

Rajesh Vs. K.S.E.B.

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Court : Kerala

Decided On : Jan-20-2006

Reported in : 2006(1)KLT686

Judge : K.S. Radhakrishnan, Ag. C.J. and; K.T. Sankaran, J.

Acts : Electricity (Supply) Act, 1948 - Sections 79

Appeal No. : W.P. (C) No. 38089 of 2003

Appellant : Rajesh

Respondent : K.S.E.B.

Advocate for Def. : T.G. Rajendran, Adv.

Advocate for Pet/Ap. : N.A. Ali,; Sudheer Ganesh Kumar,; R.B. Premod and;

Disposition : Petition dismissed

Judgement :

K.S. Radhakrishnan, Ag. C.J.

1. Whether the Kerala State Electricity Board (in short 'the Board') is entitled to claim any amount under the minimum guarantee agreement after disconnection of the electricity supply is the question that arises for consideration in this case.

2. Learned counsel for the petitioner placing reliance on the decision of a Division Bench of this court in *Meledam Saw Mills v. K.S.E. Board* 1998 (2) KLT 227 contended before the learned single Judge that once disconnection has been effected, minimum guarantee agreement also ceases to exist, consequently the Board has no legal right to demand any amount under the minimum guarantee agreement. Learned single Judge found that the provisions of the conditions relating to supply of electrical energy which came into force on 1.1.1990 was not considered by the Division Bench and hence referred the matter to the Division Bench.

3. Petitioner started a wooden furniture industry under the name and style 'Parayakath Furniture Industries' in Ward No. 3 of Kanjirapuzha Panchayath. Industry was registered as an S.S.I. Unit on 22.1.1998. Petitioner obtained power connection on 8.12.1997 on the basis of the minimum guarantee agreement executed by him with the Board. He has to pay Rs. 1,200/- per month to the Board irrespective of the fact whether the unit is consuming energy or not. Petitioner's unit had started commercial production on 10.12.1997. He had defaulted payment of electricity charges. Consequently first respondent on 26.10.1998 disconnected supply. Later supply of electrical energy was restored and was again disconnected due to non payment of electricity charges. Later petitioner was served with communication dated 11.11.2003 demanding him to pay an amount of Rs. 37,203/- towards the total amount due under the minimum guarantee agreement.

4. Counsel for the petitioner submitted that the Board has no legal right to demand the amount due under the minimum guarantee agreement once the electricity supply is disconnected. Counsel submitted that after disconnection, the said unit was not functioning and hence the petitioner is not legally bound to pay the amount demanded by the Board. Reference was made to the decision in *Meledam Saw Mills'* case, *supra*.

5. Standing Counsel appearing for the Board on the other hand contended that the petitioner having executed the minimum guarantee agreement is bound to pay the amount guaranteed. Reference was made to various clauses in the agreement and the provisions of the Conditions of Supply of Electrical Energy, 1990. Counsel

submitted that in case of default Board has got legal right to disconnect the supply and recover the, minimum amount guaranteed under the agreement.

6. Conditions relating to supply of electrical energy have been framed by the Board in exercise of the powers conferred under Section 79(j) of the Electricity (Supply) Act, 1948 which came into effect on 1.1.1990. Clause 4 of the Conditions of Supply of Electrical Energy deals with Line extension and Minimum Guarantee Agreement. The said provision is extracted below for easy reference.

4. Line extension and Minimum Guarantee Agreement.

(a)(1) If the application is from an area where service can be effected only by extending H.T. Lines, installation of transformer and/or L.T. Distribution lines, then an estimate for the work will be prepared and the prospective consumer(s) shall guarantee a minimum annual revenue return of 25% of the capitalised cost of the works for a period of seven years. If the beneficiaries are willing to execute the Minimum Guarantee Agreement, the administrative sanction to the estimate for work will be issued and the parties asked to execute the Minimum Guarantee Agreement in the Form No. 8 annexed, within 3 months. If the agreement is executed within this time, technical sanction will be issued and work will be taken up for execution according to priority. The Minimum Guarantee Consumers can register their services along with the Minimum Guarantee Agreement by paying their security deposits even though their internal installations may not have been completed. For more details on Minimum Guarantee Agreement see para 20. (After completion of the line extension work, the guarantor(s) will be intimated of the power availability and readiness of the Board to supply power by registered post or personal delivery with due acknowledgement. This guarantor(s) shall register service connection within three months from the date of receipt of such intimation.)

(2) If the guarantor(s) registers service connection within three months from the date of receipt of intimation of the readiness of the Board to supply power the guarantor(s) shall be given notional priority treating the service connection as having been registered on the date of acceptance of the minimum guarantee agreement. If the guarantor(s) fails to register the service within three months from

the date of receipt of such intimation, he/they shall pay unconnected minimum (UCM) charge which will be equal to the minimum amount guaranteed by him/them plus interest at the ruling rate till the date of registration of the service. On payment of such amount the service shall be given notional priority from the date of acceptance of minimum guarantee agreements. If the guarantor(s) fails to register the service within the aforesaid period or discontinues to receive the supply, before the expiry of guarantee period, he/they will be liable to pay the guaranteed minimum charge plus interest at the ruling rate as per the terms of the minimum guarantee agreement.

Clause 20 deals with unremunerative works and minimum guarantee agreement, which says that whenever new works are to be carried out to effect supply to prospective consumers, such works will be taken up only if they will fetch the required minimum return. The intention of executing the minimum guarantee agreement is to ensure that the required minimum revenue return is forthcoming and would be charged only until the line extension becomes self remunerative as per the norms fixed by the Board from time to time.

7. We have already indicated that the object behind the execution of the agreement is to ensure that minimum revenue required is forthcoming for unremunerative works under the minimum guarantee agreement. Power is conferred on the Assistant Executive Engineer to review whether the line has become self remunerative. Once it is self remunerative it is also open to the Board to waive the minimum guarantee amount guaranteed in the event of which consumer need only pay for the actual consumption of energy. Above is the purport of the minimum guarantee agreement and the liability of the relevant conditions on executing the minimum guarantee agreement.

8. We are of the view, the decision in Meledam Saw Mills' case, supra, would not apply to the facts of this case. The Division Bench was dealing with a situation prior to the coining into force of the Conditions of Supply of Electrical Energy, 1990. An identical question came up for consideration before the Division Bench of the Andhra Pradesh High Court in Thrimurthy Steel Industries v. A.P .State Electricity Board 1997 (1) An. W.R. 587 and the court interpreting similar

provisions of the Conditions of Supply held that the consumer is liable to pay minimum charge even after the service is disconnected. The same is the view taken by the Division Bench of the Allahabad High Court in *Pilibhit Ispat (Pvt) Ltd. v. U. P. State Electricity Board* : AIR1996 All329 . Same view has been taken by the Karnataka High Court in *Karnataka State Electricity Board v. D.P. Gurumoorthy* : AIR2000 Kant214 and the Jharkand High Court in *Rishi Cement Co. Ltd. v. Bihar State Electricity Board* AIR 2001 Jharkhand 64. The Apex Court in *Bihar State Electricity Board v. Green Rubber Industries and Ors.* : [1989]2SCR275 has also adopted the same view. On law and facts, we are in agreement with the Board that it can demand amount under the minimum guarantee agreement even after the disconnection of supply till the line becomes self-remunerative. The reference is answered accordingly and the Writ Petition is dismissed.

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