(2001) 10 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

SAVITRI CON-CAST LTD. APPELLANT

Vs

JAIPUR VIDYUT VITRAN NIGAM LTD. RESPONDENT

Date of Decision : 19-10-2001

Acts Referred:

Citation : 2002 1 CPJ 64

Hon'ble Judges : C.M.Nayar , R.K.Anand J.

Final Decision : Complaints dismissed

Judgement

1. THIS order will dispose of R.T.P.E. No. 18/1993, R.T.P.E. No. 20/1998, R.T.P.E. No. 26/1998 as common questions arise for consideration in all these cases. The facts in R.T.P.E. No, 18/1998 have been referred in this order and it will not be necessary to reproduce facts in each case.

2. THESE complaints have been filed under Sections 10(a)(i) and 36B(a) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act) alleging unfair and restrictive trade practices being indulged in by the respondent in increasing the fixed basic units for charging under the head "Minimum Charges" from 130 units per KVA to 175 units per KVA. It is stated to be in complete violation of the terms and conditions of the Agreement made with the respondent Board. The impugned Notification was issued on 11.9.1997 without even informing the complainants of the same. It is, therefore, contended that unilateral arbitrary action by the respondent Board in increasing from 130 units per KVA to 175 units per KVA - an increase of 35 units constitutes hostile policy and is discriminatory in nature. We may refer to the facts of the first case as incorporated in paragraphs 5 and 6 of the complaint may be referred to as under : 5. Each consumer is required to pay monthly bills according to the Rates set out by respondent in "schedule of tariff" as per agreement, these charges can. be increased from time-to-time. In other words, these are general, etc. charges for supply of electricity including "Minimum Charges". 6. Therefore, if there is increase in the "Minimum Charges" (i.e. the price of minimum charges), the consumer is obliged to pay the same. But such minimum charges have to be

worked out on the basis of 130 units only as agreed in the Agreement. Therefore, the cost price of 130 units can be increased from time-to-time by respondent Board as per agreement (provided they are not arbitrary). But, the Board cannot under any circumstances increase the basic units (i.e. 130 units) agreed between the Board and petitioner. That is to say that the basic working for the price has to be "130 units per KVA" per month of the contracted demand in case of consumer having contracted demand of 1000 KVA. The bone of contention and the controversy in the petition is that the basic units for calculating the price are being raised which is not permissible and is an unfair and restrictive trade practice. The increase is cited and referred to in paragraph 7 which may also be stated below : 7. That through a recent communication dated 11.9.1997 agreed unit of 130 units per. KVA have been disturbed and arbitrarily increased 175 units per KVA in violation of the agreement as the following chart would show : Recently minimum charges in High Tension tariff for H.T. consumer have been substituted by communication dated 11.9.1997. A Comparison of old and new Is given as under : Agreed terms in agreement (Old) Minimum, Charges : (i) For consumers having a 110 units per KVA contract demand above per month of the 125 KVA and up to Contract demand. 1000 KVA. (ii) For cons Limres having a 130 units per KVA contract demand above per month of the 1000 KVA. Contract demand. New Minimum Charges :

S. No. Type of Industry Contract Demand above125 KVA Up to 1000 KVA Contract Demand above 1000 KVA 1 2 3 4 (1) For Induction/ Arc Furnace Industries 110Units/KVA month of contract Demand 175Units/KVA/ month of contract Demand (2) For all other Industries except stated in S. No. 1 110 units/ KVA month of contract Demand 130Units/KVA/ month of contract Demand.

The respondent has filed reply wherein it is specifically pleaded that the respondent is entitled to fix such tariff as it may deem, fit and proper in view of the provisions of Section 49 of the Indian Electricity Supply Act, 1948 and further as per the agreement entered into between the parties the respondent Board is entitled to make such alterations as it may think fit and proper by an appropriate notification and such alterations are deemed to be part of the agreement in supersession of the earlier charges fixed and set out in the schedule annexed to the said agreement.

3. WE have heard learned Counsel for the parties and do not find force in the contentions as raised by the complainants. The complainants have not been able to show as to how the provisions of Sections 10(a) and 36 B(a) of the Act are attracted. The notifications have been issued in terms of the agreement and, therefore, no unfair trade practice has been committed by the respondent. The increase in tariff or increase in minimum charges form part of the tariff does not amount to restrictive or unfair trade practice. The respondent is vested with powers under Clauses 16(a) and 16(b) of the Agreement to revise the scales of rates and charges. These clauses read as under : "16 (a). The consumer shall pay to the Board every month charges for electrical energy supplied to the

consumer during the preceding month under this agreement in accordance with the provisions and scale of rates set forth in the tariff schedule attached hereto and which shall be deemed to be part of this agreement. 16 (b). If the Board by notification makes any alteration in the aforesaid scale of charges, such altered rates shall be treated as if the same were part of this agreement in supersession of the charges set out in the schedule attached hereto with effect from the date fixed in the notification and if no date is fixed in the notification then from the date of publication of such notification."

4. THE apprehension of the complainants that when there is no supply of electricity, it will be unjust to impose minimum charges can also not be sustained. THEre is proportionate deduction in the charges as will be evident from reading of Clause 17(a) which reads as below : "17 (a). If at any time the supplier is prevented from supplying electrical energy under this agreement in whole owing to all or any of the causes mentioned in clause ten of this agreement then the minimum charges payable by the consumer shall be reduced proportionately."

The judgment of Allahabad High Court reported as AIR 1974 Allahabad 70, Hari Shankar & Ors. v. U.P. State Electricity Board & Anr., clearly lays down that the Board is entitled to fix minimum guaranteed charges. It is also submitted by the respondent in the present cases that consumption of consumers is more than 175 units. The grievance of the complainants, therefore, is not justified and will be of no consequence. 9.The complainants are also provided with a remedy to seek redressal of their grievances by the mode of arbitration as provided in Clause 30 of the agreement which reads as below ; "30. In the event of any dispute or difference arising at any time between the supplier and the consumer in regard to any matter arising out or in connection with agreement such dispute or difference shall be referred in the first instance to the Supplier''s Chief Engineer and in case of his decision not being accepted to the consumer the said dispute or difference shall be referred to the arbitration of two Arbitrators, one 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 or Umpire shall be final and binding on the parties hereto and any reference made under this clause shall be deemed to be a submission to arbitration under the Indian 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 proportion."

10. In view of the above reasons we do not find .any ground to hold that the respondent is guilty of unfair and restrictive trade practice which will require our interference in the present proceedings. The complaints are accordingly dismissed. The Notice of Enquiry issued in each case is discharged. There shall be no order as to costs. Complaints dismissed.

