(2016) 03 OHC CK 0023

In the Orissa High Court

Case No : W.P.(C) No. 4548 of 2008

The Executive Engineer, Kendrapara Electrical Division No. 1, CESU	APPELLANT
Vs	
Grievance Redressal Forum and Others	RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:
Electricity Act, 2003 — Section 181 (2) (t) (v) (w), Section 65

Citation : (2016) 03 OHC CK 0023

Hon'ble Judges : Dr. B.R. Sarangi, J.

Bench : Single Bench

Advocate : B.K. Nayak, for the Appellant;

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—1. The petitioner-Executive Engineer, Kendrapara Electrical Division No. 1, CESU, Kendrapara has filed this application seeking to quash the judgment dated 20.06.2007 passed by the learned Grievance Redressal Forum, Paradeep in C.C. Case No. GRF/KED-1/05/2007 in Annexure-7 and further seeking for a direction to opposite party No. 2 to execute an agreement on 18 KW load under the General Purpose Tariff Category as defined under Clause 80 (2) of the O.E.R.C. Distribution (Conditions of Supply) Code, 2004.

2. The short fact of the case in hand is that opposite party No. 2 is a business concern of which Sri Purna Chandra Panda was the proprietor located at Tarini Market Complex, Tinimuhani known as "Kranti Photo Processor" which is a entrepreneur having a small scale industries permanently registered under the District Industries Centre, Kendrapara. Opposite party No. 2 applied for supply of power to his photo processing unit for a contract demand of 12 KW in the year 2001 and executed the agreement on 20.1.2001 and subsequently filed an application for enhancement of contract demand of 12 KW to 20 KW. After necessary verification, the agreement was executed on 27.6.2003 with contract demand of 20 KW and accordingly agreement was executed on 27.6.2003 and

thereafter the bills have been prepared on the basis of Medium Industry Tariff. Thereafter opposite party No. 2 submitted an application for reduction of the contract demand from 20 KW to 18 KW and such proposal was allowed after necessary approval and communicated to the opposite party No. 2 on 29.3.2007. Opposite party No. 2 was also intimated to deposit an additional security of Rs. 26,556/- for reduction of contract demand of 20 KW to 18 KW within seven days and to execute a fresh agreement of contract demand of 18 KW. On verification of the premises, it was found that the total connected load used by the consumer is 17.273 or say 18 KW. On 18.4.2007 a reminder was sent to opposite party No. 2 for deposit of the additional security and also for execution of a fresh agreement on 18 KW on G.P. Tariff basis as per Clause 80 of the O.E.R.C. Distribution (Conditions of Supply) Code, 2004. Pending execution of agreement and deposit of the additional security amount for the month of April 2007, opposite party No. 2 was billed on G.P. Tariff basis as per Clause 80 of the O.E.R.C. Distribution (Conditions of Supply) Code, 2004. It is stated by opposite party No. 2 that for demand of additional security though he has approached the authority, the same has not been considered. As his unit is a small industry, billing having been done on the basis of G.P. Tariff basis, the opposite party No. 2 approached the Grievance Redressal Forum with a prayer that fresh agreement for 18 KW of contract demand may be executed on small industrial category and the bill may be issued in small industry category from 18 KW of contract demand w.e.f. the date of his application i.e. 31.8.2004 after adjusting the excess amount already paid. The petitioner filed objection before the GRF and stated that since the opposite party No. 2 has reduced the contract demand from 20 KW to 18 KW, the unit has to be billed on G.P. Tariff basis as per Clause 80 O.E.R.C. Distribution (Conditions of Supply) Code, 2004. Therefore, the demand so raised is in conformity with the provisions of law read with instruction issued vide letter dated 26.12.2003 regarding classification of implementation of tariff on different types of consumers. Therefore, no illegality has been committed by the petitioner. After due adjudication, the GRF without taking into consideration the provisions mentioned in the O.E.R.C. Distribution (Conditions of Supply) Code, 2004 has come to a finding that opposite party No. 2 unit is a small industrial consumer with contract demand of 18 KW from April, 2007 onwards and necessary action shall be taken accordingly and directed for revision of electricity bills of opposite party No. 2 for the period from April, 2007 onwards if it has been issued on G.P. Tariff basis/Commercial tariff to S.I. tariff vide impugned judgment in Annexure-9. Challenging the said judgment in Annexure-9, the petitioner has filed this application.

