

(1998) 02 KAR CK 0069
In the Karnataka High Court
Case No : Writ Petition No. 5033 of 1998

Vasavadatta Cements

APPELLANT

Vs

Karnataka Electricity Board, Bangalore and Another

RESPONDENT

Date of Decision : 19-02-1998

Acts Referred:

Karnataka Electricity Board Electricity Supply Regulations, 1988 — Regulation 25, 30.01, 30.04, 30.05

Citation : AIR 1999 Kar 29 : (1998) 6 KarLJ 417

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri R. Gururajan, for the Appellant; Sri N.K. Gupta, for the Respondent

Judgement

1. The petitioner is engaged in the manufacture of cement in a unit set up by it in Sedam in Gulbarga District. In connection with the said unit, it has obtained from the respondent-Board a High Tension Power connection. In terms of Power Tariff, 1990 introduced with effect from the first meter reading date on or after 6-9-1990 "Power Factor Bonus" and High Voltage Rebate admissible to such units earlier were withdrawn qua units that had already availed of the said benefits for a period of five years. General conditions I(h) and (i) of the said Tariff which are relevant in this connection read as under:-

1(h) Power Factor (PF).--(i) In the event of the PF recorded or calculated goes below 0.85 lag, a surcharge of 1 per unit consumed will be levied for every reduction of PF by 0.01 below 0.85 lag.

(ii) Rounding off of PF shall be regulated as per Regulation 25.00 of ESR 1988.

(iii) There will be no rebate for PF above 0.85 lag.

1(i) Rebate for Supply at Voltages -- 33KV and above: If the consumer is availing power at a voltage higher than 13.2 KV he shall be entitled to a rebate as indicated below:

Supply voltage

Rebate

(a) 33/66 KV

1 per unit of energy consumed

(b) 110 KV

2 per unit of energy consumed

(c) 220 KV

3 per unit of energy consumed

The above rebate will be allowed only in respect of new installations for a period of 5 years and is not admissible to existing installations who have been allowed H.V. rebate for a period of not less than 5 years.

(emphasis supplied)

The above rebate is applicable only on the consumption of normal energy entitlement made available to the consumer and is not applicable on the other energy allotted and consumed, if any, viz., (1) High Cost Energy, (2) Night Energy, (3) D.G.P. Energy and (4) Excess energy consumed beyond the normal entitlement.

2. Feeling aggrieved of the withdrawal of the Bonus and the Rebate, the petitioner filed W.P. No. 17497 of 1991 and obtained an interim order of stay against the same. In the Power Tariff for the year 1992, a similar provision making units that had availed of the concession for a period of 5 years ineligible was introduced which came to be challenged separately by the petitioner and similar other units in different writ petitions filed in this Court. Those writ petitions were dismissed on 6-1-1993 (Kanoria Industries Limited, Bagalkot v Karnataka Electricity Board, Bangalore and Another), by a Single Judge of this Court upholding the withdrawal. Writ Appeal No. 189 of 1993 filed against the said decision was also dismissed on 7-8-1996 (Kanoria Industries Limited, Bagalkot v Karnataka Electricity Board, Bangalore and Another). The Division Bench was of the view that the withdrawal of the power factor bonus and high voltage rebate to such of the units as had availed of any such concession for a period of five years did not suffer from any illegality to warrant interference. In the meantime when W.P. No. 17497 of 1991 came up for hearing on 13-11-1996 the same was also dismissed in the light of the Division Bench decision of this Court in W.A. No. 189 of 1993 thereby giving quietus to the controversy relating to validity of the provision contained in 1990 tariff insofar as the withdrawal of the bonus and rebate was concerned. With the dismissal of the writ petition, the respondent-Assistant Executive Engineer intimated to the petitioner that a sum of Rs. 21,47,037/- was payable by it towards the principal amount on account of power factor bonus and high voltage rebate which amount had remained unpaid

on account of the interim order issued by this Court in the writ petition mentioned earlier. This was followed by a further demand for a sum of Rs. 30,08,543/- on account of interest on the principal amount calculated with effect from October 1991 to December 1997. The petitioner was called upon to remit the said amount within a period of one month, failing which the communication issued by the respondents vide Annexure-E to the petition, threatened disconnection of the supply without any notice. A statement indicating details of calculation of the interest was also enclosed with the said demand. Aggrieved, the petitioner has filed the present writ petition assailing the demand on precisely speaking two grounds. Firstly, it was contended on its behalf by Mr. Gururajan that Power Factor Bonus and High Voltage Rebate did not constitute power supply charges within the meaning of Regulation 30.01 to 30.05 of the Karnataka Electricity Board Electricity Supply Regulations, 1988 and could not therefore attract interest in the event of their non-payment. Secondly, it was contended that the interest on belated payments in terms of Regulation 30.05 could be levied only if the payment of the amount demanded was not made by the consumer on or before the due date. He urged that the demand in the instant case was raised for the first time on 14-11-1997 in terms of Annexure-C to the petition and the amount demanded had been remitted within the period of fifteen days from 14-11-1997 so that there was no delay in non-payment of the amount recoverable from the petitioner to justify the levy of any interest on the same.

