

(1994) 09 RAJ CK 0014
In the Rajasthan High Court
Case No : C.W.P. No. 1229 of 1984

Rathi Gases Ltd.

APPELLANT

Vs

Rajasthan State Electricity Board and Others

RESPONDENT

Date of Decision : 13-09-1994

Acts Referred:

Contract Act, 1872 — Section 23
Electricity (Supply) Act, 1948 — Section 49, 78A

Citation : AIR 1995 Raj 139

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Advocate : Paras Kuhad and Sanjay Kumar, for the Appellant; A.K. Sharma and Neeraj Sethi, for the Respondent

Final Decision : Dismissed

Judgement

Arun Madan, J.—The present writ petition has been filed under Article 226 of the Constitution of India in the matter of Electricity Supply Act, 1948 (hereinafter to be referred as the Act 1) concerning the additional tariff and the concessions, the benefit of exemption of which, the petitioner can be held entitled under the Rules or not, by virtue of the petitioner being an expanding industrial unit. According to the petitioner its Company was granted an industrial licence No. IL:293(74), dated 28th June, 1974 for establishment of a unit at Ghaziabad in U.P. for manufacturer of oxygen gas and later on the necessary sanction was accorded by the Government of India on 30th November, 1974 to shift the site of the petitioner-company from Ghaziabad to Alwar, Rajasthan and at the time of establishment of the said industrial unit, the petitioner-company had applied for power connection of 380 K.V.A. connected load against the contract demand of 400 K.V.A. from the Rajasthan State Electricity Board (for short "the Board*"), which was realised on 26th May, 1975.

2. Subsequently, at the request of the petitioner-company the said contract demand was further extended by the Board by 100 K.V.A. thus raising the

petitioner-company demand up to 500 K.V.A. The said contract demand was realised in favour of the petitioner on 24th December, 1979 and thereafter the petitioner made a representation to the Government of India for effecting capacity of 2 lac million cubic meters in pursuance thereto and the Government of India vide its letter dated 31st December, 1979 granted necessary permission to the petitioner for the said substantial expansion.

3. According to the petitioner-company it had incurred expenditure of Rs. 50,50,270/- on the execution of the expansion project undertaking in pursuance of the letter of intent up to 22nd February, 1982, which was not more than 25% of the fixed capital investment of petitioner-company.

4. In pursuance of the above, the Secretary to the Government, Industries Department, granted the substantial expansion on 25-6-82 vide Annex-1 to the writ petition, and pursuance to the above the petitioner-company applied to the respondent-Board for additional power with 600 K.V.A. contract demand, which was finally sanctioned by the Board on 29th Oct. 1982, and simultaneously the petitioner-company had also applied to the respondent-Board for rebate in tariff in the additional power to be consumed in their unit. In pursuance of the said request, the Executive Engineer of the Board examined the petitioner's eligibility for rebate in tariff in terms of Board's circular dated 22nd/25th March, 1980 and the same was recommended vide letter dated 19th Nov. 1982 and ultimately the matter was examined by the Superintending Engineer (A.C.), Rajasthan State Electricity Board, Alwar and based on the documents furnished by the petitioner-company and on the basis of the recommendations made by the Executive Engineer, in terms of the letter dated 19th Nov. 1982 and other relevant factors, it was held by the Superintending Engineer that the petitioner was entitled for the rebate for additional 600 K. V. A., required for substantial expansion till 31st March, 1984 and the petitioner availed the said benefit subject to fulfilment of other requirements which the petitioner-company fulfilled.

5. In pursuance of the above sanction the petitioner was directed to execute two agreements with the respondent-Board in respect of their existing 500 K.V.A. contract demand and for the new demand of 600 K.V.A. for the expanding unit. In compliance of the said direction two separate agreements were executed between the parties in respect of 500 K.V.A. and 600 K.V.A. contract demands respectively on 29th Nov. 1982 vide Annex.-3 and 4. In pursuance of the rebate sanctioned by the respondent-Board, which was admissible only for the expanding unit, such as the petitioner industry, sub-metering arrangement was made at the petitioner's Company premises to avail the benefit of the supply keeping in view the requirement of clause iv(b) of the agreement dated 29th Nov. 1982 and according to the petitioner all necessary formalities as prescribed by the Board for availing the rebate in respect of new 600 K.V.A. connection for the Company's expanding unit were duly complied with. It will be significant to mention in this connection that in exercise of the powers conferred in sub-section (5) of Section 78A of the Electricity Supply Act, the State Government

