(2018) 02 KAR CK 0026

In the Karnataka High Court

Case No : 18664 of 2013

Velankani Information Systems Private Limited	APPELLANT
Vs	
Bangalore Electricity Supply Company Limited	RESPONDENT

Date of Decision : 12-02-2018

Acts Referred:

Citation : (2018) 02 KAR CK 0026

Hon'ble Judges : Vineet Kothari

Bench : Single Bench

Advocate : Shridhar Prabhu, Pavan Sagar, Prasanna Kumar

Final Decision : Disposed off

Judgement

1. This Writ petition was filed with the following prayers:-

i) Call for records.

ii) Issue a writ in the nature of certiorari quashing the Assessment Order dated 19th February 2013 passed by the Respondent at Annexure-A

bearing No.AEE/S8/AAO/ SA/6502-05 and consequent demand letter bearing No.AEE(E)/S8/AAO/S-1/HT/01-04 dated 1st April, 2013 at

Annexure-B.

iii) Issue a writ of mandamus directing the respondent to apply and collect the electricity charges for the entire installation of the petitioner under

Revenue Register (RR) No.S8HT30 in respect of the operation of Deutsche Bank under category HT2A only;

iv) Issue a writ of mandamus directing the respondent to refund of excess amount deposited by petitioner receipt No.10338 dated 27th July 2009

and collected by the respondent based on agreement under HT- 2(B) tariff dated 25th June 2009.

v) Pass such other orders as this Hon''ble Court deems fit in the facts and circumstances of the case, including an order as to costs, in the interest

of justice and equity.

2. Heard the learned counsels for the parties on merits.

3. Both the learned counsels fairly submitted that the controversy in the present case is covered by a decision of this Court dated 27.11.2017

passed in W.P.Nos.57324-325/2015 (Talisma Corporation Private Limited Vs. Bangalore Electricity Supply Company Limited and connected

writ petitions, wherein, this Court has held in the said case as under:-

15. I have heard the learned counsels at length and perused the records.

16. In the considered opinion of this Court, the present writ petitions deserve to be allowed with costs.

17. It is surprising that the Respondent- BESCOM, a Govt.Company for distribution of power chose to disregard the Certificate

issued by the District Industries Centre to the effect that the petitioners-industries were engaged in the Software Development

business only. There is no material at all on record brought by the Respondent-BESCOM before this Court or otherwise to indicate

that these petitioners were engaged in any other business other than the Software Development.

18. From the facts given above, it is clear that these petitioners had not only obtained the relevant Certificates about their business

activities of being engaged in Software Development in the contemporary period when they commenced the business from the District

Industries Centre but also from the Director of IT & BT even though later in the year 2006 (Cognizant Technology) and in the year

2011 (Talisma Corporation) and in none of these Certificates issued by the Director of IT & BT, he has found anything contrary to

the petitioners viz., that they were throughout not engaged in the business of Software Development only or that they were carrying

on any other incidental or ancillary business other than the Software Development also, so as to segregate their power consumption

into two or more parts to contend that they would be entitled to the concessional Tariff under HT2(a) only partly and not for other

categories falling under ''commercial'' category under HT2(b) category.

19. Merely insisting upon the petitioners to obtain such Certificate from the Director of IT & BT in the year 2002 itself, when the said

Policy was announced by the Government of Karnataka, does not demolish the case of the petitioners when they claim that their

industry was through out engaged in the Software Development only. If the benefit of concessional rate of tariff under HT2(a) is

sought to be denied by the Respondent BESCOM to these petitioners industries, the burden was upon them (BESCOM) to bring on

record any such evidence and allow the petitioners to controvert the same.

20. Nothing of this sort has been done by the Respondents in this case. No reason has been assigned before this Court by the

Respondents-BESCOM to brush aside the Certificates issued by the District Industry Centre in the case of Talisma Corporation in

the first instance, much less, there is any justification for them to ignore the Certificate issued to another petitioner namely

M/s.Cognizant Technology by the Director of IT & BT himself in the year 2006 as quoted above.

