(2000) 04 MAD CK 0060

In the Madras High Court

Case No : Writ Petition No''s. 18374 and 18375 of 1999 and 128 of 2000 etc. and W.M.P. No''s. 26814 and 26816 of 1999 and 200 and 3232 of 2000 etc. etc.

R.C. Diocese of Sivagangai etc. APPELLANT

Vs

Assistant Electrical Engineer, City Distribution Tamil Nadu Electricity Board etc. RESPONDENT

Date of Decision : 11-04-2000

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49(3), 49(4)
Tamil Nadu Revision of Tariff rates on Supply of Electrical Energy Act. 1978 — Section 3

Citation : AIR 2001 Mad 22

Hon'ble Judges : P. Shanmugam, J

Bench : Single Bench

Advocate : S. Subbiah, Fr. A. Xavier Arulraj, B. Rajendran, M. Balachandar, V. Manisekaran, P.N. Chezhian, AR.L. Sundaresan, A. Sankarasubramanian, P. Jagadeesan, Vijayakumari Natarajan and A. Sivaji, for the Appellant; N. Muthusamy, for the Respondent

Final Decision : Dismissed

Judgement

P. Shanmugam, J.—All these petitioners are corporate bodies seeking for quashing of orders passed by the authorities of the Electricity Board declining free supply of electricity and consequential order directing the authorities to effect free supply of electricity.

2. With effect from 1-8-1990, the Schedule to the Tamil Nadu Regulation of Tariff Rates of Supply of Electrical Energy Act, 1978 was amended so as to make free supply of electricity to agricultural connections. However, various authorities, including the Secretary to Government, have clarified that free supply is extended only to the agriculturists and not to corporations, local authorities and organisations like trusts. According to them, the benefits given to agriculturists cannot be extended to other than agriculturists. In effect, the writ petitions are

directed against such clarification.

3. K. Govindarajan, J. in a common order in W.P. No. 11031 of 1999 etc., by order dated 1-9-1999 has taken the view that the Government order refers to "agriculturists" and there is no further qualification prescribed for getting the concession. According to the learned Judge, a mere clarification in the form of a letter, cannot override the statutory provisions, in the absence of restriction to the word "agriculturists", the concession should be given to the petitioners as they are agriculturists.

4. In this batch of writ petitions, the institutions whose primary object is to run educational institutions, religious and charitable trusts, are said to have acquired lands for agricultural purposes. In some cases, the authorities of the Electricity Board have informed the petitioners that they are not eligible for free concession and that the tariff will be shifted from agricultural commercial.

5. The Parliament by Electricity (Supply) Act, 1948 has provided for rationalisation of the production and supply of electricity. Section 5 of the Act enables the State Government to constitute Electricity Boards. Section 49 of the said Act empowers the Electricity Board to prescribe uniform tariff. Sub-section (3) of Section 49 of the Act enables the Board, if it considers necessary or expedient to fix a different tariff for the supply of electricity to any person having regard to the geographical position of any area, the nature of supply and the purpose for which supply is required and any other relevant factor. Sub-section (4) of Section 49 of the Act specifically states that while fixing the tariff and terms and conditions of supply of electricity, the Board shall not show any undue preference to any person. Section 78-A of the Act states that the Board shall be guided by such directions that may be given to it by the State Government on questions of policies.

6. The Supreme Court in Delhi Cloth and General Mills Co. Ltd. and Another Vs. Rajasthan State Electricity Board and Another, while construing Section 49-A of the Act held that on it''s plain construction, Section 49-A of the Act makes it lawful for the Board to revise from time to time the tariff fixed for the supply of electricity to all such consumers who are enjoying special benefits. The Tamil Nadu Revision ofTariff Rates on Supply of Electrical Energy Act, 1978 (Act 1 of 1979) is a law passed by the Tamil Nadu Legislature to provide revision of tariff rates leviable on electrical energy supplied in this State by the Tamil Nadu Electricity Board. Section 3 of the Act empowers the Government to prescribe the tariff rates payable to the Board by any consumer. Section 4 of the Act says that the State Government may after taking into account the cost of production of energy and such other matters, as may be prescribed by the notification, amend the provision of the schedule to this Act.

