

(1972) 05 AHC CK 0016
In the Allahabad High Court
Case No : Civil Misc. Writ No. 4177 of 1971

Renusagar Power Co. Ltd.

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 02-05-1972

Acts Referred:

Uttar Pradesh Electricity (Duty) Act, 1952 — Section 3, 7

Citation : AIR 1973 All 33

Hon'ble Judges : H.N. Seth, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : N.B. Singh, K.L. Misra and R.K. Gulati, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

H.N. Seth, J.—The petitioner, Renusagar Power Co. Ltd., has filed this petition under Article 226 of the Constitution praying that demand in the letter dated 5th of January, 1971 from the Electrical Inspector amounting to Rs. 1,44,400/- and the recovery of certificate dated June 21, 1971 under the signatures of Tehsildar, Dudhi requiring the petitioner to pay a sum of Rupees 1,44,384/- be quashed.

2. The petitioner Company was incorporated under the Companies Act, 1956. The object of its incorporation was to-generate, develop and supply electrical power at a place or places for which licences may be obtained and to transmit, distribute and supply such power throughout the area of supply named therein, and without prejudice to the generality of the above to transmit, distribute and supply such power to and for the purposes of feeding the plant of the Hindustan Aluminium Corporation Ltd., and generally to generate, develop and supply power at any place or places and to transmit, distribute and supply such power for all lawful purposes. The petitioner company obtained sanction of the State Government u/s 28 of the Indian Electricity Act, 1910 to supply electricity to Hindustan Aluminium Corpn. Ltd. vide Government notification dated 12th November, 1964. After obtaining this sanction it started constructing and

erecting the power plant which was completed round about June 1967. Before, however, the plant could be commissioned, it was necessary for the petitioner to carry out start-up and testing operations for which it required some electrical energy. Accordingly, it entered into an agreement with the U. P. State Electricity Board for the supply of 6000 K.W. of electrical energy for purposes of start-up operations. By its letter dated June 29, 1967 addressed to Messrs. Hindustan Aluminium Corporation (Hindalco) of which the petitioner company claims to be a subsidiary. The Board confirmed the agreement to supply electrical energy for the testing and start-up of the Renu Sagar power plant according to the rates mentioned in the rate schedule. Originally that agreement was to remain in force for a period of six weeks but that period was subsequently extended. In pursuance of that agreement, the petitioner Company deposited Rs. 1,20,000/- by Way of security which was either refundable and/or adjustable on termination of the supply under that agreement.

3. The supply under the agreement commenced on 14th of July, 1967 and continued upto 5th November, 1967. The State Electricity Board submitted monthly bills for the electrical energy consumed during July to November, 1967, in accordance with the agreement, amounting to Rs. 5,77,636/- which were duly paid by the petitioner company. It may be mentioned that at the time of submission of these bills, the petitioner was not required to pay any electricity duty under the provisions of the U. P. Electricity Duty Act, 1952. After making certain adjustments it was found that from out of the security amount deposited by the petitioner a sum of Rs. 62,976 became refundable to it. This sum was ultimately adjusted against other amounts due from the Hindalco in March, 1968.

4. After about a year and a half, by a letter dated 16th June, 1969, the Assistant Electrical Inspector informed the Executive Engineer, Rihand Hydel Generation Division that the Renu Sagar Power Company was liable to pay electricity duty at the rate of 25%, amounting to Rs. 1,44,000, in respect of the power consumed by it from July 14, 1967 to 6th of November, 1967. This duty had not been charged from the petitioner. The Executive Engineer was therefore requested that he should take immediate steps for realizing the duty under intimation to him. The Executive Engineer, Hydel Generation Division, thereupon, asked the petitioner to pay the duty at an early date. The petitioner by its letter dated November 5, 1969 denied its liability to pay the duty demanded. The Electrical Inspector and the State Electricity Board, however, went on pressing their demand for payment of electricity duty and the petitioner in the like manner continued to refute its liability. Ultimately, the petitioner received a letter dated January 8, 1971 from the Assistant Engineer, enclosing therewith a copy of the Government order dated January 21, 1969 demanding payment of Rs. 1,44,384/-. The petitioner once again wrote to the Executive Engineer that the duty was not payable by it. In the meantime, the petitioner received letters from the Electrical Inspector dated 5-1-1971 stating that if duty was not paid by January 16, 1971 proceedings for its recovery would be taken u/s 7 of U. P. Act XXIII of 1952. This letter was followed by a recovery certificate dated June 21,

1971 from the Tehsildar Dudhi. The petitioner contends that under the provisions of U. P. Electricity Duty Act, 1952, no duty was payable by it in respect of the electricity consumed by it for the purposes of testing and start-up of the Renusagar Power Plant. In any case, as the duty had not been demanded by the Electricity Board along with the monthly bills submitted by it, it could not be said that the petitioner had failed to pay the duty in the prescribed manner and as such no proceedings for its recovery, as arrears of land revenue, could be taken u/s 7 of the Act. The petitioner further contends that the State Electricity Board supplied electrical energy to Obra Power Station in similar circumstances but they did not charge any electricity duty from them. Action of the respondents, in seeking to recover duty from it is discriminatory and contravenes the provisions of Article 14 of the Constitution. In the circumstances it prays that the proceedings for recovery of the duty should be quashed.