directed the respondent-Board vide its circular dated 25th August, 1979 to allow rebate of electricity tariff at the rate and the conditions provided therein vide Annex-5, and in terms of the said directives of the State Government, the Board issued an order dated 22nd/25th March, 1980, with regard to grant of rebate in tariff vide Annex-6, and as per the requirement of the Government, the petitioner-Company had applied for temporary connection of 220 K.V.A. for construction purposes on 10th August, 1982 for their old established unit and having availed the benefit of rebate, started production in its expanding unit within 2 years from the grant of letter of intent and its new unit commenced production with effect from 29th Dec. 1982. Simultaneously the petitioner-Company had also submitted substantial expansion certificate to the Board which was issued by the State Industries Department and a separate connection for normal tariff covered by a separate agreement had also been taken by the respondents for such expansion and separate metering equipments were also installed in the petitioner's industrial premises for such connection. It has been further contended on behalf of the petitioner that in spite of the benefit of rebate having been sanctioned by the Superintending Engineer and notwithstanding the petitioner-company having fulfilled all the requisite conditions/ requirements in terms of the Board Circular dated 23rd/25th March, 1980, in the rebate bill issued by the Board for the month of Feb. 1983, the requisite rebate in tariff @ 10% was not provided by the Board. Against the decision of the Superintending Engineer, the petitioner represented to the Board on 16th May, 1983 for having not given the necessary rebate in power tariff to the petitioner's expanding unit. Aggrieved by the respondent-Board's failure to grant rebate in power tariff, the petitioner-company has filed the present writ petition.

6. I have heard the learned counsel for the ? parties at length and also perused the relevant documents.

7. Mr Sanjay Kumar, learned counsel for the petitioner has contended before the Court that the petitioner's industry was shifted from Ghaziabad to Alwar in Rajasthan in the year 1982 and the enhanced contract demand from 400 K.V.A. to 600 K.V.A. was released in favour of the petitioner-company on 24th Dec. 1979. It has been further contended that in pursuance to the substantial expansion of Company recommendation for necessary rebate in favour of the petitioner-company on 29th Nov. 1982 was also made subject to the fulfillment of the conditions and the requisite requirements stipulated there. In this connection reliance was placed by the learned counsel for the petitioner on an administrative order dated 26th July, 1975 (Annx-ure-R/1) issued by the Rajasthan State Electricity Board in terms of the directive dated 25th Feb. 1975 issued by the State Government in accordance with Section 78(A) of the Act. It was provided in the said circular to allow the following rebate in electricity tariff to industries, who start drawing electric power and cause actual electric energy consumption regularly for construction purpose between 1-4-1974 and 31-3-1979:-

- (a) For industries having contract demand of more than 600. KVA 15%
- (b) For industries having contract demand of more than 1200 KVA and upto 6000 KVA * 12tf0%
- (c) For industries having contract demand of more than 125 KVA and upto 1200 KVA: 10%
- (d) For energy consumed in the Electrochemical process, a further rebate of 10% will be given on the balance amount of the bill after deducting the above rebate.

8. Clause 1 of the above circular provides that the above rebate will be subject to the following conditions:-

"(i) The rebate shall not be allowed on the electric consumption for construction purposes

(H) The rebate will be available for a maximum period of five years from the date of commissioning of the industry concerned but in no case beyond 31st March, 1984.

(iii) These rebates shall not be applicable to those consumers who obtain part of their requirements from their own generation or from any other sources and do not purchase all the requirements of power from the Board.

(iv) This rebate shall not be allowed to such connections as are given in the premises where an industry is existing or was in existence either in its own name or in any other name.

(v) This rebate shall not be allowed in respect of industries to whom connections are released on negotiated tariff."

9. It was contended by the learned counsel for the petitioner that sub-clause (ii) of Clause 1 of the aforesaid circular clearly stipulates that the benefit of rebate can be availed of by an expanding unit or a new industry for a maximum period of 5 years from the date of commissioning of the industry but in no case beyond 31st March, 1984 but this condition is subject to the limitation which is imposed in sub-clause (iv) which clearly envisages that the benefit of the said rebate shall not be allowed to such connections which are in the premises where an industry is existing or was in existence either in its own name or in any other name. In any case the said rebate will not be in respect of industries to whom connections are released on negotiated tariff.

10. It is significant to mention that condition No. 3 of the said order clearly stipulates that if an existing industry, which has not been availing the similar rebate expands its production capacity and takes construction power for any substantial expansion during the period 1st April, 1974 to 31st March, 1979 will also be eligible for rebate for substantial expansion only as allowed by the Board to new industries and that the benefit of rebate shall not be available beyond 31st March, 1979. The term "substantial expansion" is clarified by the

explanation to condition No. 3 as an additional investment of at least 25% in the capital.