3. Mr. B.K. Nayak, learned counsel for the petitioner states that while considering the case of opposite party No. 2 the learned GRF has not taken into consideration the provisions contained in O.E.R.C. Distribution (Conditions of Supply) Code, 2004 in proper perspective. Since the contract demand has been reduced to 20 KW to 18 KW, the billing has to be made on the basis of G.P. Tariff basis which has been done by the authority w.e.f. April, 2007 onwards and in absence of any

materials produced before the authority to satisfy the claim that it should be billed on the basis of small scale industry, the order passed by the GRF in Annexure-9 is based on surmises and conjectures inasmuch as while passing such judgment clause 80 of the O.E.R.C. Distribution (Conditions of Supply) Code, 2004 with regard to classification of consumers has not been taken into consideration in proper perspective. Therefore, the judgment in Annexure-9 cannot sustain in the eye of law.

4. Mr. B.K. Sahoo, learned counsel for opposite party No. 2 strenuously urged that the impugned judgment has been passed in due application of mind inasmuch as opposite party No. 2 being registered as a small scale industry under the District Industry Centre, Kendrapara, it has to be billed on the basis of small scale industry category after reduction of contract demand from 20 KW to 18 KW and as such the judgment passed by the learned GRF in Annexure-9 is wholly and fully justified and the same should not be interfered with.

5. On the basis of the facts pleaded, it appears that opposite party No. 2 initially entered into an agreement for a contract demand of 12 KW on 20.1.2001 in Annexure-1 and subsequently when opposite party No. 2 sought for enhancement of contract demand of 12 KW to 20 KW, the same was allowed and also a fresh agreement was executed on 27.6.2003 vide Annexure-2. Again opposite party No. 2 sought for reduction of contract demand from 20 KW to 18 KW, which has also been considered and accordingly he has been communicated vide letter dated 29.3.2007 to deposit the additional security amount of Rs. 26,566/- and execute a fresh agreement for contract demand of 18 KW within seven days vide Annexure-3. Opposite party No. 2 premises was also duly inspected for the said purpose and on physical verification it was found that the connected load is 17.273 or say 18 KW. Accordingly, opposite party No. 2 was intimated vide letter dated 18.4.2007 that his unit comes under the G.P. Tariff basis as per clause 80 of the O.E.R.C. Distribution (Conditions of Supply) Code, 2004 and he has been requested to deposit an amount of Rs. 26,566/- towards additional security deposit and to execute a fresh agreement for contract demand of 18 KW on G.P. Tariff basis immediately vide Annexure-5. Having setting up of a photo processing unit, the unit has to be billed on the basis of G.P. Tariff basis and not on the basis of small industrial tariff basis. Therefore, now it is to be considered whether opposite party No. 2 is to be charged on the basis of small industrial category basis or general tariff basis. As per paragraph-2 of the agreement, the consumer has to obtain and peruse a copy of the O.E.R.C. Distribution (Conditions of Supply) Code, 1998 and undertake to observe and abide by all the terms and conditions stipulated therein. The said code has been modified from time to time to the extent they are applicable and shall form part of the agreement. Paragraph-7 of the agreement provides that tariff and conditions of supply mentioned in the agreement shall be subject to any revision that may be made by the licensee from time to time.

6. In exercise of power conferred on it by Section 181 (2) (t) (v) (w) and (x)

read with Part-VI of the Electricity Act, 2003, Orissa Electricity Reform Act, 1995 and all other powers enabling it in that behalf, the Orissa Electricity Regulatory Commission make regulations to govern distribution and supply of electricity and procedures thereof such as the system of billing, modality of payment of bills, the powers, functions and obligations of the distribution licensees and/or suppliers and the rights and obligations of consumers called "Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004". Chapter-VIII provides classification of consumers. Clause-80 of the Code, 2004 deals with classification of consumers.

7. Initially as per O.E.R.C. Distribution (Conditions of Supply) Code, 1998, Clause 80 (b) defined commercial consumers whereas clause-80 (g) defined general purpose consumers and clause-(i) defined small industries consumers, to read as follows:

"Clause-80(b) Commercial.

This Category relates to supply of power to premises, which are used as office, business, commercial or other purposes not covered under any other category with a contract demand upto but excluding 110 KVA and where the non domestic load exceeds 10% of the total connected load.

(g) General Purpose

This category relates to supply of power for all general purposes comprising mixed load and with a contract demand of 110 KVA and above where the non domestic load exceeds 10% of the total connected load.

(i) Small Industries

This category relates to supply of power for industrial production purpose with a contract demand below 22 KVA where power is generally utilized as motive force."

8. Subsequently, Code 1998 underwent amendment and Code 2004 came into existence. Relevant provisions of the classification of the consumer as defined in Regulation 80 of the O.E.R.C. Distribution (Conditions of Supply) Code, 2004 is quoted below:

"The relevant provision of the classification of the consumer as defined in Regulation 80 of the O.E.R.C. Distribution (Conditions of Supply) Code, 2004 is quoted below:--

Clause -80(2) General Purpose

This category relates to supply of power to premises which are used for office, business, general purpose and other purposes not covered under any other category where the non domestic load exceeds 20% of the total connected load.