7. Thus, it can be seen that the Board is empowered under the Central Act to prescribe uniform rates of tariff under Sections 49(3) and 49(4) of the Act. The Tamil Nadu Act says that the tariff rates payable by any consumer can be fixed

by the Government payable to the Board. But, before they do so, they will take into account the cost of production of energy. The relevant portions of the Tamil Nadu Act are as follows :

"3. Tariff rates for consumption of electrical energy :-- Notwithstanding anything contained in the Tamil Nadu Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949 (Tamil Nadu Act XXIX of 1949), the tariff rates payable to the Tamil Nadu Electricity Board by any consumer on the electricity energy supplied by the Board shall be as specified in the Schedule to this Act.

4. Power of the State Government to amend the Schedule :-- The State Government may after taking into account the cost of production of energy, and such other matters as may be prescribed by notification, amend the provisions of the Schedule to this Act.

The Schedule referred to u/s 3 has got two parts. Part I deals with the high tension power supply. Part II deals with the low tension power supply. Under Low Tension supply, the following are the broad categories :

(1) Domestic purpose

(2) General purpose

(3) Public lighting

(4) Industrial and non-industrial

(5) Agricultural service.

(6) Bazaar lamp

8. The agricultural service was further classified when the Tamil Nadu Act as supplied to bona fide agricultural service with a connected load of not less than 3 HP per service. There was a classification between small farmer (owning 2-1/2 acres of wet land upto an extent of 5 acres of dry land) and other farmers. The low tension tariff was classified into Tariff VI for huts in village Panchayats etc. and Tariff VII for recognised educational institutions, actual place of public worship, orphanage etc. Agricultural service was classified into small farmers to whom no charge is leviable. For other fanners, a lumpsum of Rs. 50/- per HP was charged and if the connected load exceeds 5 HP, the lumpsum of Rs. 75/- per HP was charged.

9. In G.O.Ms. No. 29, Energy dated 31-1-1995, there was a further modification in reference to agriculture. Those agriculturists who have availed service connection on payment of cost of energisation shall pay Rs. 150/- per HP per annum. In G.O.Ms. No. 115, Energy dated 19-7-1998, the tariff rate of Rs. 250/- per HP has been fixed for those who have got energisation by paying Rs. 10,000/-. The entry regarding agriculture includes the Government Seed Farms.

10. The consumer has been defined under the Indian Electricity Act, 190. Section 2(c) states that a consumer means in person who is supplied with energy and

includes any person whose premises are for the time being connected for the purpose of receiving energy. Section 3 of the Tamil Nadu Act says that the tariff rates payable by any consumer to the Board shall be specified in the Schedule. Therefore, while satisfying the consumer, the Government has classified, under Low Tension tariff, agriculture and Government Seed Farms, huts, educational and religious institutions etc. Therefore, the service connection given to consumers other than agriculture, for example, to huts, educational institutions, places of public worship, orphanages, libraries, research institutes have to be treated in their respective tariff clauses. All categories of consumers not covered are placed under Tariff 9. Therefore, the contention that the institutions having agricultural lands should be given a free concession available to the agriculturists cannot be accepted. They are classified under a consumer and the Government has classified it for the purpose of tariff rates. The classification as such, has not been assailed. That is a reasonable classification.

11. u/s 4 of the Tamil Nadu Act, the State Government is empowered to amend the provisions of the Schedule after taking into account the cost of production of energy and such other matters as may be prescribed. In the absence of any other provisions or prescriptions, whenever the Government wants to amend the provisions, it can be done only after taking into account the cost of production of energy. u/s 49(3) of the Electricity Supply Act 1948, the Board is empowered to fix different tariffs for supply of electricity to any person having regard to the geographical position and any area, the nature of the supply and the purpose for which supply is required and any other relevant factor. Sub-section (4) of Section 49 states that the Board shall not show undue preference to any person. u/s 78-A of the said Act, the Board shall be guided by directions on questions of policy given by the State Government.

12. Agriculturists were to pay charges right from the year 1959. The following table shows the various charges and the tariff.

Electricity Tariff Rate sin Tamil Nadu For Agricultural Pump set Connections (Without Including Tax)

Period Metered Tariff/Rate

(Rate/Khwr)

From 1-10-1959 7.00 paise

From 1-12-1964 8.25 "

From 1-1-1970 9.00 paise

From 1-2-1972

(a) First 100 units 12.00 paise

(b) all in excess 11.00 "

From 1-10-1974 12.00 "

From 1-9-1973 16.00 "

From 1-4-1976 16.00 "

PLUS

Fixed charges at Rs. 2.50 per HP subject to maximum of Rs. 10 per service

From 1-4-1977 16.00 paise

PLUS

Fixed charges at Rs. 1.25 per HP subject to maximum of Rs. 5 per service.

