

CASE NO.:

Appeal (civil) 2247 of 2001

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PETITIONER:

M/S. K. D. INDUSTRIES

Vs.

RESPONDENT:

BIHAR STATE ELECTRICITY BOARD & ORS.

DATE OF JUDGMENT: 21/03/2001

BENCH:

S. Rajendra Babu & S.N. Variava.

JUDGMENT:

S. N. VARIAVA, J.

L...I...T.....T.....T.....T.....T.....T...J
Leave granted.

In these Appeals the only question urged before us is whether low tension industrial users are entitled to exemption from payment of minimum guarantee charges as per the Industrial Policy framed by the Government of Bihar in 1995. In the Appeal arising from SLP 17210 of 2000 other questions are also raised. However they are not pressed before us. The relevant portions of the Industrial Policy read as follows:

"9.4 PRIORITY TO INDUSTRIAL CONNECTION

With a view to facilitating timely start up of an industrial project, over-riding time bound priority would be given to L.T./H.T. Industrial connection.

9.5 POWER TARIFF

Power tariff would be reviewed and simplified to provide power at tariff comparable with neighbouring states to industrial units.

9.6 POWER INCENTIVE

- exemption from payment of minimum guarantee charge for new industrial units having connected load upto 500 KVA

- exemption from Electricity Duty for 5 years on captive power generation upto 25 MW for own consumption to new industrial units.

- loads upto 99 H.P. to be made available on L.T. for new connection to industrial units.

- special arrangements for expeditious clearance for rebate for non supply of power to industrial undertakings."

Pursuant to this Policy the Respondents passed a Resolution dated 11th October, 1996. The relevant portion reads as follows:

"The Board in its 443rd meeting, vide Resolution No. 6917, has decided to implement the directive issued by the State Government under Section 78A of the Electricity Supply Act, 1948 by Resolution No. 3493 dated 3.9.1996 of the Department of Energy.

Accordingly, the following benefits will be given to the consumers:

1. Units which come into production during 1.4.1993 to 31.8.2000 and the defined units undertaking expansion/diversification, whose connected load is upto 500 (five hundred) KVA, are exempted from payment of Minimum Guarantee (Minimum Base Charge) for five years from the date of connection."

The Appellants in both these Appeals have set up industrial units in the State of Bihar. They have been given low tension connections. However, in spite of the policy decision granting exemption from payment of minimum guarantee charges they were forced to pay minimum guarantee charges. Therefore, they challenged the levy of minimum guarantee charges. Their Petitions came to be dismissed by the single Judge of the High Court. M/s. K.D. Industries also filed an Appeal which has been dismissed by the Division Bench of the High Court at Patna. The Appellants have thus filed these Appeals.

Mr. Sinha submitted that Para 9.4 shows that the Policy applies both to low tension as well as high tension industrial connections. He submitted that Para 9.6 had to be read with Para 9.4. He submitted that a joint reading of the two paragraphs shows that the exemption is not just for high tension connections but also for low tension connections.

On the other hand, Mr. Reddy submitted that low tension connections are always referred to in terms of Horse Power (H.P.), whereas high tension connections are always referred to in terms of KVA basis. He submitted that the Government's Policy granted exemption, from payment of minimum guarantee charges, only to connections having load upto 500 KVA. He submitted that this itself made it clear that it was only in respect of high tension connections. He submitted that this was further clear from fact that Para 9.6 itself provides that load upto 99 H.P. was to be made available on low tension for new connections. He relied upon the Tariff Notification issued by the Bihar State Electricity Board. From this he pointed out that in respect of high tension connections "minimum base charge" is collected, whereas from low tension connections a "minimum guarantee charge" is collected.

