

(2003) 02 AP CK 0102

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14410 of 1994

Sagar Cements Limited

APPELLANT

Vs

Andhra Pradesh State Electricity Board and Another

RESPONDENT

Date of Decision : 07-02-2003

Acts Referred:

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

Citation : (2003) 2 ALD 904 : (2003) 2 ALT 275

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; Vinoba Devi, SC for TRANSCO, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—Heard both the sides.

This writ petition is filed for a writ of mandamus to declare the action of the 1st respondent in granting 25% rebate on demand and energy charges subject to a maximum amount of rebate of Rs.30,00,000/- in the entire period of 3 years, as illegal and arbitrary and consequently direct the respondents to give 25% rebate on demand and energy charges for a period of three years with effect from 24.4.1993.

2. The brief facts stated in the affidavit filed in support of the writ petition are that the petitioner is a registered company carrying on the business in manufacture of cement at Mathampally Village, Nalgonda District. At the relevant time, B.P.Ms.No.691 dated 10.8.1976 and B.P.Ms.No.152 dated 13.12.1978 were in vogue and according to which the respondent - Board granted rebate of 25% in demand and energy charges for H.T. and L.T. industries for a period of three years from the date of initial production. It is stated that under the above proceedings of the respondent - Board, there is no maximum monetary ceiling limit with regard to grant of 25% rebate on power tariff for the period of three

years from the date of regular production. Basing on the above proceedings of the respondent - Board, the petitioner -company set up another cement manufacturing unit at Kharasavalasa Village of Vizianagaram District. The respondent -Board gave power supply on 22.4.1993 and the regular production was started on 24.4.1993. While so, the Government issued G.O. Ms. No.117, Industries and Commerce (IFR) Department dated 17.3.1993 modifying the earlier G.Os. By virtue of this G.O., though it had allowed 25% rebate on the power tariff for a period of three years from the date of regular production, it has fixed the ceiling limit by allowing maximum admissible 25% rebate for the total period of three years at Rs.50,00,000/- in respect of large and medium industries and at Rs.30,00,000/- in respect of small scale industries.

3. It could be seen that by virtue of the power conferred u/s 49 of the Electricity (Supply) Act, the Board has adapted the G.O. Ms. No. 117, dated 17.3.1993 through B.P. Ms.(Opn-Comm) Ms. No.51, dated 24.5.1993.

4. Now the grievance of the petitioner - company in this writ petition is that by the time regular production was started i.e., with effect from 24.4.1993, even though the Government have issued G.O. Ms. No.117, dated 17.3.1993, the same has not been adapted by the Board and it was adapted only on 24.5.1993 through B.P.Ms.No.51 and hence allowing of maximum admissible rebate of 25% for the total period of three years at Rs.30,00,000/- is illegal and arbitrary, since by the time the petitioner - company started production, only the old B.P.Ms.Nos.691 and 152 were in force, under which no maximum ceiling limited was fixed. It is stated that the petitioner -company made representation to the respondent - Board in this behalf and they were rejected, hence the present writ petition is filed.

5. No counter is filed.

6. The learned Counsel for the petitioner Sri O. Manohar Reddy submitted that the petitioner -company started production on 24.3.1993 and by that time, the G.O. Ms. No.1 17, dated 17.3.1993 was not adapted by the respondent - Board and hence the ceiling limit fixed in the said G.O. cannot be made applicable to the petitioner -company. He submitted that by the time the petitioner - company started production only the G.O. Ms. No.654, dated 13.7.1976 was in force. He further submitted that by invoking the jurisdiction u/s 49 of the Electricity (Supply) Act, 1948, the Board has issued B.P.Ms.No.51, dated 24.5.1993 adapting the G.O. Ms. No.117. He contends that the petitioner -company had started production from 24.4.1993 and hence the rebate of 25% on power tariff continuously for three years without -any ceiling limit provided under G.O. Ms. No.654 cannot be taken away by G.O. Ms. No.117. His specific contention is that the modification under G.O. Ms. No.117, would come into effect only from the date of its adaptation by the Board i.e., 24.5.1993, on which date, B.P.Ms.No.51 was issued and the same is prospective in nature. In other words his contention was that inasmuch as the petitioner started production on 24.4.1993, a right had been accrued to the petitioner by virtue of G.O. Ms. No.654 and the same cannot

be taken away by G.O. Ms. No.117, dated 17.3.1993, which actually was given effect to by adaptation by the Board by issuing B.P. Ms. No.51, dated 24.5.1993.

