
(1996) 02 AP CK 0071
In the Andhra Pradesh High Court
Case No : W.A. No. 1501 of 1995

Sarvotham Ispat Ltd.

APPELLANT

Vs

A.P.S.E. Board and Others

RESPONDENT

Date of Decision : 08-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity (Supply) Act, 1948 — Section 49(1)

Citation : (1997) 1 CivCC 73

Hon'ble Judges : P.S. Mishra, C.J.; M.H.S. Ansari, J

Bench : Division Bench

Advocate : Duba V. Nagarjuna Babu, for the Appellant; C.V. Nagarjuna Reddy, for the Respondent

Final Decision : Allowed

Judgement

P.S. Mishra, C.J.—Writ Petitioner-Appellant has suffered interruption in the supply of electricity and enforcement of a weekly holiday i.e. no supply at all, on a particular day, of electricity to its factory and moved this Court under Article 226 of the Constitution of India for a direction to keep such supply regularly and ready for consumption as agreed to between the parties. It has also made a grievance that the Respondents have discriminated as others have been supplied the electricity to the extent of the quota determined for similarly situated persons. Respondents have denied the above averment and asserted that they have made no discrimination and have maintained equal supply of electricity to all such concerned industries in the city except that for different areas different holiday for the supply of electricity has been introduced and in the case of the Petitioner-Appellant every Tuesday of the week has been imposed as a holiday.

2. Since the facts as above are confined to the exercise of such power, which is envisaged u/s 49(1) of the Electricity (Supply) Act, 1948 and rules and regulations framed thereunder as to the conditions for the purpose of such supply, it is not necessary to refer to other provisions either of the Electricity

(Supply) Act, 1948 or the Electricity Act, 1910. The Supreme Court in *A.C. Mills v. A.P.S.E. Board* (supra) has, although primarily dealt with the fixation of a special tariff for a section of consumers, observed as follows:

Section 49 of the 1948 Act in Sub-section (1) confers power on the Board to supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit. This power contains the power to regulate and ration supply. The terms and conditions to which reference has been made make explicit what is implicit in the power.

Our attention accordingly, has been drawn by the learned Counsel for the Board to a regulation as to terms and conditions of supply, which reads as follows:

41. Restrictions on use of electricity by consumers -The Board shall endeavour to afford continuous supply and to restore interrupted supply as early as possible. The Board shall have the right to stagger or curtail supply of electricity to any consumer or consumers according to operational or other contingencies. The Board shall not be responsible for any loss or inconvenience occasioned to any consumer, by any interruption of supply of any kind, whatever be the reason thereof.

It is urged that it is in exercise of this condition that supply of electricity is staggered and curtailed to the consumers like the Petitioner-Appellant for the reasons of operational and other contingencies. The Board has in no manner, thus caused any interference in supply of electricity to the Petitioner-Appellant which is designed to deny to it the supply which is maintained for its class of consumers.

3. Learned single Judge has, after taking notice of the facts and taking into consideration the submission made on behalf of the Respondents that the power is being made available on the Petitioner-Appellant's factory for a duration of 18 hours to enable it to operate the industry for a minimum of two shifts and from 8th July, 1995 onwards the power is being made available from 8 A.M. to 5 P.M. and 9 P.M. to 6 A. M. and further that the non availability of power between 5 P.M. to 9 P.M. is due to peak load hours, for which restrictions were adhered to during the period of power restriction with respect to High Tension industry and that the pattern of supply was expected to be continued until further improvement in the power operation, closed the writ petition.

4. The Petitioner-Appellant; however, has reiterated the above arguments and pointed out that the promised hours of supply of electricity have not been adhered to and if matter is left at statement on behalf of the Respondents, the sufferings caused to its industry will in no manner be removed. To test, however, the veracity of the above contention on behalf of the Respondents, we wanted an independent report from the Mandal Revenue Officer, Medical Mandal, Rangareddi District. He (the Mandal Revenue Officer) has reported that except on 11.12.1995, 18.12.1995 and 20.12.1995, between the period from 8.12.1995 to 20.12.1995 the Respondents have not maintained supply of electricity to the

Petitioner-Appellant for the duration of 18 hours as they stated in the counter affidavit and instead have on 15.12.1995 supplied electricity for 11 hours 55 minutes only, on 14.12.1995 for 14 hours 50 minutes only on 22.12.1995 for 15 hours 35 minutes only, on 10.12.1995, 16.12.1995 and 17.12.1995 for 16 hours only, and on 8.12.1995, 9.12.1995 and 21.12.1995 for 17 hours only. However, to afford an opportunity to the Board atleast to improve and stand by its promise and the submission before this Court in the counter affidavit as aforequoted, we wanted it no respond to the requirements of the Appellant. The Board has filed a Memo and stated as follows:

Memo filed on behalf of the Respondents.

It is respectfully submitted that the following are the details of power supply made to the Appellant and other similarly placed Industries in the area.

9 A.M. to 12 Moon

1 P.M. to 6 P.M.

10 P.M. to 6 P.M.

It is submitted that the power supply is being made available to the Appellant during the above mentioned timings on 6 days in a week observing weekly holiday on Tuesday. This supply is made on the basis of existing level of generation and subject to unforeseen interruptions on account of factors such as break-downs and trappings in the generation stations and transmission lines. In the event of shortage of electricity becoming more, necessitating reduction of duration of supply, the Appellant will be given advance intimation.

