(2005) 08 KAR CK 0032

In the Karnataka High Court

Case No : Writ Appeal No. 7531 of 2001

Shyam Textiles (P) Ltd. APPELLANT

Vs

Assistant Executive Engineer KEB RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

Karnataka Electricity Board (Electricity Supply) Regulations 1998 — Regulation 33.03, 33.04, 35

Citation : (2005) ILR (Kar) 4651 : (2006) 5 KarLJ 350 : (2005) 4 KCCR 2734

Hon'ble Judges : S.R. Nayak, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : Paras Jain, for the Appellant; N. Krishnananda Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—This Writ appeal preferred by a consumer of electricity supplied by the respondent Board is directed against the order of the learned Single Judge dated 20th November, 2001 passed in W.P. No. 23808 of 2001. The learned Single Judge by the order under appeal has dismissed the writ petition filed by the appellant herein.

2. The background facts leading to filing of the writ petition, in brief, are as follows: The Appellant is a private limited company and consumer of electricity supplied by the respondent - Karnataka Electricity Board (for short ''the Board''). In the writ petition, the appellant questioned the correctness and legality of the demands raised by the Board in their demand notices dated 01.03.2001 and 16.06.2001. By those demands notices, the Board directed the appellant to pay the line fixed charges for the month of July, 1998 to June, 2001.

3. The correctness and validity of those demand notices was assailed, as can be seen from para 2 of the Judgment of the learned Single Judge, mainly on the ground that in terms of Regulation 35 of the Karnataka Electricity Board (Electricity Supply) Regulations 1998 (for the sake of brevity hereinafter referred

to as ''the Regulations'') is required to be paid only during the initial agreement period and not after the expiry of the initial agreement period. On behalf of the Board, it was contended, as a defence in support of the impugned action, that the agreement entered into between the Board and the appellant consumer should be deemed to have been extended by virtue of the provisions of Regulation 33.04 until that agreement is terminated by the mode known to law and since in the instant case, the agreement between the parties is not terminated, the provision on which the reliance was placed by the appellant consumer has no application. The learned Single Judge having considered the provisions of Regulations 33.03, 33.04 and 35 and having not found merit in the contentions advanced on behalf of the Appellant/consumer has dismissed the writ petition. Hence, this writ appeal.

4. We have heard Sri. Paras Jain, learned Counsel for the appellant and Sri N. Krishnananda Gupta, learned standing counsel for the Board.

5. It was contended by Sri. Paras Jain that what is demanded in the impugned notice is the ''line minimum charges'' and that charges should not have been demanded by the Board except during initial period of agreement and since the demands do not relate to the initial period of agreement, the demands are illegal as well as unauthorized. In support of the above contention, Mr. Paras Jain would also generally refer to the principles governing interpretation of statutes. Since there is no need for us to deal with norms and principles of interpretation of statutes for the decision-making in this case, there is no necessity for us to dilate on the part of the argument of Sri. Paras Jain.

6. Sri. N. Krishnananda Gupta learned standing counsel for the Board, per contra, while supporting the impugned demands as well as the order of the learned Single Judge would contend that the tariff consists of two components / elements - the cost of electricity and minimum charges incurred / to be incurred by the Board to keep the installation and infrastructures in readiness to supply the electricity to the consumer and that second component is a levy which is different from the ''minimum line charges'' as defined under Regulation 2.16 to which reference is made in Regulation 35. Sri Gupta would highlight that since the agreement between the parties is not terminated, by virtue of the provisions of Regulation 33.04, the agreement should be deemed to have been extended and this deemed extension would be coterminous with the actual determination of the agreement by the parties to it by any mode known to the law. According to Sri. Gupta what is demanded in the impugned notices is not ''minimum line charges'' as defined under Regulation 2.16, but, fixed minimum charges which is a component of the tariff to be determined by the Board from time to time.

7. Having heard the learned Counsel for the parties, the only point that arises for decision in this writ appeal is whether the opinion of the learned Single Judge could be faulted on any permissible legal or factual ground.

8. Although the argument of Sri. Paras Jain seems to be quite attractive for its

outward appearance, if we carefully analyse the contours of Regulations 35, the hollowness of the argument can be seen without much difficulty. Regulation 35 reads as follows:

35.00 Minimum Charges.- Charges for power of supply in accordance with the Tariff in force from time to time, or the line minimum charges, if any, whichever is higher, shall be payable by the Consumer until the Power Supply Agreement is terminated, irrespective of the installation being in service or under disconnection. However, the line minimum charges, if any, are payable only during the initial agreement period."

It is true that the last part of Regulation 35, in clear terms, provides that the ''line minimum charges'', if any, are payable only during the initial agreement period. The term ''line minimum charges'', is defined in Regulation 2.16. It reads as follows:

"Line Minimum Charges" shall mean the monthly charges payable by the Consumer calculated at the rate of 1.5% per month on the entire cost of arranging power supply to the Consumer rounded off to the nearest rupee, excluding the cost of-

(i) transformer and associated structure and switchgear, and

(ii) the portion of the service line chargeable to the Consumer."

By very nature of the definition statutorily defined, the term ''line minimum charges'' cannot be equated to fixed minimum charges which is undeniably a component of the tariff that may be determined by the Board from time to time. It is true that ''line minimum charges'' as defined under Regulation 2.16 is required to be paid by a consumer only during the currency of the initial agreement period and not after the expiry of the initial agreement period. The demands raised by the Board do not relate to any part of the period which falls within the initial agreement period. Admittedly, the demands relate to a period which is posterior to the date of expiry of the initial agreement period. Simply because the power supply is disconnected and the appellant is not consuming the electricity, it is not relieved from its liability to pay a part of the tariff which is properly called fixed minimum charges for maintaining installation and sustaining the same with readiness to supply electricity to the consumer in the event of restoration of the installation. It appears that the obligation is part of the obligation of the Board so long as the agreement between the parties is not determined.

In the result and for the foregoing reasons, the Judgment of the learned Single Judge impugned in this writ appeal cannot be faulted. Writ appeal is devoid of merit and it is accordingly dismissed, however, with no orders as to costs.