

Western M. P. Electric Power and Supply Company Ltd

Vs

State of U. P. and Another

Civil Appeal No. 2482 of 1968

(J.C. Shah, V. Ramaswami - I JJ)

07.03.1969

JUDGMENT

SHAH, J. -

1. The Western U.P. Electric Power and Supply Company Ltd. - hereinafter called the 'the Company' - holds a licence under Section 3(1) of the Indian Electricity Act 9 of 1910 to supply electricity in certain areas in the State of U.P. Messrs Hind Lamps Private Ltd. set up a factory for manufacturing electrical equipment within the area of supply of the Company. Hind Lamps was receiving energy from the Company. Hind Lamps made several representation to the State Government that the supply of energy by the Company was inadequate to meet its requirements and was "interrupted and fluctuating". Meeting were held between the Company, the State official and Hind Lamps for devising means to ensure uninterrupted and adequate supply of emergy required by Hind Lamps, but there was no improvement in the supply position.

2. Hind Lamps then applied to the Government of U. P. to grant direct supply of electrical energy from the State Electricity Board. The State Government by order, dated December 26, 1961, issued in exercise of the powers conferred by Section 3(2)(e)(ii) of the Indian Electricity Act, 1910 as amended by the Indian Electricity (Uttar Pradesh Sanshodhan) Adhiniyam, 1961, directed the State Electricity Board "to supply electrical energy directly to Hind Lamps upon terms and conditions similar to those on which it supplied electrical energy to other customs". In reply to a representation to reconsider the decision, the Government informed the Company that the "decision was necessitated in the public interest and there was no justification of revising it." Another representation made by the Company was also turned down and direct supply of electrical energy was commenced by the State Electricity Board to Hind Lamps.

3. A petition moved by the Company in the High Court of Allahabad for a writ of certiorary quashing the order, dated December 26, 1961, was rejected by R. S. Pathak, J. In appeal under the Letters Patent against the order passed by the learned Judge, counsel for the Company applied for leave to plead that the order, dated December 26, 1961, resulted in discrimination between Hind Lamps and other consumer within the area of supply of the Company, and also between consumer within the area of supply of the Company, and also between Hind Lamps and the Company and the order was on that account invalid. The High Court permitted the Company to raise the contention, but declined to give opportunity to "enlarge the evidence on record at that stage". Sole reliance was therefore placed by counsel for the company on Paragraph-2 of the Government Gazette Notification issued by the U.P. Government on April 24/28, 1962, containing the revised tariff for the supply of electrical energy to licensees obtaining bulk supply from the U.P. State Electricity Board and to other consumers. It stated :

"The revised tariff shall, except in the case of the licensees, be applicable to consumers in respect of consumption in the month of May, 1962. In the case of licensees obtaining bulk supply of energy from the Board, the revised tariff shall apply to supplies made from 1st July, 1962 and onwards."

The schedules in the Gazette Notification set out the rates at which electrical energy was to be supplied by the Board to licensees as well as to diverse classes of consumers who received supply of energy from the Board. The High Court held that there was no evidence on the record to prove the rates at which energy was being supplied to the company on December 25, 1961, and the rates at which the energy was being supplied to Hind Lamps. The High Court observed that before the order, dated December 26, 1961, could be challenged on the ground of discrimination between Hind Lamps and other consumers as also between Hind Lamps and the Company, it was necessary for the Company to establish by evidence the rates of supply of energy to the Company, to Hind Lamps and to other consumers obtaining at the time of the impugned order, i.e. December 26, 1961, and in the absence of that evidence the plea of discrimination must fail.

4. The High Court also rejected the contentions raised by the Company that the impugned order was not made in public interest, that granting direct supply of electrical energy to Hind Lamps amounted to compulsory acquisition of property of the company without payment of compensation, and that in refusing to give an opportunity to the Company to object the rules of natural justice were violated.

5. The Indian Electricity Act 9 of 1910, makes provision by Section 3 for the grant of licence to supply energy in any specified area and also to lay down or place electric supply-lines for transmission of energy. Clause(e) of sub-section (2) as amended by U.P. Act 30 of 1961, and sub-section (3) provide :

"(2)(e) grant of a licence under this part for any purpose shall not in any way hinder or restrict -

(i) the grant of licence to another person within the same area of supply for a like purpose; or

(ii) the supply of energy by the State Government or the State Electricity Board within the same area, where the State Government deems such supply necessary in public interest."

"(3) Where the supply of energy in any area by the State Electricity Board is deemed necessary under sub-clause (ii) of clause (e) of sub-section (2), the Board may, subject to any terms and conditions that may be laid down by the State Government, supply energy in that area notwithstanding anything to the contrary contained in this Act or the Electricity Supply Act, 1948."

The State Government may grant a licence to supply electrical energy to consumers within a specified area on terms and conditions prescribed in the licence and subject to statutory conditions, but on that account the State Government is not debarred from granting a licence to another persons or to supply energy directly to a consumer within the same area if the State Government deemed it necessary so to do in the public interest.

