

(2016) 11 KAR CK 0007

In the Karnataka High Court

Case No : W.P. No. 44405 of 2016 and W.P. No. 15128 of 2016

Vishwas Concrete Products Private Limited

APPELLANT

Vs

Bangalore Electricity Supply Company Ltd Corporate Office

RESPONDENT

Date of Decision : 28-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Electricity Act, 2003 — Section 62, Section 65

Citation : (2017) 2 AirKarR 129

Hon'ble Judges : Vineet Kothari, J.

Bench : Single Bench

Advocate : Sri. A.V. Amaranathan, Advocate, for the Petitioner in W.P. No. 44405 of 2016 and W.P. No. 15128 of 2016; Sri. Pavan Sagar, For Sri P. Prasanna Kumar, Advocates, for the Respondent in W.P. No. 44405 of 2016 and W.P. No. 15128 of 2016

Final Decision : Allowed

Judgement

Vineet Kothari, J.—The petitioner, Vishwas Concrete Products Private Limited, engaged in the business of running a concrete mixing industrial unit situated at Chandapur and Yelahanka villages is having a HT power supply to the extent of 200 KV from the respondent-BESCOM and had been paying concessional rate of power supply under category HT-2(a) of the Tariff Schedule published by the respondent-BESCOM, as applicable to the industrial units.

2. Being aggrieved by the order at Annexure-C dated 22.07.2016 passed by the Assistant Executive Engineer (EI), Attibele Sub-Division, Chandapura, demanding difference of power tariff, treating the petitioner's unit as falling under HT-2(b) category, which provides for a higher tariff rate applicable to commercial establishments and the demand of Rs. 13,05,903.00 was raised against the petitioner, the petitioner has preferred this WP No.44405/2016 before this Court.

3. Mr. A.V. Amarnaihan, learned counsel for the petitioner submitted that the petitioner's industrial unit is carrying on the business of mixing sand, cement,

granite, additives with water in a proportionate manner and such mixed concrete is provided to the customers upon their orders and is transported to the construction sites in trucks in mounted transit Trucks. This activity, he urged, is an industrial activity only and cannot be said to be purely a commercial activity, falling within the scope of HT-2(b) Tariff Schedule and therefore, the Assistant Executive Engineer(AEE) was not justified in applying HT-2(b) Tariff Schedule vide Annexure-C dated 22,07.2016. He also submitted before the Court that the respondent-BESCOM itself had approached the Karnataka Electricity Regulatory Commission (KERC) seeking a clarification and adjudication from the said KERC and the stand taken by the respondent-BESCOM before the KERC itself was one favourable to the petitioner, where they stated that the redi-mix concrete should be included under LT5/HT-2(a) category of Tariff. The relevant paragraph XIII of the application filed by the respondent-BESCOM before the KERC seeking approval of the tariff is quoted below for ready reference.

" Redi mix concrete to be included in LT5 tariff Previously redimix concrete activity was included under LT5/HT2a category. In Tariff Order 2015, dated 02.03.2015 this activity is not included either under commercial or industrial activity. To prevent ambiguity in the field it is prayed before the Hon"ble Commission to include the said activity under LR5/HT2a category."

He therefore submits that the impugned order of the respondent-AEE is contrary to the stand taken by the respondent-BESCOM itself and the same deserves to be quashed by this Court.

4. On the other hand, learned counsel for the respondent-BESCOM submitted that upon inspection carried out by the authorities of the respondent-BESCOM, it was found that the petitioner was involved in commercial activity of mixing certain components like sand, cement, granite, additives etc. with water and supply the same to the customers upon their orders and which activity is nothing but a commercial activity, therefore the respondent-AEE was justified in passing the impugned order. He also submitted that under the provisions of Section 127 of Electricity Act, 2003, a regular appeal is provided to the appellate authority namely, the Superintending Engineer against the order passed by the AEE and, therefore, in view of the alternative remedy available to the petitioner-Company, the present writ petition is not maintainable. He also submitted that further appeal would lie to the KERC against the order passed by the Appellate Authority.

