item No. 72, quoted as here above.

11. The argument of learned counsel for the petitioner is definitely convincing, the electric meter cannot be termed as scientific/mathematical gadget in

common parlance. Those meters cannot function without the electricity energy passing through it and for this purpose, there are so many components which are involved in making the needless of the meter run accordingly. By no stretch of imagination, such electric meter would be comparable with the thermometer or any other scientific gadget where the specified measure is measurable without any additional aid. In this item, the equipments such as telephone, loud speakers, telegraphic equipment have been categorically mentioned where again some weak electric current is required to pass through but "the electric meter" is conspicuous by its absence. The scientific/mathematical gadgets, which are being referred, which function by carrying out the measures without any aid. The perusal of item No. 72 would show that the general word has been used i.e. "all kinds of electric goods not specified else where in the Schedule, such as electric fans, electric engines, electric motors, heaters toasters, Ovens. Hot Plates and Irons including their spare parts apart from various other items." The perusal of this item would show that all such items where the electric current passes through and the end result is achievable would fall under this item. Similarly, in the case of electric meter, the meter alone is not usable, it is only when the electric current passes through it, the measure is recorded, i.e., the end result.

12. Learned counsel for the respondent has not been able to address any convincing argument for reading the electric meter as a scientific/mathematical gadget nor any comparative example has been cited. It may also be noted that in this regard, no judicial precedent has been cited by the counsel for the respondent.

13. The comparison of the language used in both the items i.e. item No. 69 and 72, would be indicative of the interpretation to which such goods would belong to. In the case at hand, the distinction is easily noticable as has been discussed above. Thus, in my view, the respondents have fallen into error in describing the electricity meter as a scientific/mathematical gadget. In fact, they were correctly charging the octroi by accepting the electricity meter falling within the ambit of item No. 72. Resultantly, the petition deserves to be allowed. By virtue of the interim order, the petitioner would also be entitled to stake their claim for the refund accordingly. If, such claim is made before the Municipal Commissioner of the respective corporations within 30 days from the receipt of certified copy of this judgment, such claim shall be decided by the learned Commissioner within six months thereafter. But, of course after affording appropriate complete opportunity to both sides for producing the requisite record. It goes without saying that a reasoned order shall be passed. The relief grantable to the petitioner, shall be passed or with interest as indicated in the interim order of this Court, within a period of one month.

14. In view of the above, the petition is allowed with the aforestated observations.

15. So far as C.W.P. No. 6959 of 1988 is concerned, the same also deserves to be allowed though the claim is different and the reasoning is different. The

electrode definitely cannot be termed as an electric good. In this regard I am in respectful agreement with the Division Bench Judgment of Madras High Court, copy whereof has been appended as Annexure P-2/A. It is scientifically answerable that the copper rods styled as electrodes are conductor of electricity. The electricity is used for the purpose of heating up the pointed ends of rods in the process of welding so that in every such process the copper rods would gradually disappear and get deposited at the point where required. By no stretch of imagination such rods can be termed or defined as electrical goods. Thus, the Corporation has fallen into error in reading the electrode as electrical goods as defined under Category VII of the Octroi Schedule of 1983,. Resultantly, petition is allowed and the petitioner shall also be entitled to the same relief claimable as indicated hereabove. No order as to costs.