6. Section 3(2)(e) is challenged on the ground of denial of the guarantee of the equal protection clause of the Constitution. Strong reliance was placed by counsel for the appellant upon a recent

judgment of this Court : The Western U. P. Electric Power and Supply Co. Ltd. v. The State of U. P. and Others. In that case the Government of U.P. had by Notification, dated September 21, 1966, authorised the State Electricity Board to supply energy directly to consumers in the area of supply for which a licence was already granted. This Court held that a licence supplying electrical energy in an area had no monopoly under its licence; but the Notification issued by the U.P. Government directing the State Electricity Board to supply energy directly to a consumer at a rate lower than the rate at which it was supplied to the licensee Company amounted to discrimination between that consumer and the other consumer and also between the consumer and the licensee and the Notification on that account was invalid. Counsel for the Company says that the question which false to be determined in the present appeal is concluded by the judgment in The Western U.P. Electric Power and Supply Company's case, for the court in that case held that the Notification of the Government of U.P. directing the State Electricity Board to supply energy directly to certain concerns at a rate lower than the rate at which energy was supplied to the licensee Company amounts to discrimination between those concerns on the one hand and the other consumers on the other, and also between the concerns and the Company.

7. Article 14 of the Constitution ensures equality among equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not however operate against rational classification. A person setting up a grievances of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the different treatment had no reasonable relation to the object sought to be achieved by the law. In the present case there is no evidence about the rate charged for energy supplied by the State Electricity Board to the Company on December 26, 1961, nor is there any evidence on the record about the rates charged for electrical energy supplied to the consumers by the Company.

8. The plea of discrimination has to be considered from two different points of view; (1) the discrimination between Hind Lamps and the other consumers within the area of supply in respect of which the Company held the licence; and (2) discrimination in the rates of supply charged by the State Electricity Board to the Company and to Hind Lamps. There is no evidence on the record about the operative rates on the date of the impugned order. Again Hind Lamps was a consumer of Electrical energy and so were the other consumers within the area of supply in respect of which the Company held the licence. But on that account it does not follow that they belong to the same class. In one case energy is being supplied by the Company and in the other by the State Electricity Board. Again, there is no grievance made by any consumer of energy that he is by the grant of preferential rates to Hind Lamps prejudicially treated. Other consumers of energy and Hind Lamps therefore do not belong to the same class, and there is no grievance by any consumer of any prejudicial treatment accorded to him.

9. There is also no evidence that the rates charged by the State Electricity Board to Hind Lamps were lower than the rates charged to the Company. The Company and Hind Lamps again do not belong to the same class. The company is a distributor of electrical energy, whereas Hind Lamps is a consumer. If the State Government charged different rates from persons belonging to the same class, in the absence of any rational basis for that treatment, the plea of discrimination founded on differential rates may probably have some force. But the Company and Hind Lamps did not belong to the same class, and there is no evidence that for energy supplied different rates were charged. In The Western U. P. Electric Power and Supply Co. Ltd. v. The State of U. P. (supra) the position was different. That case was decided on the footing that the consumer and the Western U. P. Electric Power and Supply Co. Ltd. belonged to the same class, and the Board charged higher rates from the distributing Company than the rate charged from the third respondent in that case. The Court

observed in that cases :

" the notification and the Government's direction to the Board therein results in clear discrimination. If the Board were to supply energy directly to the 3rd respondent it has to do so at rates lower than the rates at which electricity is supplied by it to the petitioner company. The petitioner company being thus charged at higher rates from its other consumers with the result that the 3rd respondent would get energy at substantially lower rates than other consumers including other industrial establishments in the area. The notification thus results in discrimination between the 3rd respondent on the one hand and the other consumers on the other as also between the 3rd respondent and the petitioner company."

The first contention was, therefore, rightly negated by the High Court.

10. By the amendment made by U.P. Act 30 of 1961, electrical energy may be supplied by the State Government or the State Electricity Board within the same area in respect of which a licence is granted only if the State Government deems such supply "necessary in public interest". The High Court observed that "the State Government was the sole Judge of the question whether direct supply of energy to Hind Lamps was or was not in the public interest. The test is of a subjective nature, no objective test being contemplated. Thus it is not open to this Court to examine whether it was necessary in the public interest. The subjective opinion of the Government is final in the matter and the same is not justiciable or subject to judicial scrutiny as to the sufficiency of the ground on which the State Government has formed its opinion. In other words the Legislature has left it to the sole discretion of the State Government to decide whether a direct supply of energy was in the public interest".

11. We are unable to agree with that view. By Section 3(2) (e) as amended by the U.P. Act 30 of 1961, the Government is authorised to supply energy to consumers within the area of the licensee in certain conditions : exercise of the power is conditioned by the Government deeming it necessary in public interest to make such supply. If challenged, the Government must show that exercise of the power was necessary in public interest. The Court is thereby not intended to sit in appeal over the satisfaction of the Government. If there be prima facie evidence on which a reasonable body of a persons may hold that it is in the public interest to supply energy directly to the consumers, the requirements of the statute are fulfilled. Normally a licensee of electrical energy, though he has no monopoly, is the person through whom electrical energy would be distributed within the area supply, since the licensee has to lay down electric supply-lines for transmission of energy and to maintain its establishment. An in road may be made in that right in the conditions which are statutorily prescribed. In our judgment, the satisfaction of the Government that the supply is necessary in the public interest is in appropriate cases not excluded from judicial review.

