Gopisetti Venkataratnam and Others

Vs

The Vijayawada Municipality and Others

Civil Appeal No. 69 of 1964

(K. Subha Rao, R. S. Bachawat, J. C. Shah JJ)

05.03.1965

JUDGMENT

SUBBA RAO, J.

On November 22, 1927, the Government of Madras, in exercise of its powers under s. 3(1) of the Indian Electricity Act, 1910 (IX of 1910), hereinafter called the Act, issued a licence to the Bezwada (now Vijayawada) Municipal Council for the supply of electric energy within the municipal limits of Bezwada at rates not exceeding the maximum charges given in the third annexure to the said licence. The appellants, who are some of the consumers of electric energy for domestic and industrial purposes, entered into agreements with the licensee for the supply of electric energy to them for domestic, industrial and other purposes, agreeing to pay the current official scale of rates. On December 13, 1940, the Municipality passed a resolution bringing into force new rates for the supply of electric energy from April 1, 1940. The consumers paid the rates so fixed till the year 1956. On April 30, 1956, the Municipal Council passed another resolution enhancing the rates from 1-4-1956. The appellants filed a representative suit against the Vijayawada Municipality in the Court of the District Munsif, Vijayawada, for a declaration that the said resolution dated April 30, 1956, passed by the Municipal Council was illegal, invalid and unenforceable and for an injunction restraining the said Municipality from collecting charges from the consumers of electric energy in the licensee's area at the new revised rates in pursuance of the impugned resolution. The learned District Munsif held that the demand of enhanced rate was legal and valid and dismissed the suit. On appeal, the learned Subordinate Judge held that the levy from the date of the said resolution was good, but it could not be given retrospective operation. He further held that the claim for duty at half an anna per unit was invalid. In the result he modified the decree of the District Munsif. On a further appeal, a Division Bench of the Andhra Pradesh High Court confirmed the decree of the Subordinate Judge. By special leave the present appeal has been filed in this Court.

Mr. A. V. Viswanatha Sastri, learned counsel for the appellants raised before us the following two contentions : (1) The rates agreed upon between the consumers and the Municipality cannot be unilaterally altered and increased by the Municipality to the prejudice of the consumers and, therefore, the said resolution dated April 30, 1956, was invalid and unenforceable; and (2) as the said resolution was passed without obtaining the previous sanction of the State Government under s. 21(2) of the Act, it was void for that reason also.

The first contention turns upon the relevant clauses of the agreement entered into between the Municipal Council and the consumers. Ex. B-4 is one such agreement date May 27, 1932, between the Municipality and one of the appellants herein. The material clauses of the agreement read :

Para, IV. The consumer shall pay to the licensee for all electrical energy so supplied at the rates and in accordance with the terms, given in the licensee's Current Official Scale of rates and the signing of this Agreement is held to imply concurrence in the terms of the said Scales of rates.

Provided that the minimum rates as specified therein shall be paid irrespective of whether energy to the extent has been consumed or not.

Para, V. A consumer under this Agreement is required to state (see Schedule) under which of the rates set out in the licensee's Official Scale of energy Rates, he desires to be charged.

Para, X. This Agreement shall be read and construed as subject in all respects to the provisions of the Bezwada Municipal Electric Licence, 1927, and to the provisions of the Indian Electricity Act 1910, and of any modification or re-enactment thereof for the time being in force thereunder so far as the same respectively may be applicable. The supply of electrical energy under this agreement is subject to following among other provisions of law, namely :-

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The schedule above referred to.

(2) Purposes to which the supply is to be given, and in the case of domestic supply under which rate to be charged, as referred to in paragraph V :

(a) (Supply) Domestic Purposes.

(b) (Rate) Rs. 0 - 6 - 0 per unit.

(3) Maximum electrical power required by the consumer :

0 - 54 K.W.

(4) Minimum monthly charge : Rs. 2 - 8 - 0 in accordance with (a) class rate in the Schedule of Rates.