11. This evidently means that the benefit of such rebate can be extended only to those existing industries which have not availed the benefit of rebate earlier and will not, in any case, be extended to the said industries which have already availed such benefits on the plea of substantial expansion. It is further stipulated in the said condition that for the purpose of availing the benefit the consumer will have to produce the certificate from the Department of Industries of the State Government that "the substantial expansion has been made by the consumer during the period 1-2-1974 to 31-3-1979". A separate connection at normal tariff covered by a separate agreement will be taken by the industry for such expansion and separate metering equipments will be provided for the same. Condition No. 4 of the order, as referred to above, stipulates that "the decision of the Chairman, whether or not an industry is entitled to any of the above concessions shall be final and binding and shall not be subject to arbitration or any legal proceedings".

12. In the reply, filed on behalf of the respondents, it has been contended that by virtue of Section 49 of the Act, the Board may supply electricity to any person, any company and a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of supply frame uniform tariff, Section 79 of the Act deals with the powers of the Board to make regulations providing the principles governing the supply of electricity by the Board to persons other than the licensee u/s 49 of the Act.

13. It will thus be seen that taking all these factors into consideration, heavy expenses have to be incurred by the Board for making the electricity available to the consumers and it is in this context that the scheme of the Act envisages levy of improvement charges on the consumer as per uniform tariff framed u/s 49 of the Act read with Section 79(j) of the Act. The minimum charges fixed for the High Tension consumers are as under:-

i) For consumer having a 110 units per contract demand above KVA per month 1000 KVA. of the contract demand. ii) For consumers having 130 units per a contract demand KVA per month 1000 KVA. of the contract demand.

14. In support of the contentions, the learned counsel for the respondents has placed reliance upon Cl. 30 of the agreement executed between the parties which read as under: -

"CLAUSE 3*0 OF THE AGREEMENT :

In the event of any dispute or difference arising at any time between supplies and the consumer in regard to any matter arising out of or in connection with Agreement, such dispute or difference shall be referred in the first instance to the supplier's Chief Engineer and in the case of his decision not being accepted by the consumer, the said dispute or difference shall be referred to the

arbitration of two arbitrators, and to be appointed by each party hereto and an umpire to be appointed by the arbitration before entering upon the reference and the decision or award of the said arbitrators hereto and any reference made under this clause shall be deemed to be a submission to arbitration under the Arbitration Act, 1940 or any statutory modification thereof for the time being in force.

The arbitrators or the umpire giving their or his decision also decide by which party the cost of the arbitration and award shall be paid, and if by both parties, in what pro portion."

15. It was contended by the learned counsel for the respondents that if the petitioner had any grievance with regard to tariff rate for the period referred to above, it was open to the petitioner to avail the benefit of arbitration since a bona fide dispute has arisen which had to be referred to the Superintending Engineer at the first instance and in the event of its decision not being accepted by the consumer, it was open to the petitioner to have the said dispute or difference referred to the arbitration of 2 arbitrators one to be appointed, by each party hereto and a umpire to be appointed by the arbitration and any reference made in Clause 30 of the agreement would, have been a submission to the arbitration under the Arbitration Act. Since the alternative remedy of arbitration was available to the petitioner and this having not been done, it is not open to the petitioner to challenge the same by filing the instant writ petition in this Court.

16. The main challenge of the petitioner is against the deduction of minimum charges raised by the Board on the ground that the Board has failed to fulfil its obligation under the agreement and, therefore, notwithstanding the initial period of 5 years with effect from 26th July, 1975 to July, 1980, the petitioner was still entitled to avail the benefit of rebate for a further period of 5 years upto 31st Mar., 1984 and that the petitioner as an expanding unit was legally entitled to the benefit of rebate for the said extended period ending 1984. It has been further contended by the learned counsel that the petitioner industry had completed the expansion of the new unit as on 31st Dec., 1982 and was hence entitled, to the rebate. This fact is borne out from the prayer made in the writ petition whereby the petitioner has sought relief of issuance of appropriate writ, order or direction against the respondent-Board to give 10% rebate in electricity tariff to the petitioner-Company from the date when the expansion unit commenced its production i.e. 29th Dec., 1982 in accordance with the directives issued by the Government. This fact has been controverted by the learned counsel for the respondents that no request for extension of the demand was made in terms of conditions Nos. 3 and 4 of the Board's order dt. 26th July, 1975 vide Annex. R/1 and the said benefit is available only to an existing industry which has not availed of the same benefit of rebate earlier and since the petitioner having already availed the benefit of the said rebate during the period 26th July, 1975 to July, 1980, was not entitled to the extension of the said

benefit by virtue of the said provisions. It has been further contended by the learned counsel for the petitioner that the disputed questions of facts have been raised in the instant petition for which remedy of civil suit was available to the petitioner and which has not been availed of and since the alternative remedy has not been availed by the petitioner it is not open to him to file the present writ petition. Furthermore if the petitioner was aggrieved by the decision of the Board it was open to the petitioner to make a representation to the Chairman directly as provided by condition No. 4 of the Board's circular, referred to above, which has not been done in the instant case.

