(1978) 12 AHC CK 0004

In the Allahabad High Court

Case No : Writ Petition No''s. 1655 of 1974, 1057, 1125 of 1975 and 510 of 1976

Sia Ram Gupta and Others — APPELLANT

Vs

The U.P. State Electricity Board and Others — RESPONDENT

Date of Decision : 22-12-1978

Acts Referred:
Electricity (Supply) Act, 1948 — Section 26
Electricity Act, 1910 — Section 10, 11, 21(2), 21(3), 22

Citation : (1979) AWC 497

Hon'ble Judges : U.C. Srivastava, J;Hari Swaroop, J

Bench : Division Bench

Advocate : S.K. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Hari Swaroop and U.C. Srivastava, JJ.—These petitions relate to the demand of minimum guarantee charges from the Petitioners under the Indian Electricity Act, 1910. The minimum guarantee charges are being demanded u/s 22 of the Indian Electricity Act, 1910. On 12-10-1974 the U.P. State Electricity Board issued a notification fixing the minimum guarantee charges in exercise of power under the proviso to Section 22 of the Indian Electricity Act, 1910. It is this notification which has been challenged by the Petitioners in these writ petitions.

2. The first contention raised by the Learned Counsel was that u/s 22 of the Act, it was not permissible for the Electricity Board to charge the minimum guarantee as that Section authorised only the ''licensee'' to charge the amount. The contention is that Board, not being the licensee, cannot take advantage of Section 22 of the Act. Reliance in this connection has been placed on the wordings of Section 22 of the Act which read as follows:

Where energy is supplied by a licensee, every person within the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply;

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration.

Section 26 of the Electricity Supply Act, 1948, gives to the Board the same powers and obligations as a licensee has under the Indian Electricity Act, 1910. It runs as under:

"Subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910, and this Act shall be deemed to be the license of the Board for the purposes of that Act;

Provided that nothing in Sections 3 - 11, sub Sections (2) and (3) of Section 21 and Section 22. Sub-section (2) of Section 22A and Sections 23 and 27 of that Act or in (Clause II to V, Clause VII and Clauses IX to XII) of the Schedule to that Act relating to the duties and obligations of a licensee shall apply to the Board;

Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area where distribution mains have been laid by the Board and the supply of energy through any of them has commenced.

3. Learned Counsel for the Petitioners placed reliance on the first proviso to Section 26 and urged that the Board has not been given the power to charge minimum electricity charge u/s 22 of the Indian Electricity Act, 1910. We are unable to see any merit in this contention. The main part of Section 26 speaks of powers and obligations while the first proviso speaks only of duties and obligations. Section 22 of Indian Electricity Act, 1910, deals with the obligations of the licensee to supply energy to a consumer and the proviso thereto deals with the power of the licensee to charge minimum guarantee amount. It placed an obligation on the consumer to pay the minimum charges. The first proviso to Section 26 of the Electricity Supply Act, 1948, thus does not prohibit the Electricity Board from exercising the power of the licensee under the proviso to Section 22 of the Indian Electricity Act, 1910. We, therefore, overrule the contention of the Learned Counsel for the Petitioners that the State Electricity Board had no power to fix the minimum guarantee charges payable under the proviso to Section 22 of the Indian Electricity Act, 1910.

4. Learned Counsel for the Petitioners then contended that Section 22 of the Act deals with the agreement and it does not permit unilateral act of the State Electricity Board to fix the minimum charges payable under the proviso.

According to the Learned Counsel it deals with bilateral action and not unilateral action of the Board. Although the words speak of the agreement the Section does not rule out the coming into effect of an agreement by implication. According to the proviso to Section 22 no person is entitled to demand or to continue to receive electricity without entering into an agreement regarding minimum charges. Once the Board or licensee makes out a Schedule and announces it and offers to supply energy with that Schedule of minimum charges and the consumer takes the energy, a completed contract will be deemed to have come into effect within the meaning of the proviso to Section 22 of the Act, An offer in such a case is made by the licensee (Board) and accepted by the consumer by his act of receiving the electric energy for consumption. We, therefore, do not find any merit in the contention that without a formal agreement having been executed between the parties the minimum guarantee charges are not payable by the consumer when the law prohibits every person from continuing to receive electric energy without entering into such an agreement. Section 49 of the Electricity Supply Act, 1948 will also lead to the same conclusion.

5. The third contention of the Learned Counsel for the Petitioners is that the proviso to Section 22 of the Indian Electricity Act, 1910, permits the licensee to charge and the consumer to pay such minimum annual sum as will give him reasonable return on the capital expenditure and not to charge monthly sum. The condition about minimum consumption guarantee which is applicable, has Clause (6) in the following terms:

6. Minimum Consumption Guarantee; Rs. 180/-BHP/ annum of the contracted load chargeable at the rate of Rs. 15/-BHP/ month of the contracted load subject to final adjustment in the last bill of the year of account.

6. This term shows that adjustment is to be made annually. Hence, even if the amount is payable monthly, the net result will be an annual payment. The minimum guarantee will also be deemed to be a minimum annual guarantee. Hence, the contention of the Learned Counsel that in lean months the Petitioner will have to pay minimum guarantee charges cannot be deemed to cause any injury to the Petitioners as they can get the final adjustment at the end of the year. In case the annual consumption is above the minimum guarantee then the question will not arise about payment of minimum guarantee charges and the adjustment will be permissible.

7. The proviso to Section 22 of the Act also contains a clause for arbitration. Hence, if there has to be an adjustment and the said adjustment is not allowed by the Board, the matter can be dealt with by the arbitrator and the Petitioners cannot be deemed to be without any remedy or to suffer injury because of this clause.

8. The last contention of the Learned Counsel was that fixation of the amount of minimum guarantee charges has been arbitrarily made. There is, however, no material on record on the basis of which we might come to the conclusion that

the fixation is arbitrary. It was for the Petitioners to place on record material to make out a prima facie case. Bare assertion cannot be sufficient. There is a presumption that the law has been followed and the fixation has been done after complying with the necessary conditions. In any case, as there is no material available on record, no relief can be granted on the basis that fixation is arbitrary.

9. As none of the contentions raised by the Learned Counsel for the Petitioners, has been found to have merit and the Petitioners are not without remedy, in case excess charges are made, these petitions fail and are dismissed without any order as to costs.