5. According to the respondents, the petitioner is liable to pay the duty demanded. The State Electricity Board submitted a formal bill dated October 17, 1969, demanding payment of duty amounting to Rupees 1,44,384/- on or before the 18th November, 1969. Since the demand has not been met by making payment in the prescribed manner, the same can be recovered u/s 7 of the U. P. Electricity Duty Act, 1952. They contend that the case of Obra Power Station stood on entirely different footing and that no duty was payable by it under the provisions of the Act

6. Before discussing the question whether in the circumstances of the case any duty under the U. P. Electricity Duty Act was payable by the petitioner we propose to deal with the other two questions, viz:--

(1) Whether the petitioner company has been discriminated as against Obra Power Company, and

(2) Whether in the circumstances of the case it cannot be said that the petitioner failed to pay duty in accordance with the procedure prescribed and therefore no action for its recovery u/s 7 of the Act can be taken.

7. So far as the ground of discrimination is concerned, it has been pointed out in the counter-affidavit that the Obra Power Station is owned and operated by the U. P. Electricity Board itself. It is one of the generating stations of the U. P. Electricity Board. The energy consumed by Obra Power Station in its testing and start up operations was the energy consumed by the U. P. State Electricity Board from out of the energy produced by itself. There was no element of sale involved in the supply of energy to the Obra Power Station. Obra Power Station was not a licensee within the meaning of explanation to Section 3 of the U. P. Electricity Duty Act and as such there was no question of demanding electricity duty from it. Prima facie, the cases of supply of energy for testing and the start-up operation, to Obra Power Station and the petitioner, stand on different footings and no question of discrimination, forbidden by Article 14 of the Constitution, being practised arises. If under the provisions of the Act, duty is payable by the

petitioner, it has to meet its liability. It cannot take shelter behind Article 14 of the Constitution and evade its liability on the ground that for some reason the State Government has failed to realise it from another person. We do not find any force in the submission that action of the respondents in requiring the petitioner to meet its liability is liable to be quashed on the ground that it is violative of Article 14 of the Constitution.

8. On the question whether the duty demanded can be recovered as arrears of land revenue, learned counsel for the petitioner relies on Section 7 of the Act which runs as follows:--

"Any sum due on account of electricity duty and interest if any if not paid in the prescribed manner shall be recoverable by the State Government as arrears of land revenue."

He contends that recovery of duty as arrears of land revenue under this section can be effected only if the consumer has failed to pay it in the prescribed manner. According to Rule 3, which provides for the time, manner of collection and payment of duty, a licensee is required to include the electricity duty leviable under the Act as a separate item in the bill of charges for the energy supplied by it and to recover the same from the consumer with its own charges for supply of energy. After realising the duty the licensee is required to deposit that amount in the Government Treasury. In this case the Board failed to include the duty claimed to be payable by the petitioner, in the monthly bills originally submitted by it. Unless there is a demand for payment of duty in the manner provided in Rule 3, it cannot be said that the consumer has failed to pay it in the prescribed manner and no question of its recovery as arrears of land revenue u/s 7 of the Act arises. There is no provision in the rules enabling a licensee to send a bill simply for payment of Electricity Duty. The bill D/- 18 Oct. 1969, therefore, was not a demand in accordance with Rule 3 and no question of recovery of duty as arrears of land revenue, u/s 7, arises.

9. We are unable to accept this submission. According to Section 7 of the Act, the right to recover the duty as arrears of land revenue arises if the following two conditions are fulfilled:--

- (1) Any sum is due on account of electricity duty, and
- (2) That duty has not been paid in the manner prescribed.

10. Sections 3 and 3-A of the Act, read together go to show that the liability to pay duty is that of the consumer and the same becomes due as and when the energy is consumed. So long as the duty is not paid, normally it will continue to be due. Nothing has been brought to our notice to show that the duty which was due from the petitioner ceased to be so due. The first condition for recovery of duty from the petitioner as arrears of land revenue u/s 7 of the Act, is therefore made out. The second condition merely requires that the duty, which is due, has in fact not been paid in the manner prescribed. In this case it is not disputed that

no duty has been paid in the prescribed manner. In our opinion it makes no difference whether failure to pay duty is on account of some inaction on the part of the licensee or the appointed authority or because of some omission on the part of the consumer. So long as duty is due and has not been paid in the prescribed manner, both the conditions for taking action will be there and the State Government will have a right to recover the same u/s 7 of the Act. It is, therefore, not necessary for us to go into the further question whether the duty had been demanded from the petitioner in a prescribed manner or not.