5. Having heard the learned counsel for the parties, this Court is of the opinion that the present writ petition deserves to be allowed. The reasons are as follows;

The Tariff Schedule of category HT-2(a) and 2(b) published by the respondent-BESCOM is quoted below for ready reference.

TARIFF SCHEDULE HT-2(a)

Applicable to Industries. Factories. Workshops. Research & Development Centres, Industrial Estates, Milk Dairies, Rice Mills, Phova Mills, Roller Flour Mills, News

Papers, Printing Press. Railway Workshops/KSRTC Workshops/Depots, Crematoriums, Cold Storage. Ice & Ice-cream mfg.

Units, Swimming Pools of local bodies. Water Supply Installations of KIADB and other industries, all Defence Establishments. Hatcheries, Poultry Farm, Museum, Floriculture, Green House. Bio Technical Laboratory, Hybrid Seeds processing Units, Stone Crushers. Stone cutting. Bakery Product Manufacturing Units, Mysore Palace illumination, Film Studios. Dubbing Theatres, Processing, Printing, Developing and Recording Theatres, Tissue Culture, Aqua Culture, Prawn Culture, Information Technology Industries engaged in development of Hardware & Software, Information Technology (IT) enabled Services/Start-ups/Animation/Gaming/Computer Graphics as certified by the IT & BT Department of GOK/GOI, Drug Mfg. Units, Garment Mfg. Units, Tyre retreading units, Nuclear Power Projects, Stadiums maintained by Government and local bodies, also Railway Traction, Effluent treatment plants and Drainage water treatment plants owned other than by the local bodies, LPG bottling plants, HT-2(a)(i) : Applicable to Areas under Bruhat Bangalore Mahanagara Palike (BBMP) and Municipal Corporation.

Demand Charges

Rs.180 /kVA of billing demand/month

Energy charges

For the first one lakh units

575 paise per unit

For the balance units

615 paise per unit

Railway Traction and Effluent Treatment plants.

Demand charges

Rs.180 /kVA of billing demand/month

Energy charges

540 paise per unit for all the units.

TARIFF SCHEDULE HT-2(b)

Applicable to Commercial Complexes. Cinemas. Hotels. Boarding & Lodging, Amusement Parks, Telephone Exchanges, Race Course, All Clubs, T.V.Station, All India Radio, Railway Stations, Air Port, KSRTC bus stations, all offices. Banks. Commercial Multi-storied buildings, APMC Yards, Stadiums other than those maintained by Government and Local Bodies, Construction power for irrigation, Power Projects and Konkan Railway Project, Petrol / Diesel and Oil storage plants, I.T.based medical transcription centers, telecom, call centers /BPO / KPO.

RATE SCHEDULE

HT-2(B)(I): Applicable to Areas under Bruhat Bangalore Mahanagara Palike (BBMP) and Municipal Corporation,

Demand Charges

Rs. 200 kVA of billing demand/month

Energy Charges

For the first two lakh units

735 paise per unit

For the balance units

765 paise per unit

HT-2(b)(ii): Applicable to Areas other than those covered under HT-2(b)(i)

Demand Charges

Rs. 190 kVA of billing demand/month

Energy Charges

For the first two lakh units

715 paise per unit

For the balance units

745 paise per unit

6. There is no dispute of facts that the petitioner's industry is a cement concrete mixing unit. It mixes sand, cement, granite and water with certain additives providing a ready mixture for the construction of buildings upon the orders placed by the customers as per their requirements. As against the broad description of the Tariff Schedule HT-2(a) quoted above including "Industries, Factories, Workshops etc" the Tariff Schedule given in HT-2(b) is restricted to commercial activities in "Commercial Complexes, Cinemas, Hotels, Boarding and Lodging, Amusement Parks, Clubs, T.V. Station etc.". the activity which the petitioner carries on cannot, by any stretch of imagination, fall under HT-2(b) category dealing with purely commercial activities and service activities like Cinemas, Hotels, Amusement Parks, Clubs etc. There is absolutely no justification for giving a restrictive meaning to the terms "Industries, Factories, and Workshops etc" employed in HT 2(a) Tariff Schedule category. Only a perverse and pedantic approach for them could perhaps take out the petitioner's industrial activities in to HT-2(b) category. Therefore cannot be a water tight compartment between the Industry and Commerce. Whatever an industry manufactures has to be sold also and therefore commercial activity to that extent will be necessarily an integral part of the industry itself. If a commercial activity