(8) L.T. Industrial (S) Supply

This category relates to supply of power for industrial purpose with a contract demand below 22 KVA."

9. On perusal of the aforementioned provisions, it appears "commercial category" mentioned in clause-80 of the O.E.R.C. Distribution (Conditions of Supply) Code, 1998 is no more available in the Code 2004. The commercial category has been merged with general purpose tariff category under clause 80 (2) of the Code 2004. In tariff notification under the heading "Schedule of Charges for Retail Supply" in paragraph-5 "small industry tariff" has been notified which reads as follows:--

"5. Small Industry

This tariff rate shall be applicable to supply of power at a single point for industrial purposes with contract demand/connected load upto but excluding 22 KVA where power is utilized as a motive force and supplied at LT. xxx xxx xxx"

10. The Chief Executive Officer in its communication dated 26.12.2003 in Annexure-6 issued clarification regarding implementation of tariff on different types of consumers so far it relates to small industrial tariff, which reads as follows:--

"xxxx It is therefore clarified that S.I. Tariff is made available to consumers having contract demand below 22 KVA where power is used generally as a motive force for industrial production and supplied at LT as per aforesaid tariff notification and O.E.R.C. Distribution (Conditions of Supply) Code. Similarly in case of commercial consumers, who can avail power below 110 KVA, utilized power at single point at LT/HT supplied for commercial, business, office and other purposes, not covered under any other category."

11. This being the provisions of law governing the field, it will apply to the present context. It appears that opposite party No. 2-consumer is availing power supply to his shop for commercial and business purpose at L.T. supply and since the non-domestic load exceeds 20% of the total connected load, opposite party No. 2 has been called upon to execute the agreement on general purpose tariff category and to deposit the additional security amount. But instead of complying the same, opposite party No. 2 approached the GRF. On the basis of the undisputed facts available on record and the law governing the field, instead of taking into consideration the same, the GRF has observed that the consumer is using electrical power to the extent of 15.091 KW as per the tariff notification of small industry category and the said tariff shall be applicable to supply of power at single point for industrial production purpose with contract demand/connected load upto but excluding 22 KVA. Therefore, he came to a conclusion that opposite party No. 2 comes under the small industry tariff category and directed for execution of agreement on contract demand of 18 KW from April 2007 onwards under the small industry tariff category and for revision of electricity bills w.e.f. April, 2007 onwards and such finding has been arrived at by the GRF without taking into consideration clause 80 of the O.E.R.C. Distribution (Conditions of Supply) Code, 2004 wherein classification of consumers has been

made. Though opposite party No. 2 was issued to execute the agreement under the general purpose tariff category, the learned GRF without taking into consideration the classification of consumer as defined in Clause 80 (2) of the Code has come to an erroneous finding and more so it has lost sight of the provisions contained in clause 80 (8) of the Code, 2004 in which small industry tariff has been defined as LT Industrial (S) Supply which provides that where supply of power is utilized for industrial purpose and for industrial production (as per tariff notification) with a contract demand below 22 KVA, the said unit comes under the LT Industrial (S) Supply category. If this classification will be taken into consideration so far opposite party No. 2 unit is concerned, no such industrial production is going on in the shop and as such it does not come under the purview of small industries/LT Industrial (S) tariff category. The consumer was charged under the small industry tariff category on the basis of certificate issued by the District Industry centre but at the time of hearing when learned counsel for the opposite party No. 2 was called upon to produce the certificate, he could not be able to produce the same. In any case as per the provisions of Section 65 of the Electricity Act, 2003, opposite party No. 2 is entitled to come under the categorization of small industry as per the classification made by the District Industries Centre provided the State Government grants subsidy for the loss caused to the Distribution Company and deposits the required shortfall before the O.E.R.C. and as such no certificate has been extended by the District Industries Centre to categorize opposite party No. 2 under the small industry tariff category. It appears from the verification report in Annexure-4 that the total utilized load of the opposite party No. 2 unit is used for non domestic purpose and not for industrial purpose, therefore opposite party No. 2 comes under the general purpose tariff category. But the GRF has not considered the above mentioned facts and law governing the field in proper perspective.

12. In that view of the matter, this Court is of the considered view that the GRF having lost sight of the provisions and the law enshrined under Code, 2004 and having come to an erroneous finding that the billing has to be made on the basis of "small industry category" cannot sustain in the eye of law. Accordingly, the judgment dated 20.06.2007 passed by the GRF in C.C. Case No. GRF/ KED-1/05/2007 in Annexure-9 is hereby quashed and the opposite party No. 2 has to be billed under the General Purpose Tariff basis instead of Small Industry Category which is in consonance with the provisions contained in Clause 80 (2) of the O.E.R.C. Distribution (Conditions of Supply) Code, 2004.

13. Accordingly, the writ petition is allowed. However, there would be no order to costs.