17. In support of his contentions, the learned counsel for the petitioner has placed reliance upon the judgment of this Court in the matter of *Man Industrial Corporation v. Superintendent, Central Excise, Mor, Udaipur* reported in 1989 (1) RLR 773. This was a matter regarding claim for refund of excise duty wrongly recovered by the Excise Department. There was a bona fide mistake regarding the levy of excise duty so far recovered from the petitioner and it was held in this case that the claim of the petitioner was within limitation and was entitled to refund of the excise duty together with payment of interest @ 12% per annum with effect from the date of the filing of the writ petition till the refund of excise duty. With due respect to the said decision, I am of the view that this decision is not attracted to the facts of the present case because it is not a case of bona fide mistake on the part of the respondent-Board regarding levy of electricity tariff on the petitioner-industry which on the contrary has been levied strictly in consonance with the Rules and the Board's circular, referred to above, which is binding by virtue of an agreement between the parties.

18. In this connection reliance was also placed in the matter of *R.S.E.B. v. J.K. Synthetics, D.B.* Civil Appeal No. 117/80, decided on 15th March, 1984, by a Division Bench of this Court. The question which had arisen in this case was regarding the benefit of rebate of 10% to the industries having 125 KVA and not exceeding 1200 KVA. It was held by the said decision that in the absence of the contract demand being specified in respect of Wire Cord Factory, the respondent was not entitled to claim any concession with respect of the disputed period. It was further held that the claim of the respondents for grant of concession in terms of the order dt. 25-3-1970 must fail for the reason that it does not specify the condition with regard to the existence of contract demand. It was in this context that the special leave appeal was allowed against the decision of the learned Single Judge.

19. In the present case the ratio of the aforesaid decision of the Division Bench is not attracted for the reason that in that case there was no evidence with regard to the contract demand wherein in the present case there is clear reference to the two agreements executed between the parties and the demand is based on departmental circulars referred to above, and, therefore, the question of extending any benefit to the petitioner particularly when the petitioner has already availed the benefit of rebate for the initial period of 5 years on the

ground that it is an expanding unit and further wants the benefit of its extension beyond 5 years on the ground that it is a new unit is neither permissible nor justified because I am of the considered opinion that in this manner there will be no end to the benefit of rebates being extended to the new units from time to time and they will go on seeking said benefit endlessly which is neither permissible nor warranted particularly when public revenue is involved and there could be no compromise for giving any concession as against the public revenue as it would be a huge loss to the State exchequer.

20. Learned counsel for the petitioner has also placed reliance on the judgment in the matter of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, in support of the contention that the decision of the Board in denying the benefit of rebate to the petitioner suffers from arbitrariness being violative of Article 14 of the Constitution of India. In this case the Apex Court had held that the State's constitutional obligations are co-extensive with contractual obligations since the State acts for public good and in interest and its public character is not changed merely because statutory or contractual rights are available to the other party and further that the State has to act justly, fairly and reasonably even in contractual fields in the context of bargaining powers which is unequal.

21. I am of the considered opinion that the ratio of the aforesaid decision is not attracted to the facts of the present case, in as much as the decision of the Board does not suffer from any arbitrariness since the Board had in a very fair and reasonable manner extended the benefit of concession towards tariff earlier to the petitioner for a period of 5 years, as referred to above, and in any case, it would be against the public interest more particularly where the public revenue is involved to extend such benefit indefinitely to any consumer on mere asking as it would not only be detrimental to the State revenue but such an agreement would also be opposed to the public policy since no Department of the State can run without sufficient funds at its disposal. Moreover the petitioner has failed to point out any similar cases where such discrimination has been made qua the petitioner and, therefore, in absence of such specific instances it is not open to the petitioner to allege any failure of his fundamental rights either under Article 14 on the ground of un equality or on the ground of violation of his fundamental right to trade and business under Article 19(1)(g) of the Constitution of India.

22. Keeping in view the above contention and after hearing the learned counsel for the parties and perusing the documents on the record, I am consequently of the view that notwithstanding the fact that the petitioner is a new industrial unit but the said unit has already availed of the benefit of said rebate earlier for a period of 5 years, as referred to above, i.e. 26th July, 1975 to July, 1980, is not entitled to the extension of the said benefit for another period of 5 years since it is neither justifiable nor permissible under the Rules. With these observations the writ petition is dismissed with no order as to costs.