(2001) 12 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11325 of 1999

Sri Vasavi Industries Ltd. APPELLANT

Vs

The Andhra Pradesh Transco and Others RESPONDENT

Date of Decision : 10-12-2001

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2001) 12 AP CK 0044

Hon'ble Judges : Ghulam Mohammed, J

Bench : Single Bench

Advocate : C.V. Nagarjuna Reddy, for the Appellant; K.N. Jwala, SC, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—The petitioner is a manufacturer of M.S. Rods and Angles and its raw material is ingots and billets. The petitioner is a H.T. consumer with a C.M.D of 490 KVA.

2. The unit was commissioned on 19.8.1987. The respondents imposed power cut at the first instance with effect from November, 1987 till July, 1988. However, restrictions were lifted on 29.7.1988. Again power cut was imposed by B.P.Ms.No:1065, dated 23.11.1988 and the petitioner was fixed quota of demand and energy at 268 KVA and 69,972 KWH (Units) respectively observing 25% cut in maximum demand and 30% cut in Energy. The quota has been revised later as per formula given in B.P.Ms.No:1148, dated 21.12.1988 and the revised quota was 368 KVA and 76,092 units. It is stated that the petitioner unit is a continuous process and has to work for three shifts. The petitioner gave a representation on 29.11.1988 reque sting to revise the quota of power supply on three shift basis. When power cut was imposed in November, 1987, the petitioner filed W.P.No:5401 of 1988 for a direction to fix the petitioner''s quota on three shifts basis treating it as a new Industry and by an order dated 12.4.1988, the respondents were directed to continue the power supply to the petitioner unit

without insisting for payment of penalty on the excess units. Thereafter, by letter dated 17.5.1988, the 1st respondent informed that the Board decided to increase the quota to the petitioner unit on two shift basis instead of three shifts. The petitioner was required to p ay an amount of Rs.1,89,400/- towards additional consumption deposit on 20.6.1988 and the petitioner paid the same. While fixing the additional consumption deposit, the respondents have taken the base energy as 1,59,936 KWH (units) which is evident from the letter written by the 3rd respondent dated 20.6.1988. Surprisingly, however, the petitioner''s quota was fixed at 76,092 units by adopting a different formula altogether. For the purpose of arriving at the consumption deposit, the base energy is taken at 1,92,512 units and for fixing the energy quota, the base energy is fixed as 99,960. As the respondents failed to consider the two representations dated 29.11.1988 and 7.1.1989 for revision of quota on three shift basis, the petitioner filed W.P.862 of 1989 and the same was disposed of on 21.12.1998 with a direction to the respondents to consider the said two representations of the petitioner and pass appropriate orders after giving an opportunity of personal hearing. In pursuance of the direction, the petitioner parti cipated in the hearing and the 2nd respondent impressed upon the petitioner''s representation that since the outstanding amount of penal charges for exceeding the quota was only a sum of Rs,3,35,956, the petitioner may accept the liability subject to the consideration of the petitioner being permitted to run the unit on 3 shift basis in future and the 2nd respondent persuaded the petitioner to agree to pay the said amount without going into the legality or otherwise of the respondents'' action in not fixing the quota on three shift basis and eventually, the liability was limited to Rs.3.35 lakhs and consent was given to that effect and minutes to that effect was drawn by the 2nd respondent and signed by both the parties. In pursuance of that understanding, the 2nd respondent issued letter dated 16.3.1990 demanding the petitioner to pay Rs.3,35,956/- within 15 days. The said amount was paid through D.D. dated 13.4.1999 towards full and final payment of arrears for the period of February 1989 to August, 1989. While so, the 3rd respondent sent a letter dated 21.5.1999 wherein a sum of Rs.8,24,559/- was demanded towards the additional charges under condition 32.2.1 of the Terms and Conditions of Supply and it is nothing but interest on penal charges and the demand towards additional charges for the belated payment of penal charge, is manifestly illegal and patently arbitrary. The 2nd respondent quantified the petitioner''s liability at Rs.3,35,956/- and agreed through the minutes dated 15.3.1999 to receive the said amount from the petitioner and the letter dated 16.3.1999 does not mention about the additional charge and the levy of additional charge was never contemplated when the settlement was reached. The demand towards additional charge, is an afterthought and in violation of settlement. Having quantified the liability and received the same, the respondents waived the right invoking the condition No:32.2.1 and they are estopped from making any such claim. The petitioner seeks the relief of direction in the nature of writ of mandamus declaring the action of the respondents in to fixing the quota on three shift basis as illegal and consequently, declaring the demand for payment of penal charge and additional charge through letters dated 16.3.1999 and 21.5.1999 as illegal.

