

(1994) 06 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

S.D.O., H.S.E.B., FARRUKH NAGAR, GURGAON

APPELLANT

Vs

PRABHY DAYAL

RESPONDENT

Date of Decision : 03-06-1994

Acts Referred:

Citation : 1994 3 CPJ 488

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

Final Decision : Appeal dismissed

Judgement

1. WHETHER the tariff for the Low Tension Industrial Power Supply is leviable for an agricultural pumping connection used for flori-culture ? This is the solitary though somewhat significant question herein.

2. THE Haryana State Electricity Board has chosen to prefer this appeal against the order of the District Forum, Gurgaon allowing the respondent-consumer's complainant. THEREIN it had been alleged that he had obtained an electricity connection No. S-432-AP for his tubewell for irrigation and installed an electric motor of 3 Horse Power therein. THE case was that he had a marginal land holding of 1 acre and had, regular in paying the electricity charges raised against him. However to his consternation he received a bill dated 9th of June, 1993 for Rs. 3523/- and it was his case that no arrears were due and the impugned bill was wrong and incorrect. On notice being issued the appellant-Board took up the plea that on the 21st of November, 1992 the Meter Reader had found the meter sticky and also that the electricity connection was being used for growing flowers for the purpose of garden and nursery. It was the case that on his report Mohinder Singh, AFM was deputed to check the same, who also submitted a report about the energy was being used for growing flowers. Consequently because the electricity was allegedly used not for agricultural purpose, but for flori-culture it was billed at the industrial tariff rate.

The District Forum on a full consideration of the matter came to the conclusion that no check meter was installed and even on the basis of the appellant's own officials the allegation of the meter being sticky was unfounded and without any

basis. As regards the other ground it firmly opined that the mere fact that the irrigation was being used for gardening or nursery or growing flowers would not warrant the changing of the tariff from an agricultural one to an industrial purpose. Consequently the change in the tariff rate and enhancement was quashed.

3. MR. Jagat Narain the learned Counsel for the appellant-Board very fairly did not assail the finding of the District Forum on the question of the meter being sticky. The primal challenge levelled was on the point that floriculture was not an agricultural activity but was a commercial one which would attract the tariff for industrial power supply. It was the case that even though the connection was originally given as an agricultural pumping one, the moment it was used for growing flowers, the same would convert to industrial use and entitled the Board to levy the steeply higher charges thereunder. Basic reliance was on a recent purported clarification dated the 12th of April, 1993 of the schedule of tariff for the supply of energy. Basing himself thereon the submission was that fruit gardens, nurseries and equally the floriculture would come within the industrial tariff. Since the whole stand of the appellant - Board is based on the aforesaid clarification emanating from the Chief Engineer (Commercial) to his subordinates dated 12th of April, 1993 it is apt to notice the relevant part of this clarification in extenso :- "The matter has been considered and it has been decided that the water pumping loads for gardens/nurseries (Govt./private/otherwise) fruit gardens/nurseries, public parks etc. may be covered under relevant industrial tariff but where such gardens/nurseries comprise only a part of the agricultural activity, these may be covered under A.P. tariff, when the connection was originally given on Agricultural Supply tariff. It is further made clear that wherever basic activity is agriculture and horticulture is introduced only as a subsidiary activity, A.P. tariff will continue to apply but conversely wherever the basic activity is horticulture/gardens/nurseries etc. introduction of agriculture activity will not alter the levy of industrial tariff."

Now a plain reading of the clarificatory letter and the aforesaid portion thereof would make it manifest that it only purports to interpret the schedule of tariff for the supply energy. Indeed Mr. Jagat Narain had fairly stated that the primal document obviously was the said schedule of tariff and a mere letter or clarification can not over-ride the same. That being the situation one may now revert to the said schedule of tariff.