The Schedule of Rates mentioned in this agreement presumably refers to scale of rates fixed by the resolution of the Municipality. The conflicting arguments centre on the question whether the words "current official scale of rates" in para. IV relate to the scale of rates current on the date when the agreement was entered into or refer to the scale of rates current from time to time in accordance with the resolution passed by the Municipality. The expression "current" means "vogue or prevalent"; and "current rate" may mean the rate obtaining at a particular time or at a future time or from time to time. The term goes well with the present, future and recurrent. It is capable of different meanings depending upon the context or setting in which it appears. As the meaning of the word is ambiguous, it is legitimate, in order to ascertain its true meaning, not only to study the document as a whole but also to ascertain its meaning from the circumstances whereunder the said agreement came into existence. Under para. X of the agreement the said agreement shall be subject to the provisions of the licence and the provision of the Indian Electricity Act, 1940, that is to say the said provisions are incorporated by reference into this agreement. Under the licence the licensee

is precluded from charging rates higher than those prescribed thereunder. On April 1, 1940, the Electricity Department of the Vijayawada Municipality prepared a document styled as "Conditions and Rates of Supply". It does not contain any statutory rules, but only administrative directions in regard to providing, inter alia for the method of entering into agreements and for charging rates for the energy supplied. This embodies the administrative practice of the Municipality in the matter of charging rates for the energy supplied. Paragraph 15 thereof, under the heading "Method of charging for current", reads :

> "The price and method of charging for current supplied shall be such as may from time to time be fixed by the licensee in accordance with the provisions of the Act and of his licence, or such as may be made subject of special agreement between the consumers and the licensee."

This makes a distinction between the official rate and the contractual rate. The official rate is that fixed by the licensee from time to time and the contractual rate is that fixed by special agreement between the parties. It may be assumed that this dual method is followed by the Municipality in the matter of entering into agreements. The form of application prescribed for the supply of electric energy contains the following clause :

> "I agree to pay for the said energy, service connection and other dues including the deposit of such security as may be demanded in accordance with the scale of rates and the rules of the licence."

The scale of rates in the context means the official scale of rates that may be fixed by the Municipality. When an application is filed an obligation is imposed under s. 22 of the Act on the licensee to supply energy, except in so far as is otherwise provided by the terms and conditions of the licence, on the same terms as those on which any other person in the same area is entitled in similar circumstances to corresponding supply. Section 23 of the Act says that a licensee shall not, in making any agreement for the supply of energy, show undue preference to any person. The combined operation of these provisions is that the licensee cannot discriminate between the applicants in the matter, among others, of rates chargeable for the energy supplied. Unless the Municipality enters into an agreement with a consumer enabling it to charge him at a rate fixed by it from time to time, it would be very difficult for the Municipality to maintain equality of treatment between the consumers in the matter of rates. The illustrate, if under certain agreement a rate obtaining at a particular date is agreed upon and the rate is binding on the Municipality even if it is raised later on, the Municipality may be guilty of discrimination which it is asked to avoid by statute if it charges other consumers at a higher rate. This difficulty can be avoided if there is a term in the agreement executed by every consumer that he will pay the official rate fixed by the Municipality from time to time subject to the maximum fixed by the licence. That apart, a public body like the Municipality in supplying energy to different consumers cannot run the risk of incurring loss by agreeing to fixed rates, for the Government may increase the licence fee, as it has done in the present case, or there may be a rise in the cost of distribution. On the other hand, if the term in the agreement is flexible to meet the said eventualities, the maintenance of continuous supply of electric energy may be assured without any loss to the public body. The circumstances obtaining at the time when the agreements between the consumers and the Municipality were entered into were these : The licensee had power to fix the rates subject to the maximum prescribed by the Government. The administrative directions provided for charging for the current supplied at rates that may be fixed from time to time. The Municipality was in practice fixing the rates from time to time having regard to the relevant circumstances. The said rates fixed by the Municipality from time to time were the

"Official Scale of Rates". The consumers applied to the Municipality for supply of energy, agreeing to pay for the energy supplied at the scale of rates fixed by the Municipality.