3. The respondents filed a counter affidavit. It is stated that at the time of release of supply in August, 1987, the petitioner paid consumption charges based on single shift. The petitioner paid the consumption deposit for one shift and run the unit on three shift basis and thus, the petitioner committed malpractice and violation of terms and conditions of supply besides causing loss to the Board. Pursuant to the direction in W.P.5401 of 1988, the Standing committee considered the request of the petitioner to increase the quota on two shift basis instead of three shift basis subject to payment consumption deposit on two shift basis. The petitioner paid additional consumption deposit of Rs.1,89,400/- towards consumption deposit on two shift basis as per the orders of the Standing Committee. During interregnum period, the petitioner''s quota was fixed on two shift basis ie., 417 KVA and 1,01,959 units. It is averred that it is not correct that the deposit is sufficient for consumption of 1,90,512 units. It is only sufficient for 1,66,536 units per month and the guidelines for fixing the quota for a new Industry contained in B.P.Ms.No:1065, dated 23.11.1988 and the petitioner is eligible for 76,092 units only per month towards quota during the current R & C period and the quota is fixed on the basis of units, for which consumption deposit is paid or the units arrived at as per the formula prescribed in B.P.Ms.No:1065, dated 23.11.1988 whichever is less. As per the directions in W.P.No:862 of 1989, the petitioner has been given an opportunity for personal hearing and orders were passed for payment of Rs.3,35,956/- and the petitioner has also agreed to pay the amount as per the minutes dated 15.3.1999. As per the condition 32.2.1, the Board is empowered to enforce the petitioner to pay additional charges on belated payment. The contention of the petitioner that the 3rd respondent seeks to collect interest on penal charges, is not correct. As per B.P.Ms.No:1065, the petitioner has to pay two times of normal tariff rates for excess energy consumed in excess of R & C quotas fixed which is not penal charges and they are only additional charges for belated payment as per terms and conditions. The action taken by the 3rd respondent in respect of claiming of additional charges, is legal. The respondents never informed that Rs.3,35,956/- is inclusive of additional charges and the respondents reserved the right to collect any charges from the petitioner under clause No:9 and 10 of Agreement. The respondents claimed additional charges for Rs.8,24,559/- for belated payment of Rs.3,35,956/- from February 1989 upto the date of payment as per clause No:32.2.1 of terms and conditions of supply and tariff conditions. The fact that the request of the petitioner for fixation of three shift will be considered in future subject to the payment of additional consumption deposit, was also mentioned in the minutes. The petitioner requested for 15 days time for arranging payment of Rs.3,35,956/-. The respondents allowed the time and the petitioner also paid the amount on 15.4.1999. The contention of the petitioner that his representation dated 29.11.1988 and 7.1.1989 were not considered is not true. On receipt of the demand notice for Rs.8,24,559/-, the petitioner had

approached the A.P. Transco Limited, Hyderabad for granting installments by letter dated 16.6.1999 and he was granted three monthly installments. The petitioner has paid the first instalment of Rs.2,74,959/- on 19.6.1999. Thus, the petitioner had accepted the demand dated 21.5.1989 towards additional charges on belated payment. Thus, there is no violation of Article 14 of the Constitution.

4. Heard Mr. C.V. Nagarjuna Reddy, the learned counsel for the petitioner and Mr. K.N. Jwala, the learned Standing counsel for the respondents. It is submitted by the learned counsel for the petitioner that the minutes drawn on 15.3.1999, quantified the amount of Rs.3,35,956/- towards the full and finalization of the consumer''s liability towards penalty, and, as such, it does not reserve any right to levy additional charges. The amount was quantified as penalty towards exceeding the quota fixed on the basis of two shifts. They have also agreed to allow the petitioner for three shifts in future. It is further submitted that condition No:32.2.1 of the Terms and Conditions of Supply, is inapplicable provision, and, it is open to the Court to waive the rights to invoke the said provision depending upon the fact. The respondents having quantified the amount of Rs.3.35 lakhs and received the same, waived their right if any to invoke condition No:32.2.1 of the Terms and Conditions of Supply and are estopped from making any such claim.

5. On the other hand, it is submitted by the learned standing counsel for the respondents that the quota was fixed as per the formula fixed in B.P.Ms.No:1065, dated 23.11.1988 and the amount of Rs.3,35,956/- is towards the penalty for exceeding the quota whereas the additional charge is demanded under condition No:32.2.1 of the Terms and Conditions of Supply for belated payment and the said condition is statutory.

6. While drawing my attention to condition No:45 which deals with the knowledge of facts and rules, it is contended that the petitioner having accepted the demand notice for Rs.8,24,559/- and sought for installments to pay the same and having paid one of the three installments granted by the respondents, cannot seek for any indulgence from this Court. Apart from that, the petitioner has also suppressed the fact of granting of installments and payment of one of the installments, and, as such, it is open for the petitioner to challenge the same.

7. In so far as the contention of the petitioner that the respondents having quantified the amount of Rs.3.35 lakhs and received the same, waived their right if any to invoke condition No:32.2.1 of the Terms and Conditions of Supply and are estopped from making any such claim, is concerned, it cannot be accepted in as much the amount demanded was towards exceeding the quota during the restriction period. Apart from that, the question as to the principle of estoppel by conduct does not arise in as much there is no estoppel against the statute. Since the condition No:32.2.1 of the Terms and Conditions of Supply, is a statutory one framed u/s 49 of the Act, the plea of estoppel is accordingly rejected.

8. As regards the payment of additional charge is concerned, a reading of

condition No:32.2.1 of the Terms and Conditions of Supply clearly shows that the Board is empowered to collect the additional charge and the same cannot be held to be arbitrary in as much the petitioner had executed the H.T. Agreement, in which under condition No:9, it is an obligation on the part of the petitioner to pay all charges levied by the Board. Apart from that, the petitioner having sought for installments to pay the amount of Rs.8,24,559/- vide letter dated 21.5.1999 towards additional charges on belated payment, and, having paid one installment out of three installments, has not stated in his affidavit and it amounts to suppression of facts and that he has not come to the Court with clean hands. As such, this Court cannot exercise the powers of equitable jurisdiction so as to nullify the affect of the additional charges as demanded by the respondents vide letter, dated 21.5.1999.

9. In the facts and circumstances of the case, I am of the view that the amount demanded under the impugned letters is towards the penalty for exceeding the quota during the R & C period while the proceedings dated 21.5.1999 are issued in exercise of powers contemplated under condition No:32.2.1 demanding additional charge for belated payment. Therefore, they do not call for any interference from this Court. Accordingly, this writ petition is dismissed. There will be no order as to costs.