From 1-7-1977

(a) small farmers 14.00

(b) big farmers 16.00

PLUS

Fixed charges at Rs. 1.25 per HP subject to maximum of Rs. 5 per service.

From 1-6-1978

(a) small farmers 12.00 paise

(b) big farmers 14.00 palse

PLUS

Fixed charges at Rs. 1.25 per HP subject to maximum of Rs. 5 per service.

From 15-9-1981

(a) small farmers 12.00 paise

(b) big farmers 15.00 paise

Metering tariff rate abolished on 15-3-1984

PERIOD FLAT RATE OR LUMPSUM CHARGES ON HP :

Flat Rate Tariff

From 15-9-1984 : (a) Small Farmers : No charges (Free supply)

: (b) Big Fanners : Lumpsum charges at Rs. 75 per HP per year

From 20-10-1989 : (a) Small Farmers : No charges (Free supply)

: (b) Big Farmers : (i) Upto 5 HP Lumpsum charges at Rs. 50 per HP Per year

From 1-4-1990 : (a) Small Farmers : No charges (Free supply)

: (b) Big Farmers : (i) Upto 5 HP Lumpsum charges at Rs. 50 per HP Per year

(ii) Lumpsum charges at Rs. 75 per HP per year.

From 1-8-1990 : Free supply to all agricultural connections

From 19-11-90 : G.O.Ms. 2431 dt. 17-11-90

13. By the amendment made in G.O.Ms. No. 2431 dated 17-11-1990 the State Government has amended the Schedule to the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978, "agriculturists" are liable to pay "No charge".

14. However, the Government has clarified in their instructions that nil tariff is only to the farmers who are having agriculture as their avocation. The Chief Engineer on behalf of the Chairman of the Tamil Nadu Electricity Board in his memo dated 25-5-1995 has declined to grant the "nil tariff" benefit to Government''s seed farms. According to him, allowing free supply to agriculture is meant for agriculturists on socio economic consideration. The seed farms, Horticultural farms and nurseries are not entitled for free supply. They have to be charged under LT tariff IX. The Secretary to Government in his letter dated 27-10-1995 has clarified that the Government have extended supply to the agriculturists and therefore, free service which are not in the name of agriculturists cannot be classified under low tension tariff 5. In another letter dated 8-2-1996, the Secretary to Government has further clarified that the State agricultural farms are not eligible for the said exemption since, free supply is available to services which are in the name of the agriculturists only. But, since the Government Seed Farm is included along with agriculture for free supply, the total exemption of payment of electricity to agriculture has to be considered as strictly as possible and the benefits cannot be extended to local bodies and the organisations which are engaged in agriculture. Whenever the Government considers such free charge is to be provided, it is specified so as in the case of Government Seed Farm. In the above case, we are concerned with the petitioners like RVS Educational Trust represented by the Chairman which got five service connections. According to them, they are having agricultural lands and they are utilising the service connections for agricultural operations. Obviously, these institutions are self-financing institutions run on commercial lines and they will not be justified in claiming free supply of electricity. Similarly there are service connections in the name of local bodies and panchayat unions and the service connections are utilised by the entire villagers where several residents of the village are having one service connection in the name of the local bodies. Thus, obviously, the service connection is utilised by number of individuals when the service connection stand in the name of those organisations.

15. A counter affidavit has been filed on behalf of the respondents with reference to Government Order G.O. Ms. No. 29 dated 21-2-1995 clarifying that free supply can be extended to agricultural consumers on socio economic consideration provided in the name of agriculturists.