A perusal, thus, of the contents (of the Memo shows that the Board has backed out from its affidavit in the Writ Petition by stating that the supply would be at hours as they stated above and not as stated in the counter affidavit and. that it would be made available to the Petitioner-Appellant from 8 A.M. to 5 P.M. and 9 P.M. to 6 A.M., except in case of non availability of it between 5 P.M. and 9 P.M. The Board has, thus, shifted and varied its stand and made the Court to ponder whether a statutory authority should give to the Court different informations at different stages and has forced it to think that the veracity of its statements in the affidavits cannot be relied upon. True, for the reasons of operational or other contingencies, the Board can take a decision to stagger or curtail supply of electricity to any consumer or consumers, but it is not such arbitrary power that it can choose, for no specific reason, a consumer or certain consumers for discrimination and decide to close altogether supply of electricity on a particular day. The statement in the counter affidavit appeared to justify the stand of the Board that it has some operational difficulties and a sort of rationing is required which alone the Board has intended to resort to. Having seen, however, the stand as above, we have no reason to think that the Board has any definite policy. It has infact decided to vary supply of electricity at its whim. Learned Counsel for the Respondents has endeavoured to canvass before us that the

Board or any officer of the Board has not intentionally discriminated the Petitioner-Appellant and that only because of the exigencies and the shortage of electricity in the State under its control it has resorted to rationing and fixed a quota and hours of supply. We have, however, found it difficult to accept that in the case of the Petitioner-Appellant the Board has been fair. It has agreed to in its own affidavit that it is in a position to maintain supply for a period of 18 hours on the days aforementioned, yet it has not maintained the said supply and has not explained before us why it has failed to do so. The Appellant's statement, for the said reason, has received credibility.

5. We are aware of the fact that the Appellants complaints are based on information which may be true or may not be true. We are ready to believe that the Respondents have come in difficulties in keeping uninterrupted supply of electricity for all the 24 hours of the day. We are, however, not informed inspite of our repeated queries how the provision in the above quoted regulation to stagger or curtail supply of electricity to any consumer or consumers according to operation or other contingencies will authorise the Board to stop altogether supply of electricity on a particular day of its choosing to the Petitioner-Appellant. An industry, which is also a factory, has to abide by requirements of several other laws including such legislations which require a Weekly holiday to its employees. Industries are required, thus, to comply with such provisions and in case the supply of electricity is denied to them on a particular day altogether without there being any thought to reconcile the electric supply holiday with the holiday the industry is required to declare for its workmen, many difficulties may crop up. The State has to adopt a policy, thus, to see that no undue hardship is caused to a factory and industry and the Electricity Board has accordingly to plan its operations and particularly the supply of electricity to the industries and factories. The Respondents, it appears, have no such planning at all and they have been taking their decisions at the spur of the moment without any concern for the consumers.

6. Miserable plight of the consumer of electricity in the State is no longer confined to a few. It is a malady for which those who are involved in the management of the Electricity Board, generation of electricity and supply of electricity to the consumers alone are responsible. These, however, shall not guide us in taking decision in respect of the grievances of the Appellant. Still, since in the case of the Petitioner-Appellant the Respondents have not been able to give a fair return and have apparently deviated from what they stated before the learned single Judge at the hearing of the writ petition and it is changed by them in the Memo which they have filed before this Court, we do not want the Appellant to be an exception and immune from the sufferings which other consumers are facing in the State. We have indicated accordingly in course of the hearing that if other similarly situated industries are going without supply of electricity for their factories on one day each week, the Appellant should agree to suffer the same. Learned Counsel for the Appellant has stated at the Bar that the Court may decide a particular day when the Board shall not make any supply of

electricity to the Appellant and it shall accordingly decide a holiday from work and schedule its activities for other days of the week so long, therefore, the Board is maintaining non-supply of electricity to other similarly situated industry on a particular day in the area concerned and Tuesday is that particular day, the Appellant may not receive any supply of electricity on that day. The Board shall however, be under obligation in accordance with its own affidavit before the learned single Judge to maintain uninterrupted supply of electricity to the Appellant for 18 hours each day, except from 5 P.M. to 9 P.M. and shall not fail for any reason, except for reasons beyond its control or reasons which shall require re- scheduling of supply of electricity for all the consumers of electricity in the city of Hyderabad.

7. With the attitude that the Respondents have been adopting, it is expected that the Board's policy is to maintain a regular supply of electricity to the Appellant for 18 hours a day and on the day aforementioned about which the Mandal Revenue Officer has reported that the supply was less than the undertaking of the Board, it has to be assumed that some one in the hierarchy of the administration of the Board, who is responsible for supply of electricity, has failed to honour the Board's policy and its commitment before the Court. The Board shall be well advised to take notice of such persons and if necessary to take action and to see that nothing which is ordered today is denied to the Appellant without there being a prior communication to it of any change in the schedule and the policy as to the supply of electricity.

8. In the result, the appeal is allowed to the extent indicated above and the order of the learned single Judge is accordingly modified. On the facts and in the circumstances of the case, there shall be an order as to costs. Hearing fee Rs. 1,500/- each day.