7. On the other Smt. Vinoba Devi supported the stand of the respondent -Board and sought for dismissal of the writ petition.

8. In the light of the above, it is to be seen that G.O. Ms. No.654, dated 13.7.1976 was initially issued pursuant to the B.P. Ms. No.689, dated 17.9.1975. By virtue of this B.P., the Board has requested the seal of approval of the Government, with regard to grant of 25% concession in power tariff and accordingly the Government considered the same and issued G.O. Ms. No.654, showing the effective date as 1.1.1976. The above act of the Board in issuing B.P. Ms. No.689, dated 17.9.1975 and seeking the approval of the Government would only indicate that the Board had conceded to the jurisdiction of the Government exercisable u/s 78A of the Electricity (Supply) Act, 1948. It further means that the benefit had actually been given effect to, only by the Government and not by the Board. All this is evident from the first paragraph of B.P. Ms. No.51.

9. It is rather intriguing to note that in paragraph No. 3 of the said B.P., the Board while exercising its power conferred u/s 49 of the Electricity (Supply) Act, 1948 formulated certain guidelines. The said guidelines were incorporated after referring to G.O. Ms. No.1 17 at paragraph No.2.

10. A further perusal of the B.P. Ms. No.51 reveals that in paragraph No.1, the Board had surrendered to the jurisdiction of the Government, by issuing B.P. Ms. No.689, seeking approval with regard to certain benefits including the rebate. In the later paragraphs it appears that as though the Board has formulated the guidelines exercising its jurisdiction u/s 49 of the Electricity (Supply) Act, 1948, while referring to G.O. Ms. No.117. But it is to be noted that the guidelines issued in paragraph No.3 of the said B.P., are not in any way inconsistent with the guidelines issued by the Government in G.O. Ms. No. 117. Therefore, the inter se superiority of the Government and the Board under Sections 78A and 49 of the said Act, respectively is not the controversy.

11. It is further to be noted that though the later part of B.P. Ms. No.51 reveals that the Board had independently issued guidelines, those guidelines are strictly in consonance with G.O. Ms. No.1 17. Therefore, since the B.P. Ms. No.51 is in the nature of adaptation of proceedings of G.O. Ms. No. 117, it has to be construed that actually the said G.O. is brought into effect in all fours from the date of issuance of the G.O. i.e., 17.3.1993.

12. Coming to the facts of the present case for a while, it has to be noted that the petitioner started production from 24.4.1993 and the G.O.Ms.No.117 was issued on 17.3.1993. In other words the benefits as regards the rebate in power tariff, given by the Government through G.O. Ms. No.654, dated 13.7.1976 were restricted or modified partially by the same authority, by issuing G.O. Ms. No. 117. It is not in dispute that both the G.Os. are prospective in nature. But it is to

be noted that by the time the petitioner - company started production, the G.O. Ms. No.117 was already issued and was very much in force.

13. To put it slightly in a different way, the benefits extended by G.O. Ms. No.654 were partially modified by the Government in G.O. Ms. No.117 and the same is binding, inasmuch as the petitioner started commercial production on a later date, after issuance of G.O. Ms. No.117.

14. From the above it is clear that the contention of the learned Counsel for the petitioner that the effect of G.O. Ms. No. 117 has come into force only from the date of its adaptation through B.P. Ms. No.51 dated 24.5.1993, cannot be accepted. I am of the view that the effective date of G.O. Ms. No.117 is the date on which it was issued and admittedly by that date, the petitioner did not commence its regular production and consequently the benefits under G.O. Ms. No.654, dated 13.7.1976 cannot fully be made applicable to the petitioner and in the said set of facts, G.O. Ms. No.117 alone should be made applicable.