3. The expression "power supply charges" has not been defined by the Regulations. The absence of the definition would not however make any material difference for it is not in dispute that the scheme of the Karnataka Electricity Board Electric Tariff, 1990 envisaged the grant of Bonus and Rebate out of the amount otherwise payable by the petitioner towards the tariff for energy consumed. A plain reading of the General Conditions 1(h) and (i) extracted earlier leave no manner of doubt that the petitioner was entitled to a rebate in the event of its availing power at a voltage higher than 13.2 KV and a Bonus in the event of its maintaining the prescribed power factor. Both these concessions by way of Bonus and Rebate were therefore applicable and relatable to the Tariff otherwise recoverable from the petitioner on account of energy consumed by it. If the petitioner was disentitled to claim any such Rebate or Bonus, it would be liable to pay the entire amount claimed by respondents as power supply charges in accordance with Regulation 30.01 to 30.04 of the Regulations aforementioned. It is therefore difficult to accept the submission made by Mr. Gururajan that power factor Bonus or High Voltage Rebate did not actually constitute a part of the "power supply charges" and could not therefore attract levy of interest in terms of Regulation 30.05 in the event of the petitioner's failure to pay the same.

4. Coming then to the alternative submission urged by Mr. Gururajan, the writ petition does not set up the case argued at the bar. It is not the case of the petitioner that no bill in terms of Regulation 30.01 was issued to the petitioner in respect of the amount that remained outstanding for the relevant period. The

liability of the petitioner to pay interest in terms of Regulation 30.05 is to be determined by reference to the bills issued by the respondents in terms of Regulation 30.01 to 30.04. The issue of these bills not being in dispute in the writ petition, it is difficult to see how the liability to pay interest could be avoided only because the Corporation had after dismissal of the writ petition demanded the payment of the outstanding amount in terms of its communication dated 14-11-1997. As a matter of fact, the said communication appears to have been issued in response to the petitioner's letter dated 29-11-1996 whereby it had informed the Assistant Engineer about the dismissal of the writ petition by this Court and asked for information as to the actual amount payable by it. The communication Annexure-C to the petition in these circumstances was a repetition of the demand that already stood made from the petitioner in terms of bills issued from time to time which the petitioner ought to have paid within the stipulated period of fifteen days to avoid any liability by way of interest. I have therefore no hesitation in rejecting the second limb of Mr. Gururajan's argument also.

5. That an interim order staying recovery of the bills from the consumer does not obliterate the liability to pay interest is also fairly well settled. Reference in this connection can be made to a Division Bench decision of this Court in the case of *Rashtrothana Parishat, Bangalore v Karnataka Electricity Board, Bangalore*, where the legal position has been summed up thus:

"Merely because this Court had earlier granted stay and permitted the appellant, during the pendency of his petition, to pay the electricity bills at the old rate, his liability to pay at the new rate in case of dismissal of his petition had not ceased. It was merely postponed as a result of the stay order. As a result of dismissal of the petition, he has been held to be under a legal obligation to pay the electricity bills at the new rates. The only effect of the said order was that during the pendency of his petition he was permitted to pay at the old rate and the respondent-Board was restrained from disconnecting the power supply on the ground of non-payment of bills at the new rate. As the petition was dismissed, the amounts which the appellant had not paid according to the new rate and which came to be paid later on, became belated payments and therefore he attracted the further liability of paying interest on such belated payments.

It has to be stated that the revised bill was given to the appellant and he has not paid the said amount in time. Therefore, there was delay in making the payments. According to the rules, such payments have to be regarded as belated payments and therefore interest becomes payable thereon. Therefore, we cannot accept the contention that in this case the appellant was not liable to pay interest as demanded by the Electricity Board".

6. Reference can also be made to the decision of the Supreme Court in the case of *M/s. Kanoria Chemicals and Industries Limited v Uttar Pradesh State Electricity Board and Others*, where their Lordships have specifically repelled the contention that an interim order against the recovery of dues from the consumer

would confer an immunity upon the consumer against payment of interest even if the writ petition is eventually dismissed. To the same effect is the decision of another Bench of this Court in the case of Karnataka Electricity Board, Bangalore Vs. Sandur Manganese and Iron Ores Limited and another, .

7. Mr. Gururajan lastly argued that the calculation of interest appeared to be erroneous. He pointed out that, even though the payment of entire amount claimed by the respondents has been made on 26-11-1997, the respondents have claimed interest upto December 1997. He referred to the statement enclosed with the respondent's communication dated 8-1-1993 to show that interest upto December 1997 had been calculated and claimed by the respondents. Mr. Gupta on the other hand urged that, the statement does not refer to interest including of the month of December 1997 and that December 1997 interest has not been calculated or demanded. He was however fair enough to concede that, if the respondents have claimed interest even for the period beyond the date of actual payment by the petitioner, the petitioner could point out the error in which event the respondents would correct the demand. This in my opinion sufficiently meets the argument advanced by Mr. Gururajan, It is open to the petitioner to point out any error in the calculation of interest as indicated above in which event the respondents are expected to correct the same so as to raise a demand strictly in accordance with the provisions of the Regulations.

8. In the result, I see no reason to interfere with the two demand notices issued to the petitioner. The writ petition fails and is accordingly dismissed. Reserving liberty to the petitioner to apply for correction of the bills if so advised.