11. We now proceed to deal with the question whether in the circumstances of this case, any electricity duty, under the provisions of the U. P. Electricity Duty Act, was payable by the petitioner. According to Section 3, duty is levied for and paid to the State Government on the energy consumed by a consumer. Section 3-A provides that the amount of electricity duty levied u/s 3 on the energy consumed by a consumer is to be paid by and collected and recovered from the consumer. Section 2 (d) defines consumer as a person other than a licensee who is supplied with energy by a licensee, by a Board of the State or Central Government According to this definition, if a licensee is supplied with energy by Board, Government or any other licensee, it will not be considered to be a consumer. The expression licensee has been defined in Section 2 (f) as meaning any person licensed under Part II of the Indian Electricity Act, 1910 to supply energy and includes any person who has obtained the sanction, in that behalf, of the State Government u/s 28 of the Act. It is not disputed that petitioner has obtained sanction of the State Government u/s 28 of the Indian Electricity Act, It is therefore a licensee and as such falls outside the ambit of the expression "consumer" as defined in the Act. Explanation I to Section 3, however, provides that for the levy and payment of electricity duty the energy consumed by a licensee or Board in or upon premises used by it for its commercial or residential purposes shall be deemed to be energy paid for and consumed by a consumer. Accordingly, a licensee though not a consumer, is liable to pay duty only in respect of energy consumed by it in the circumstances mentioned in the explanation.

12. The question, therefore, that arises for consideration is whether the energy supplied to the petitioner for purposes of testing and start-up of the Renusagar Power Plant was consumed by it in or upon premises used for its commercial or residential purpose. It is not suggested that the energy supplied for testing and start-up of the Power Plant has been used for any purpose other than for which it was supplied. That purpose clearly rules out consumption of energy in or upon premises used for residential purposes. Indeed, learned counsel for the respondents does not contend that the petitioner is liable to pay duty as it has consumed energy in or upon premises used by it for residential purposes.

13. We will, therefore, proceed on the basis that the energy supplied to the petitioner was not consumed by it in or upon premises used by it for its residential purposes. What we have to determine in this respect is whether the

energy was consumed by the petitioner in or upon premises used by it for its commercial purposes.

14. The purpose with which the petitioner Company was incorporated was to generate, develop and supply electrical power at place or places at which licences may be obtained and to transmit, distribute and supply such power throughout the area of supply named therein and without prejudice to the generality of the above to transmit, distribute and supply such power to and for the purpose of feeding the plant of Hindustan Aluminium Corporation Ltd. and generally to generate, develop and supply power at any place or places and to transmit, distribute and supply such power for all lawful purposes. The petitioner obtained the sanction of the State Government u/s 28 of the Indian Electricity Act, 1907 for supplying electricity to Hindustan Aluminium Corporation. This shows that the commercial purpose of the petitioner was to generate and supply electrical energy to Hindustan Aluminium Corporation. It is only such premises which were used by the petitioner for generating or supplying energy to the Hindustan Aluminium Corporation that can be said to be used by it for its commercial purposes. In the circumstances, before the petitioner started generating electrical energy and supplying it to the Hindustan Aluminium Corporation it cannot be said that it was using any premises for its commercial purposes. It follows that the energy consumed by the petitioner in testing and start-up of the Renusagar Power Plant before it went into production of electrical energy, was not consumed by the petitioner in or upon premises used by it for its commercial purpose.

15. Sri V. K. Mehrotra, learned counsel for the respondents, urged that the expression commercial purpose as used in explanation to Section 3 should not be interpreted in a narrow sense. According to him, irrespective of the fact, whether the petitioner commenced the commercial activity covered by the licence or not, any activity undertaken by the petitioner in order to achieve or further its commercial object will itself be a commercial purpose. Use of the premises by the petitioner in that connection will also be for its commercial purpose. In the instant case, the energy consumed by the petitioner in testing and start-up of the power plant was with the object of achieving its commercial object of supplying energy to Hindustan Aluminium Corporation. Use of premises in that connection, therefore, was for petitioner's commercial purpose. Accordingly, the present case is covered by Section 3 of the Act and the petitioner is liable to pay duty in respect of the energy consumed by it. We have given our careful consideration to the submissions made by Sri Mehrotra but are unable to accept the same. Definition of the expression consumer as given in Section 2 (d) of the Act indicates that normally a licensee is not to be covered by it. The explanation added to Section 3 creates a fiction that in respect of the energy consumed by a licensee in or upon the premises used for certain specific purpose, it would be deemed to be a consumer and would be liable to pay duty in respect thereof. This implies that the Legislature contemplates cases where a licensee may consume energy in at upon premises which are not used by it for its commercial