is an integral part of the industry, without any exception carved out by the respondent-BESCOM itself or KERC, one fails to understand what prompted the AEE to take out the petitioner's activity from out of HT-2(a) Tariff Schedule and place it under HT-2(b) Tariff Schedule. No such reasons have been assigned by him except saying that it is a commercial activity.

7. By no common understanding or well-known connotations of these terms employed in these two Tariff Schedules, the petitioner's industrial activity could be said to be falling outside the scope of HT-2(a) Tariff Schedule. The words "Industries and Factories" employed in HT-2(a) Tariff Schedule is not restricted to only those units carrying out the manufacturing activity in a narrow or limited sense as the respondent-AEE would want it to be. A new commercial article is being produced in the present case also. Concrete mixer by mixing cement, granite, water and additives, so as trader and common man understands, there is definitely a manufacturing activity involved and thus why it should not be an "industry" and there is no reason to hold it to be not so.

8. The so-called reasons assigned by the AEE in the impugned order are these not only against the clear and common understanding of these terms, but is also contrary to the stand taken by the respondent-BESCOM itself when they approached the KERC for a clarification and approval of their tariff for the concrete mixing unit to fall under the LT5/HT-2(a) category. Thus, the stand of the respondent-AEE is contrary to the stand taken by the Institution itself to which he belongs. Such a contrary stand cannot therefore be permitted to be taken by the said authority. A large number of industrial and commercial activities are included in the Tariff Schedule in HT-2(a) category published by the respondent-BESCOM itself and units like Bio Technical Laboratory, Stone Crushers, Film Studios, Dubbing Theatres, Information Technology Industries, Gaming and Computer Graphics etc. have been included in the said Tariff Schedule HT-2(a) by the respondent-BESCOM and where such broad categories of industrial and commercial units have been included in HT-2(a) category providing for them a marginally concessional rate, the impugned charging of a higher rate under category HT-2(b) as indicated above, included only purely commercial and service providing units like Amusement Parks, Clubs, Hotels, Cinemas etc. is an order perverse to its core and therefore such order cannot be sustained in law.

9. The plea of alternative remedy available to the petitioner-Company before the respondent-BESCOM is too weak to be entertained in such cases. As of now, even the KERC, where the respondent-BESCOM had approached for Tariff approval on the lines indicated above are in favour of the petitioner unit and which has not been decided by the KERC itself. It cannot be expected that the departmental authorities like the Superintending Engineer before whom an appeal lies under Section 127 of the Electricity Act, 2003 as contended by the learned counsel for the respondent also would have expeditiously decided such an appeal leaving the petitioner in a lurch and subjecting him to the higher tariff

rates unnecessarily in the meanwhile. Even otherwise, the availability of alternative remedy under the concerned statute is not a bar of jurisdiction to be exercised by this Court under Article 226 of the Constitution of India. It is only rule of discretion to be exercised by the Court in the facts of each case.

10. In the present case, this Court is satisfied and convinced that there is no need to relegate the petitioner-Company back to the alternative remedy, as this Court has come to the conclusion that the impugned order passed by the AEE has no justifiable foundation to stand and therefore deserves to be quashed.

11. Accordingly, WP No. 44405/2016 is allowed and the impugned order at Annexure-C dated 22.07.2016 is quashed and it is held that the petitioner's cement concrete mixing unit falls under HT-2(a) category of tariff published by the respondent-BESCOM and is entitled to and is liable to pay the tariff rates prescribed under HT-2(a) category only at concessional rates.

12. For the reasons indicated above, WP No.15128/2016 is also allowed and the impugned order Annexure-K dated 24.11.2,015 is quashed.

13. No order as to costs.