16. In Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others, , the Supreme Court held that in terms of Section 18A and Section 49(2)

(b) of the Electricity (supply) Act 1948, the Board should carry on its activities viably, efficiently and on should economic principles with profit motive for the purpose of rendering statutory service. Their lordships observed as follows :

"A plain reading of Section 59 (as amended in 1978) plainly indicates that it is the mandate of Parliament that the Board should adjust its tariffs so that after meeting the various expenses properly required to be met a surplus is left. The original negative approach of functioning so as not to suffer a loss is replaced by the positive approach of requiring a surplus to be created. The quantum of surplus is to be specified by the State Government. What the State Government is to specify is the minimum surplus. This is made clear by the 1983 amendment which stipulates a minimum of 3 per cent surplus in the absence of specification by the State Government which has the liberty to specify a higher percentage than three. That Section 59, as it stood before 1983 contemplated a minimum surplus was also the view expressed by this Court in Rohtas Industries Ltd. and Others Vs. Chairman, Bihar State Electricity Board and Others, where it was said. (Para 17).

Under the above provision, the Board is under a statutory obligation to carry on its operations and adjust its tariffs in such a way to ensure that the total revenues earned in any year of account shall, after meeting all expenses chargeable to revenue, leave such surplus as the State Government may, from time to time, specify. The tariff fixation has, therefore, to be so made as to raise sufficient revenue which will not merely avoid any net loss being incurred during the financial year but will ensure a profit being earned, the rate of minimum profit to be earned being such as may be specified by the State Government.

17. In D.C.M. v. Rajasthan State Electricity Board 1996 (2) S.C.C. 431, the Supreme Court held that the Board is relieved of the shackles of the contractual obligations flowing from the agreements relatable to Section 49(3) and the Board is empowered in terms of Section 49A to revise the tariff or frame uniform tariffs with respects to consumers enjoying special benefits. In M/s. Andhra Steel Corporation Ltd. Vs. The Andhra Pradesh State Electricity Board and others, , the Supreme Court held that Section 78A of the Electricity Supply Act 1948 empowers the Board to withdraw concession at any time without affording any opportunity to the consumer concerned. The Board is entitled to interpret the special concession given to the agriculturists in terms of Section 49(3) of the Act and also while taking into account the cost of production of electricity and the consumers to whom the consumption is directed.

18. Any concession, especially of the nature of a total exemption from payment of tariff, has to be construed strictly in the light of Section 4 of the Tamil Nadu Act which empowers the State Government to take into account the cost of production and also Section 49 (3) and (4) of the Electricity Supply Act which empowers the Boards to prescribe different tariffs and uniformity. Therefore, the claim of the petitioners that all those doing agricultural operations should be provided free supply irrespective of the nature of the person and service

connection cannot be accepted. It has to be borne in mind that the Electricity Board is a Board constituted under the Central Act and is empowered to fix the tariffs and the Board should be permitted to run on efficient lines. However, the Tamil Nadu Act provides for revision of tariff rates leviable in the State of Tamil Nadu and the tariff rate has to be fixed taking into account the cost of production of energy. Therefore, the petitioners are not entitled to demand, as a matter of right, without reference to the cost of production of electricity energy, to get a free supply of energy. That will be burdening other consumers who will have to bear the cost for supplying to the petitioners free. Taking into account the whole background of this exercise of power and the different categories mentioned under the Schedule, petitioners cannot be treated as coming under agriculture. The various categories set out in the Schedule and the Government Orders from the year 1978 in reference to the tariff also make it clear that unless clearly specified, there cannot be any inference of free supply of electricity.

19. The question whether the Government can fix nil tariff while amending the provisions of the Schedule without reference to the cost of production and Section 49 (3) and (4) of the Electricity Supply Act is a moot question left open which does not directly arise for consideration in this case. The question has to be dealt with since the petitioners also want to claim the same benefit of free tariff.

20. The attention of the learned Judge, while deciding the W.P. Nos. 11031 of 1999 etc. batch, was not drawn to the provisions of the Section (3) and (4) of the Electricity Supply Act as well as the interpretation now sought to be given to the Tamil Nadu Act in the light of the judgments of the Supreme Court referred to above. Therefore, I do not find any error in the Government''s interpretation in restricting the free concession only to the agriculturists and not to the local bodies and horticultural farms, which are mostly run on commercial lines. They are not coming under the category of socio-economic consideration so as to provide cost free electricity at the cost of other category of customers and the viability of the Electricity Board. I am of the view that the Government itself has no power to prescribe nil tariff without taking into account the cost of production of electricity, especially when the Board has power u/s 49(3) of the Act to prescribe the Act.

21. For all the reasons set out above, the petitioners are not entitled for the relief sought for. Hence, the writ petitions fail and are accordingly dismissed. No costs. Consequently, all the connected W.M.Ps. are also dismissed.