or residential purpose and in respect of which no duty would be payable by it. Before commencing generation of electrical energy the only way in which the petitioner or for that matter any licensee could use the premises was either for some activity which was directed towards the object of generation or supply of energy or for purposes of residence of its officers and other employees. If the interpretation of the expression "used for its commercial or residential purposes", as suggested by Mr. Mebrotra is accepted, it would be difficult to imagine the use of a premises by a licensee which is neither for its commercial nor for its residential purpose. This would, therefore, lead to a situation, that whereas the Act intends that a licensee should be exempted from payment of duty in respect of the energy consumed by it for some purpose, the explanation added to Section 3 completely does away with that intention and a licensee becomes liable to pay duty in every case whenever it consumes energy in or upon premises used by it, like any other consumer. If this had been the intention, we do not see why while defining the expression consumer in Section 2 (d) of the Act, the Legislature took care to exclude a "licensee" from its ambit. We have, therefore, no hesitation in rejecting the submission made by Sri Mehrotra and in holding that the petitioner could be held liable to pay duty only if it could be shown that the premises in or upon which the energy was consumed was at that time being used by the petitioner for purposes of generating or supplying electricity. We are accordingly of the opinion that the petitioner did not consume the energy in dispute in or upon the premises which was being used by it for its own commercial or residential purposes, and was, therefore, not liable to pay any duty, in respect of that energy.

16. Learned counsel for the petitioner also contended that even if the explanation to Section 3 be interpreted in the manner suggested by counsel for the petitioner and the petitioner is taken to be a consumer within the meaning of Section 3 of the Act, no duty would be payable by it in view of the proviso to Section 3 which lays down that the electricity duty shall not be leviable on the energy consumed by the consumer in any industry engaged in the manufacture, production, processing or repair of goods. He contends that the goods as used in the proviso includes within its ambit the "electrical energy". The petitioner is, accordingly, engaged in production of goods and as such no duty u/s 3 of the Act is payable by it. He cited a number of cases in which the expression "goods" has been interpreted by this Court as also by the Supreme Court as including electrical energy.

17. Learned counsel for the respondents, on the other hand, contended that in the case of Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. Madhya Pradesh Electricity Board, Jabalpur, , although for the purposes of Sales Tax Act, the Supreme Court held that the expression goods includes electrical energy, but it pointed out that this expression has to be interpreted in the context of the provisions of the enactment in which it is used. According to him in the context of Electricity Duty Act, the expression goods will not include within its ambit electrical energy. He points out that if the expression goods was to include within

its ambit, "electrical energy", explanation 1 added to Section 3 would be otiose. In such a case after adding Clause (e) in proviso to Section 3, the legislature, would never have retained this explanation. The expression goods", therefore, should not be interpreted in the manner so as to include electrical energy. Moreover, at the time of the petitioner consumed the electrical energy, it was not engaged in the manufacture, production, processing or repairing of electrical energy; hence no question of claiming an exemption from payment of duty under Clause (e) to the proviso to Section 3 arises.

18. In the view which we have taken about explanation 1 to Section 3, it is not necessary for us to decide whether the expression goods as used in clause (e), in the context, covers "electrical energy" and whether at the time when the energy was consumed by the petitioner, it was engaged in the manufacture, production, processing or repairing of goods.

19. The petition, therefore, succeeds. The demand for payment of electricity duty, contained in Electrical Inspector's letter dated January 5, 1971 and the recovery certificate mentioned in Tahsildar's letter dated 21st June, 1971, copies of which have been filed as Annexures D and P to the writ petition are quashed.

20. At the time of filing of this petition, the petitioners moved an application that the respondents be restrained from recovering the electricity duty amounting to Rs. 1,44,384 so long as the petition is not decided. A Bench of this Court, however, declined to grant this prayer and gave the petitioner one week's time for paying up the dues. It also made it clear that this Court will at the time of final hearing of the petition consider the question about making an order requiring the State to refund the amount of duty paid by the petitioner. The petitioner contends that since the demand is being quashed, it is entitled to get a refund of Rs. 1,44,384 but if the respondents so like, they may instead of refunding this amount appropriate it towards electricity dues of Hindustan Aluminium Corporation. We, however, leave it to the respondents to decide whether they would like to adjust the duty realised from the petitioner towards the dues of the Hindustan Aluminium Corporation or to refund it to the petitioner. We, accordingly, direct that the respondents will intimate to the petitioner within a month of the date of this order, whether they have appropriated the sum of Rs. 1,44,384 towards the payment of dues of Hindustan Aluminium Corporation or not. In case they decide not to appropriate this amount towards dues of the Hindustan Aluminium Corporation they shall refund the duty realised from the petitioner.

21. The petitioner is entitled to the costs of this petition.