15. In this connection it is necessary to refer to the observations of a Division Bench of this Court in similar circumstances, to the extent relevant in M/s. V.K. Ferro Alloys Industries Pvt. Ltd. Vs. The A.P. State Electricity Board and others, , as under:--

"7. Now the question is whether the orders issued by the Government in G.O. Ms. No.654, dated 13.7.1976 and subsequent orders in G.O. Ms. No.38, dated 20.1.1977 which were followed by the Board in its B.P. were in conformity with the directions of the Government? Section 78A of the Act merely gives power to the Government to issue directions on questions of policy and the Board shall be guided by it. The most important aspect of the case is that though the Board mentions about the concessions for specified H.T. consumers, in Clause (7) of B.P. Ms. No.689, dated 17th September, 1975, it has neither specified the industries which will be entitled for the concessions nor the date on which the rebate will come into force. In such circumstances, the Board approached the State Government and in turn the State Government took the decision after considering all the aspect and the decision came out in the form of G.O. Ms. No.654, Industries and Commerce, dated 13.7.1976, Allowing or disallowing the benefit of power tariff concessions to any category of industries is evidently a policy matter of highest importance and that is the reason why the Electricity Board did not independently take a decision in that regard and it was left to the Government.

8. It is apparent from the various Government Orders brought to our notice that the Government is extending incentives for the new industries to be set up in the State of Andhra Pradesh and granting other facilities and concessional rates in power tariff for selected new industries eligible for the concessions and issuing orders in this regard. Following the same, the Electricity Board is issuing Board proceedings in pursuance of the said G.Os. The finality of decisions came from the Government but not from the Board. The Board itself has treated the

power tariff concession question as one falling within the ambit of "policy" and followed the "guidance" of the Government which came in the form of "directions". De hors Section 78A there is no provisions in the Act empowering the Government to issue "directions" or "instructions" for the guidance of the Board. Therefore, we have no hesitation in holding that the Government in exercise of powers u/s 78A of the Electricity (Supply) Act, 1948 have been taking policy decisions as to the entitlement of the power concessions to the industries and issuing orders reckoning the date of extension of concessions as the date on which the industry went into regular production, as such the ineligibility for the industries manufacturing ferro products like the petitioner operates from the date of G.O. Ms. No.379, dated 27.7.1989, but not from any earlier date. As it is not disputed that the petitioner has commenced commercial production with effect from 16.9.1988, it will be entitled for the benefit of power tariff concession as mentioned in G.O. Ms. No.654, dated 13.7.1976, which was extended by G.O. Ms. No.38, dated 20.1.1977."

16. Another Division Bench of this Court in A.P.S.E.B. v. Venus Hotel, Khammam, AIR 1999 AP 333, in similar circumstances while dealing with the effect of implementation of the policy decision of the Government by the Electricity Board, made certain observations at paragraph No.5 of the judgment and the relevant portion is extracted as under:

"In our considered view the learned Single Judge has rightly come to the conclusion that G.O.Ms.No.31, dated 30.4.1994 was a policy decision issued by the State Government granting concession. It is the just expectation of the citizen that the policy-decision of the State would be carried out by all its instrumentalities without any reservation Concedingly, the policy-decision of the facts does not apply to the respondents. The only ground that it was not adopted by the Electricity Board does not denude the respondent No.1 from the right to the concession on the basis of which the respondent No.1 has established the industry nor it would be a ground for the appellant - Electricity Board to decline the concession to which the respondent is entitled as a State policy. In the eventuality of permitting an instrumentality of the State to run contrary to the State policies no State policy could be implemented and the progress of the State would be hampered. The policy issued is squarely covered by a direction u/s 78A of the Electricity (Supply) Act, 1948. It does not require any specific mention or a specific direction to the instrumentalities of the State to follow its policy. In ordinary course the instrumentalities of the State are expected to follow the policy of the State framed from time to time."

17. In the present case also, it is the policy decision of the Government to modify the earlier G.Os. by issuing another G.O., and impose maximum ceiling limit with regard to grant of 25% rebate in power tariff for a period of three years from the date of production. Such decision will come into force from the date of issuance of the G.O. and hence the contention that it will come into force only from the date of its adaptation by the Board, cannot be countenanced in view of the

foregoing discussion and the judgments of this Court.

18. In view of the above, I do not find any merit in the Writ Petition and the same is accordingly dismissed. No costs.