12. But the decision of the High Court must still be maintained. The order issued by the Government recited :

"The Governor is satisfied that it is necessary in the public interest for the State Electricity Board to make the supply of electricity direct to the industry (Hind Lamps Private Ltd.) and is, therefore, pleased to order in exercise of the powers vested in him under Section 3(2)(e)(ii) of the Indian Electricity Act, 1910 (Act No. IX of 1910) as amended by the Indian Electricity (Uttar Pradesh Sanshodhan) Adhiniyam, 1961 (U.P. Act No. XXX of 1961) that the U.P. State Electricity Board make the

supply of electricity direct to the Hind Lamps Ltd., Shikohabad."

13. There is ample evidence on the record to prove that uninterrupted supply of electrical energy to Hind Lamps was necessary in public interest, and the Company was unable to ensure it. The only averment made in the petition filed by the Company before the High Court was that "the giving of supply to Hind Lamps (Private) Ltd. could not be said to be in public interest as required by Section 3(2)(e)(ii) of the Indian Electricity Act, 1910, as amended by Indian Electricity (U.P. Amendment) Act, XXX of 1961". No particulars were furnished in the petition. In the affidavit filed on behalf of the State Electricity Board it was affirmed that Hind Lamps was engaged in the manufacture of electric bulbs, fluorescent tubes, etc. and the process required uninterrupted supply; that it was one of the major industries of the State and was the only industry of its kind in the State; that as a result of the defective supply by the Company, Hind Lamps felt dissatisfied and informed the Government that if the supply position was not improved it would be forced to shift its factory from the State to some other State; that the industrial grave employment to a number of people in the State and saved a large amount of foreign exchange and on that account the State Government was keen to give it fair and due protection that it deserved; that the total supply of electricity to the Company was 1700 K. W. and even if the entire supply under the agreement was made available by the Company to Hind Lamps it would fall short of its requirements. It was, therefore, in public interest that direct supply of energy should be made available to Hind Lamps. An affidavit containing similar averments was also filed on behalf of the State of Uttar Pradesh.

14. There is no evidence on behalf of the Company to the contrary. For maintaining effective working of a large industry which gave scope for employment to the local population and earned foreign exchange, if it was necessary to give direct supply of electrical energy to Hind Lamps, the order to the Electricity Board to make direct supply of electrical energy to Hind Lamps was unquestionably in public interest within the meaning of Section 3(2)(e)(ii) of the Act.

15. There is no substance in the contention that by the issue of the order, dated December 26, 1961, there was compulsory acquisition of the property of the Company without providing for compensation. By the grant of a licence under Act 9 of 1910, no monopoly was created in favour of the Company. The statute expressly reserves the right of the State to authorise supply of electrical energy through another licensee in the same area or to a consumer directly through the State Electricity Board. Assuming that the right to supply electrical energy is property (on that question we express no opinion), we are of the view that there is no infringement of guarantee under Article 31(2) of the Constitution. Clause (2) of Article 31 as amended by the Constitution (Fourth Amendment) Act, 1955, in so far as it is material, provides :

"No property shall be compulsorily acquired X X save for a public purpose and save by authority of a law which provides for compensation for the property so acquired X X X and either fixes the amount of compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; X X X."

Clause (2-A) in substance defines compulsory acquisition or requisitioning of property within the meaning of clause (2). It provides :

"Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or

requisitioning of property, notwithstanding that it deprives any person of his property."

By clause (2-A) there is no compulsory acquisition or requisitioning of property, unless ownership or right possession of the property stands transferred to the State or a corporation owned or controlled by the State. By the order granting direct supply or electrical energy ownership of property or right to possession of property was not transferred to the State or to a corporation owned or controlled by the State, and on that limited ground it must be held that Article 3(2) has no application. The Company may, it may be assumed, as a result of direct supply of electrical energy to Hind Lamps suffer loss; but Article 31(2) does not guarantee protection against that loss.

16. The Company was afforded sufficient opportunity to make its representation before and after impugned order was passed. Hind Lamps had submitted several representations to the Government of U.P. regarding inadequate and irregular supply of electrical energy. The Company was informed about the complaints made by Hind Lamps. Meeting were held in which certain steps to be taken by the Company to make the supply regular were agreed upon, but they were not carried out, presumably because the Company had not the requisite equipment for that purpose. The Company was asked to supply electrical energy as released in favour of Hind Lamps; it failed to do so. Representations made by the Company, after the order was passed, requesting that the order, dated December 26, 1961, be withdrawn were also considered by the Government and rejected. Adequate opportunity of making a representation was afforded to the Company to satisfy the State Government that it was not in the public interest to supply electrical energy directly to Hind Lamps.

17. The appeal fails and is dismissed with costs.

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