With this background if we look at paragraphs IV and V of Ex. B-4 the meaning of the expression "current official scale of rates" will be clear. Paragraph IV speaks of "current official scale of rates" whereas para. V mentions "official scale of energy rates". These two paragraphs bring out the distinction between the official scale of rates and the official scale of energy rates : the former refers to the scale of rates maintained by the Municipality as modified from time to time by appropriate resolutions, and the latter refers to the different rates payable in respect of energy supplied for different purposes. Under para. IV the consumer specifically agreed to abide by the official scale of rates. If the intention of the parties is that the consumer shall pay only the scale of energy rates obtaining at the time the agreement is entered into, there is no necessity for this specific agreement, for para. V serves that purpose. On the other hand, the said express condition and the use of the word "current" make it clear that the consumer agrees to pay at the official scale of rates current from time to time. The adjective "current" will become a surplusage, if the intention is to pay the rates obtaining at the time the agreement is entered into, for the agreement itself gives the existing rates. The use of the adjective "current" emphasizes the fact that the official scale of rates is not the existing rates, but the scale of rates current from time to time. We have, therefore, on a reasonable construction of the ambiguous expression "current" having regard to the entire document and the surrounding circumstances, come to the conclusion that the words "current official scale of rates" in para. IV of the agreement mean the official scale of rates current or prevalent from time to time during the currency of the agreement. If so, it follows that the appellants were under a contractual liability to pay the enhanced rates covered by the impugned resolution.

The next question turns upon s. 21(2) of the Act, which, as it then stood read :

> "Subject to the provisions of sub-section (1), a licensee may, with the previous sanction of the State Government given after consulting the local authority, make conditions not inconsistent with this Act or with his licence or with any rules made under this Act, to regulate his relations with persons who are or intend to become consumers, and may with the like sanction given after the like consultation add to or alter or amend any such conditions; and any conditions made by a licensee without such sanction shall be null void."

Under this sub-section the licensee cannot make conditions to regulate his relations with the consumers or amend any such conditions without the sanction of the State Government. Mr. Viswanatha Sastri argued that to enhance the rates was to alter a condition within the meaning of sub-s. (2) of s. 21 of the Act and as admittedly the sanction of the State Government was not obtained before such alteration, the said resolution was void. The learned Solicitor General contended that s. 21(2) of the Act was a general provision relating to conditions, whereas s. 23 thereof was a specific provision in regard to fixing of rates and that s. 23 would, therefore, prevail over s. 21 and that s. 23 did not prescribe the sanction of the Government as a condition precedent for fixing the rates, Mr. Tatachari, while supporting this argument, added that on the interpretation of para. IV of the agreement suggested by the respondents there was no alteration in the conditions at all and, therefore, there was no scope for invoking s. 21 of the Act. It is not necessary to express our opinion in this case on the question whether s. 23 excludes the operation of s. 21(2) of the Act in the matter of fixation of rates, for we are satisfied that there is no alteration of any condition of the agreement within the meaning of s. 21(2) thereof. We have held that under para. IV of the agreement that was entered into between the consumers and the licensee, the consumers agreed to

pay the rates that were fixed by the Municipality from time to time. If the said term was a condition within the meaning of s. 21(2) of the Act, there was no change at all in that condition, for the change in the rates was not in derogation of the condition but in terms of it. To state it differently, the same condition embodied in para. IV of the agreement continued to operate between the parties even after the rates were enhanced under the impugned resolution. Therefore, no sanction of the State Government was necessary for enhancing the rates.

No other point was raised before us. In the result, the appeal fails and is dismissed with one set of costs.

Appeal dismissed.

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