4. NOW a reference to para 4 of the said schedule which admittedly pertains to Low Tension Industrial Power Supply would make it manifest that the same makes a clear distinction betwixt the agricultural pumping supply for irrigation and the industrial loads, barring specific exceptions laid out there in. The relevant and the opening part of the said para may be noticed in extenso :- "L.T. Industrial Power Supply Availability: Available to all industrial loads. Agricultural loads e.g. wheat threshers, "Toka" connections including pumps (other than irrigation) upto 70-KW." A plain reading of the above would make it manifest that

electricity connections for irrigation or agricultural loads are separate and distinct from the industrial ones. The only exception made is with regard to wheat threshers or "Toka" connections. Barring these two an irrigation connection for an agricultural load does not come within the ambit of an industrial load to which the tariff rate specified in this para would apply. The matter is made even more clear when reference is made to para 6 of the schedule which in specific terms deals with agricultural pumping supply. This category is available for irrigation purpose etc. It is obvious that where a connection is taken under this head for all agricultural or irrigation purpose the tariff has to be only under this head. The solitary exception made is by note-(c) which specifies that agricultural tariff is not chargeable to tubewell pumping supply to forest nursery. It is evident from a reading of all the clauses of para 6 that a tubewell connection for irrigation purpose must necessarily be covered and charged under agricultural pumping supply tariff, barring one for a forest nursery. Now a combined reading of paras 4 and 6 make it evident that an electricity connection to a tubewell for irrigation purposes would be fully covered for the levy of tariff under the agricultural pumping supply except in the case of three exceptions namely wheat thresher, "Toka" connection and supply to a forest nursery. All other irrigation activities would remain fairly & squarely within the arena of the agricultural pumping supply. There is no lacuna or ambiguity on the point in the schedule of tariff in the supply of energy. Once that is so the said tariff can not be over ridden for any purported clarification which pretends to exclude gardens, nurseries, fruit gardens, including nursery therefor, and public parks, from the ambit of irrigation and agricultural pumping supply and thrust it under the head of an Low Tension Industrial Power Supply. Such a purported clarification would indeed be an exercise in futility because it is contrary to the statutory schedule of tariff of supply of energy by which the Board is itself bound.

5. IN the aforesaid context it is somewhat elementary that statutory provisions and instructions have primal legal force and can not be deviated from or over-ridden by non-statutory clarifications in the thin garb of construing patently explicit regulations or tariff schedules. It bears repetition that we find neither any ambiguity or lacuna in the statutory schedule of tariff for supply of energy which in details lays down the rates for different categories of consumers. Once that is so, the purported clarification being in terms contrary to and in deviation from the schedule can possibly have little or no meaning. It is elementary that in case of any conflict betwixt the schedule of tariff & a mere communication emanating from the Chief Engineer (Commercial), the former must prevail over the latter. INevitably reliance of the learned Counsel for the appellants on the said clarification is vain and his submission must necessarily fail.

6. ALTOGETHER apart from the above, on larger principle also the respondent-consumer is on an equally firm ground. Even in ordinary parlance a tubewell primarily irrigating a garden or a nursery or a fruit garden and equally floriculture cannot be easily dubbed as industrial activity. It remains primarily agricultural in the sense of growing and creating wealth from the foundational

source of land. That agricultural is a thing apart from commerce, and industrial activity, appears to us as somewhat self evident. However since this matter is covered within this jurisdiction by the recent judgment of this Commission in *Surinder Kumar v. M/s. Escorts Ltd. & Another*, I (1993) CPJ 438, it is unnecessary to further elaborate the matter. Therein after a very exhaustive consideration of the issue it was concluded as under: "It is held that "commercial purpose" is a thing apart and distinct from an "agricultural purpose" under the Act." The aforesaid ratio would cover the matter by analogy. It can perhaps be said with equal authority that an industrial purpose is a thing apart and distinct from an agricultural purpose. It seems somewhat elementary that floriculture is a pristinely agricultural activity. In the light of the somewhat exhaustive discussion above, the answer to the question posed at the outset has to be rendered in the negative. It is held that the tariff for the Low Tension Industrial Power Supply is not leviable for an agricultural pumping connection used for floriculture.

Once it is held as above, it obviously follows that the appeal of the Board must fail and is hereby dismissed. We however impose no costs in view of the somewhat ticklish and interesting question involved. Appeal dismissed.