
(2015) 05 KL CK 0028

In the High Court Of Kerala

Case No : W.A. No. 1639 of 2014 in W.P.(C) 20999 of 2014

W. Electro Chemicals

APPELLANT

Vs

Kerala State Electricity Board and Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 142(b)

Citation : (2015) 05 KL CK 0028

Hon'ble Judges : P.R. Ramachandra Menon, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : J. Julian Xavier and Firoz K. Robin, for the Appellant; Sajeevkumar K. Gopal, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J.

1. The denial on the part of the the respondent Electricity Board in giving power connection to the petitioner's industrial Unit despite satisfying all the requirements under the relevant provisions based on the application submitted years back and interference declined by the learned single Judge in W.P.(C) No. 20999 of 2014, forms the subject matter of challenge in this appeal preferred by the prospective consumer.

2. The appellant/petitioner started an industrial unit way back in 1995; engaged in the manufacture of "Calcium Carbide" Due to various adverse circumstances, the unit came to be closed down in 2004. The power supply was cut off and the installation was dismantled. Years after, the Board came up with Ext. P1 Board Order, enabling the defunct units to revive the operation by giving some benefits, waiving some extent of liability. The writ petitioner sought for the benefit of Ext. P1, which was sanctioned. Ext. P2 bill was raised by the respondent Board to the tune of Rs. 6647902/-, which was satisfied by the writ petitioner before 31.03.2012. Thereafter, Ext. P3 representation was submitted for effecting re-

connection. The writ petitioner had also submitted Ext. P5 application on 28.03.2012 seeking to enhance the load from 500KVA to 1000 KVA so as to meet the requirements of the writ petitioner and to run the unit in a profitable manner, with the desired extent of production. The scheme was approved by the concerned authority/Chief Electrical Inspector by way of Ext. P6. The writ petitioner obtained S.T. Registration apart from obtaining clearance certificates from the Pollution Control Board as well as the District Industries centre, as evident from Exts. P8 and P9.

3. Despite satisfying the requirements as above, there was inordinate delay on the part of the respondent Board to accede to the request made by the writ petitioner for connection. This made the writ petitioner to approach the Green Channel Committee, where it was agreed from the part of the respondent Board that, on enhancement of power capacity of the Sub Station, the request of the writ petitioner would be acceded to and that the same required nearly three months' time. The minutes of the meeting of the Green Channel Committee is produced as Ext. P10. In spite of expiry of three months, the power supply was not effected, which made the writ petitioner to file Ext. P11 representation. Still, the plea raised from the part of the respondent Board was that there was no power allocation, which is sought to be contradicted with reference to the materials procured under the RTI Act. Reliance is sought to be placed on Ext. P13 and also the proceedings by way of Ext. P14 and P15 with reference to the capacity of the concerned sub station "before enhancement" and "after enhancement". Since the attempt made by the writ petitioner turned to be futile, the petitioner was constrained to approach this Court with the writ petition.

4. After considering the submissions and materials on record, interference was declined and the writ petition was dismissed. This was mainly with reference to the communication issued by the Board on 29.03.2014 to the writ petitioner, a copy of which has been produced as Ext R4(a), to the effect that by virtue of commencement of the "new Supply Code 2014, brought into force w.e.f. 01.04.2004, it was obligatory for the writ petitioner, which is a power intensive unit, to have satisfied necessary financial requirement for installing the "dedicated feeder". This according to the writ petitioner was not correct or sustainable, as the writ petitioner was knocking at the door of the respondent Board for the past several years, i.e. even much prior to the commencement of new Regulations/Supply Code and as such, the application of the writ petitioner ought to have been considered under the old Regulations and not under the new one.

5. We heard Mr. Harishankar R., the learned Counsel appearing for the respondent Board and also Mr. C.K. Karunakaran, who entered appearance on behalf of additional 7th respondent brought in the party array during pendency of the appeal. The said additional respondent came to be impleaded in view of the stand of the Board revealed from the pleadings raised from the part of the Board to the effect that the request of the appellant/petitioner cannot be acceded to,

also because of the application put-forth from the part of the additional 7th respondent for power connection.

6. A counter affidavit has been filed by the additional 7th respondent pointing out that the idea and understanding of the appellant is not at all correct and that both the appellant as well as additional 7th respondent are to be treated as "new consumers", mainly for the reason that no valid application as envisaged under the relevant provisions of the new Supply Code, 2014 had been preferred by the appellant before the respondent Board for getting power connection.

7. By virtue of implementation of new regulations/Supply Code 2014 w.e.f. 01.04.2014, particularly as mandated under Regulation No. 12, it is obligatory for the "Power Intensive Units" to meet the financial burden so as to provide necessary Feeder and there cannot be any exemption in this regard. Admittedly, petitioner's unit, manufacturing Calcium Carbide, is a "power intensive unit". It is also pointed out that, apart from approving the scheme, approval at different stages is contemplated including sanction to energise, to be issued by the competent authority under the Electrical Inspectorate. These requirements are still to be satisfied; both in the case of the appellant as well as additional 7th respondent and as such, they are almost in the same boat. It is further pointed out from the part of the additional 7th respondent that the alleged concept of "power allocation" is a misnomer in so far as the position is concerned after commencement of the Electricity Act, 2003. Under the said enactment, no power allocation is envisaged or necessary, anybody will be getting power supply subject to availability and satisfaction of the relevant requirements in accordance with the relevant provisions of law.