21. This Court cannot appreciate the reasons assigned by the Ombudsman of Electricity in his order dated 24.06.2013 nor by the

Asst.Executive Engineer in the impugned orders passed against these petitioners. These authorities have not at all cared to give any

reasonable, plausible or sufficient reason to ignore or brush aside the Certificates issued by the other Departments of the State

Government which itself has issued the Millennium Policy 2002. The authorities of the Respondent- BESCOM cannot be permitted

to take arbitrary stands in the matter, contrary to the documents and Certificates issued by other Departments of the State

Government in an arbitrary manner.

22. There was no dispute from the side of the Respondent-BESCOM that Software Development Industry as an ''industry'' falls

within the category of HT2(a) of Tariff Schedule, but the only submission made before the Court was that since the petitioners did not

produce the Certificates issued by the Director of IT & BT initially, soon after the announcement of the Millennium Policy by the

Circular of 2002, they cannot be held entitled to the said concessional rate of power Tariff.

23. This contention of the Respondent- BESCOM has no merit at all and this Court does not find any substance in the same and the

same is liable to be rejected.

24. This kind of typical bureaucratic attitude on the part of the Authority at the level of Asst.Executive Engineer (Elec.) of

Respondent-BESCOM of turning the tables of the concessional rates of Tariff on the petitioners after so many long years and raising

huge demands against the petitioners, which definitely has an impact of discouraging and dampening of the industries in the State, not

to talk of the unnecessary litigation landing on the Boards of this Court, wasting precious public time of the Courts, man hours and

litigation expenses. Before taking such a stand of reversal of policy of the State itself in the impugned orders, the Respondent-

Asst.Executive Engineer (Elec.) did not even take care to seek any approval from his own higher authorities, so that such orders

could reflect a responsible stand taken by the Respondent-BESCOM, as an Organization, rather than the individual view of an

Officer at the lower echelon like that of Asst.Executive Engineer.

25. This even reflects badly on the internal working and hierarchical discipline of the Respondent-BESCOM itself, where such policy

decisions were also taken by the lower officials, perhaps even without the higher authorities being taken into confidence. Such a

casual, non-chalant and arbitrary attitude of the Respondents-Authorities creates more havoc rather than doing any public good or

public service in the matter.

26. The writ petitions therefore deserve to be allowed with costs to be paid by the Respondent-Asst.Executive Engineer in his

personal capacity and the same is quantified at Rs.25,000/- for each of the petition. The impugned orders passed by the Electricity

Ombudsman on 24.06.2013 as well as the Asst.Executive Engineer are quashed and set aside and it is further directed that any

amount paid under such impugned orders by these petitioners shall be liable to be refunded/adjusted against their future bills in a

phased manner with interest at the rate of 9% p.a. from the date of deposit till the date of adjustment/refund. The petitioners Software

Development Industries are entitled to concessional Power Tariff under HT2(a) throughout.

27. If the Respondent-BESCOM chose to refund the excess charges paid, it is free to do so, otherwise, to the extent of 50% regular

Power Tariff bills against the petitioners industries, the adjustment out of the amount already deposited by them under the impugned

orders shall be liable to be adjusted with interest and computation in this regard of the entitlement of their refund/adjustment shall be

made by the Respondents-Authorities of BESCOM within a period of one month from today, for which, the petitioners may make

their claims with the relevant documents before the Respondents-BESCOM, who will determine the amount of adjustment/refund due

to the petitioners with the aforesaid simple interest of 9% p.a. within a period of one month from today and costs to be paid by the

Respondent- Asst.Executive Engineer (Elec.) shall be paid separately by him from his personal resources to the each of the

petitioners within a period of one month from today.

28. The Writ Petitions are accordingly allowed with costs.

4. By agreement of both the learned counsels, this Writ Petition is also disposed of in the aforesaid terms. No costs.