We have considered the submissions of the parties. The question which arises for consideration is whether the State Government, in its policy direction, was granting exemption from payment of minimum guarantee charges only to high tension connections or it was granting exemption even to low tension connections. The Government would be the best party to answer this question. We have been shown an Order dated 10th September, 1997 in C.W.J.C. No. 3241 of 1997. In

this case also the question was whether under the policy the low tension connections were exempted from payment of minimum guarantee charges. The Court called upon the Additional Advocate General to seek clarification from the Government. The Government then clarified that the Industrial Policy did not make any distinction between high tension and low tension connections. The Government clarified that subject to other conditions of the Policy all units having connected loads upto 500 KVA were covered by the exemption. The Government having so clarified it is now not open to contend that the Government's Policy did not grant exemption to low tension connections. Even otherwise, in our view, the provisions of Paras. 9.4 and 9.6 have to be read together. A conjoint reading makes it clear that the Government is aware that there are low tension connections and high tension connections. Whilst granting exemption the Government is not specifically excluding low tension connections. Even in Para 9.6, when the Government wants to refer to low tension connections it specifically does so. Thus the only conclusion can be that if the Government wanted to exclude low tension connections they would have specifically done so. The words used in the policy direction are "minimum guarantee charges". Thus, even on basis of Mr. Reddy's submission this must apply to low tension connections. We see no substance in the argument that low tension connections are only referred to in terms of HP. We have seen the Tariff Notification issued by the Respondents. The Tariff Notification contains conversion tables for converting Kilowatts into Kilovolts, Kilovolts into Horse Power, Horse Power into Kilovolts etc. Therefore, these are convertible terms. This is clear from the Tariff Notification which inter alia provides as follows:

"LOW TENSION INDUSTRIAL AND MEDIUM POWER

(SYMBOL : LTIS)

1. Applicability:

(i) For use of Electrical motors and other industrial appliances and medium power of less than 80 HP. If consumer desires to take more than one LT connection in the same premises the total installed load shall be below 80 HP. The use of Arc Welding Set, Electric Motors in Public Water Works, Flour Mills, Oil Mills, Dal Mills, Rice Mills, Atta Chaki Hullers, Spellars, etc. will also be covered under this category.

(ii) Existing consumer having load of 80 HP and above will be charged at rates applicable to HTS-1." (Emphasis supplied)

Thus it is to be seen that low tension connections having loads upto 80 Horse Power and above remain low tension connections but would then pay charge at rates applicable to high tension connections. It is this 80 Horse Power which has, in the Policy, been increased now to 99 Horse Power. Even though they pay rates applicable to high tension connection, they are referred to in terms of HP.

Faced with this situation Mr. Reddy submitted that the Respondents had not fully accepted the Government Policy and had by their Resolution dated 11th October, 1996 only granted exemption to high tension connections. He submitted

that this is made clear by the fact that in the Resolution the words used are "minimum base charge" and "for connected load upto 500 KVA". Mr. Reddy relied upon Section 78A of the Electricity Supply Act, 1948 and submitted that Government directions were not necessarily binding on the Respondents. He submitted that the Respondents could dispute the direction issued by the Government. He relied upon the case of Ester Industries Ltd. v. U.P. State Electricity Board reported in (1996) 11 SCC 199, wherein it is held that the State Government's policy direction for grant of developmental rebate at a specified rate to newly set up industries was not binding on the State Electricity Board and that the High Court could not in exercise of powers under Article 226 direct the Board to implement such direction. He submitted that in this case the Respondents had chosen not to fully accept the policy direction of the State Government and had accepted it only in respect of high tension connections. He submitted that the High Court was right in refusing to grant any relief to the Appellants.

We see no substance in this submission. The Board is accepting the Government's directions given to it under Section 78A of the Electricity Supply Act. In its Resolution it is granting exemption from payment of minimum guarantee (minimum base charge). The Respondents are well aware of the difference between low tension connections and high tension connections. If, as is claimed, the term "minimum guarantee charge" is not used for high tension connections, then they would not have used that term at all in the Resolution if they wanted to restrict the exemption to high tension connections. Advisedly they have used both the terms "Minimum Guarantee" and "Minimum Base Charge". This itself shows that the exemption applied to both types of connections. Respondents have not stated that such exemption would not be granted to low tension connections. In our view, the Respondents having adopted the direction of the Government are bound to comply with those directions. So long as the other conditions of the Police decision are complied with the exemption has to be for both high tension connections as well as low tension connections.

In this view of the matter, we set aside the Orders of the High Court and allow the Appeals on this point. It is not disputed that Appellants are otherwise entitled to exemption. Thus Respondents must now repay to the Appellants amounts received as Minimum Guarantee Charges, which are in excess of payments due for actual consumption. Such refund to be made within six weeks from today. In the circumstances of the case, there will be no Order as to costs.