8. Mr. Harishankar R., the learned Counsel representing the respondent Board submits that there is no dispute with regard to nature of operation of the appellant/petitioner and that the appellant/petitioner cannot be given power supply, unless the requirements under Regulation No. 12 of the new Supply Code, 2014 are satisfied. The old Regulations have no application and the same stands repealed as per Regulation No. 178 of the New Regulations, submits the learned Counsel.

9. The learned Counsel for the appellant points out that, when the matter came up for consideration earlier, it was submitted from the part of the appellant/petitioner, that the appellant/petitioner would be satisfied for the time being, if connection was provided with the original capacity of 500 KVA, which was in existence earlier when dismantling was effected way back in the year 2005. It is stated by the learned Counsel for the Board that, it cannot be acceded to, for the reason that the term "power intensive unit" stands defined as per Regulation No. 2(66), which apart from defining the unit with reference to the load factor, also identifies particular/specified units with reference to the nature of production/product. Regulation 2(66) reads as follows:

"66. "Power intensive unit" means an industrial unit which consumes electricity

at HT or EHT level:-

(i) for induction are furnace; or

(ii) for the manufacture of any one or more products namely calcium carbide, caustic soda, charge chrome, Ferro-chrome, Ferro-manganese, Ferro-silicon, Ferro-alloys, Silicon Carbide, sodium metal, potassium chlorate, sodium chlorate and other chlorate and per chlorates; or

(iii) for any one or more of the processes namely, melting of metals and alloys electro chemical processes, electro thermal processes; or

(iv) for manufacture of products for which cost of electricity is more than twenty five percent of the cost of product manufactured; or

(v) for heating load exceeding twenty percent of its total connected load"

The product that is being manufactured by the appellant being Calcium Carbide, it very much comes within the bar under Regulation 2(66). It is also pointed out that the version of the appellant that there was adequate power supply and that the matter was unnecessarily and arbitrarily protracted by the Board is far from the track of truth.

10. After hearing both the sides, this Court finds that there is disputed question of facts, with regard to availability of power after enhancement of the capacity of the Sub Station. Materials are produced from both the sides. But the "fact finding exercise" cannot be done by this Court within the limited frame work as to the permissible extent of scrutiny. If at all there was any lapse or callous inaction on the part of the respondent Board in considering the application of the appellant at the relevant time, i.e., before commencement of the new Regulations and any adverse consequence has been resulted to the appellant, it is for the appellant to pursue appropriate remedy for compensation/damages, based on the pleadings and evidence to be let in; with regard to which this Court does not intend to express any opinion.

11. Coming to the scope of interference, the factual position has been adverted to by the learned Single Judge with reference to the pleadings raised from both the sides and interference has been declined referring to Ext. R4(a) dated 29.03.2014 issued by the Board alerting the appellant as to the necessity to satisfy the requirements under Regulation 12 of the new Supply Code 2014; which has come into force w.e.f. 01.04.2014. Of course, there is a case for the appellant that the said communication was never served to the appellant/petitioner and that it was actually issued after commencement of the new Regulations. The learned Judge has observed that it was open for the appellant to have challenged Ext. R4(a) by way of appropriate proceedings, which admittedly was not done by amending the writ petition.

12. During the course of hearing, the appellant pointed out that the accrued rights cannot be taken away, placing reliance on the decision rendered by the

Apex Court in Anil Kumar Goel v. Kishan Chand Kaura [2008 (1) KLT 50 (SC)]. We have gone through the said judgment, which deals with the scope of proviso to Section 142(b) of the Negotiable Instruments Act, holding that it is not retrospective (paragraph 8). There is no dispute with regard to the said proposition that accrued rights cannot be taken away. The question is whether the appellant/petitioner has got any vested right/accrued right to have power connection prior to 01.04.2014.

13. It is seen from the materials on record that the factual position sought to be asserted from the part of the appellant has been vehemently disputed from the part of the respondent/Board. Unless a finding is rendered against the stand taken by the Board and in favour of the appellant/petitioner, there cannot be an inference with regard to the alleged accrued rights. Even otherwise, preferring an application before the concerned authority for power connection by itself cannot create any vested right to have the matter considered in accordance with the provisions of law as on the date of application. Various aspects have to be considered by the competent authority for considering and dealing with the matter pursuant to the application. During the pendency of the proceedings, new Regulations have come into existence and the new Regulations do not draw any exception with reference to the "pending applications". In other words, the new Regulations do not say anywhere, that the pending applications preferred before the date of commencement of new Regulations i.e. 01.04.2014 will have to be dealt with under the old Regulations.

14. From the above, it is clear that the case sought to be built up by the appellant/petitioner with reference to Ext. P5 application preferred before the commencement of the new Regulations, to have it acted upon and dealt with under the old Regulations does not have any merit or bona fides. Interference is declined and the appeal stands dismissed.