The Amalgamated Electricity Company Ltd.

Vs

The Jalgaon Borough Municipality

Civil Appeal No. 748 of 1968

(V.R. Krishna Iyer, A.C. Gupta, Syed M. Fazal Ali JJ )

03.09.1975

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave against the judgment dated February 14, 1967, of the High Court of Bombay turns upon the interpretation of Clause 3 of the agreement Ext. 39 executed between the parties containing the terms and conditions for which the plaintiff/appellant was to supply electricity to the defendant the Jalgon Borough Municipality.

2. What appears to us to have been a short and simple case has been rendered cumbersome and complicated by somewhat complex and involved process of reasoning adopted by the High Court in interpreting the various clauses of the agreement Ext. 39. The plaintiff/appellant's case was based mainly on Clause 3 of the agreement but the High Court instead of concentrating its attention on the interpretation of the scope and ambit of this particular clause appears to have entered upon a roving inquiry and a detailed determination of the history of the case, the various clause of the agreement executed, the licence taken by the appellant, and so on, which, in our opinion, were not at all germane for the decision of the simple issue which arose in this appeal.

3. The facts of the case lie within a very narrow compass. The plaintiff/appellant entered into an agreement to supply electrical energy to the Jalgon Borough Municipality as far back as 1944. The energy was to be supplied on the basis of the agreement executed between the parties in the year 1944. This agreement expired towards the end of January, 1951, and a fresh agreement which is dated May 29, 1951, Ext. 39, which was to commence from February 1, 1951, was executed between the parties. This agreement was to ensure for a period of five years. In the present appeal we are concerned with the terms and recitals of this agreement, particularly Clause 3 thereof.

4. The plaintiff averred inter alia that under the agreement the defendant was bound to consume electrical energy for 16 hours a day and pay the minimum charges even if no actual consumption was made. This claim was put forward by the plaintiff in December, 1953 on the basis of Clause 3 of the agreement. Consequent upon its claim the plaintiff sent a number of bills to the defendant which it refused to pay and hence the present suit was instituted on February 27, 1956. Before the trial Court the defendant municipality denied the allegations of the plaintiff and averred that under the terms of the agreement the municipality was not bound to pay to the plaintiff company any minimum charges even if the electrical energy was not consumed. It was also alleged that even if there was any such clause in the agreement it was void under Section 23 of the Indian Electricity Act, 1910. A number of other defences were also taken with which we are not concerned.

5. The trial Court of the Civil Judge, Senior Division, Jalgaon accepted the defendant's plea and dismissed the suit of the plaintiff/appellant. The plaintiff thereupon preferred an appeal to the High Court of Bombay which upheld the decree of the trial Court and dismissed the appeal negativing the plea put forward by the plaintiff.

6. Counsel for both the parties agreed before us that the fate of the entire case depended upon the interpretation of Clause 3 of the agreement Ext. 39 which appears on pp. 275-277 of the printed Paper Book. Mr. F. S. Nariman for the appellant submitted that the interpretation put by the High Court was absolutely wrong, whereas Mr. K. S. Ramamurthi strenuously supported the judgment of the High Court. The High Court on consideration of Clauses 2 and 3 of the agreement appears to have lost sight of the essential stipulation contained in Clause 3 and found that minimum charges were given only in Clause 2 of the agreement and Clause 3 could be of no assistances which were not at all relevant for the purpose of construing Clause 3 of the agreement. In order to interpret the document, it may be necessary to extract Clauses 2 and 3 of the said agreement :

> 2. The Company shall supply to the Municipality and the Municipality shall take from the company for a period of five years, the period commencing from 1st February, 1951 electrical energy for running the electric motors to work water pumps at the Girna pumping Station at the following rates :
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> 1.5 annas per unit for the first 50 units per month per B. H.P. installed and the rest at 0.5 anna per unit plus an additional charge at 0.01 anna per unit per rupee rise in the fuel oil rate over Rs. 68 per ton viz. the rate Ex-Power House ruling prior to war. With a minimum of 50 units per month per B.H.P. installed, first 50 units per B.H.P. shall mean and include units given by both the Electric Motors and Pumps at the Girna Pumping Station. The additional charge is to apply to all units.
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> 3. The hours of supply of electrical energy for running the said electric motors shall be according to the quote of diesel oil sanctioned by the Government. In normal times, i.e. when diesel oil becomes available in any required quantity and without any restriction, the Municipality shall take supply of electrical energy for a minimum period of 16 hours a day. i.e. excluding the four hours from 6 p.m. to 10 p.m.

7. An analysis of Clauses 2 and 3 of the agreement clearly shows that these two clauses are independent and separate provisions dealing with different contingencies. If there is any link between the two it is only that the reason for making concession in Clause 2 for charging rate of 5 annas per unit over first 50 units is the fact that plaintiff company was guaranteed payment for electrical energy to be supplied during fixed period whether or not it is consumed by the municipality. Clause 3 first of all stipulated that in normal times the municipality was bound to take supply of electrical energy for a minimum period of 16 hours a day and in view of this minimum guarantee the company would supply electricity for a maximum period of 20 hours a day. In doing this, however, for hours, namely from 6 p.m. to 10 p.m. would be excluded, because these being the peak hours the company would be at liberty to supply electricity to other consumers. The terms of Clause 3 appear to us to be absolutely clear and unambiguous and it was not at all necessary for the High Courses to have gone into a plethora of extraneous circumstances when the terms of that document do not admit of any ambiguity. The High Court seems to have completely overlooked the fact that Clause 3 of the agreement embodied what is known in common parlance as the doctrine of minimum guarantee, i.e. the company was assured of a minimum consumption of electrical energy by the municipality and for the payment of the same whether it was consumed or not. That was the

reason why the company was prepared to charge a minimum rate of 0.5 anna per unit over and above the first 50 units. The minimum charge of 0.5 anna per unit, therefore, was actually the consideration for the minimum guarantee allowed to the plaintiff under Clause 3 of the agreement.

8. Moreover Clause 2 and 3 of the agreement seem to us to be in consonance with the spirit and letter of the proviso to Section 22 of the Indian Electricity Act which runs thus :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital expenditure, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration.

A bare reading of Clause 3 is sufficient to indicate that this particular term of the contract was in direct compliance with the provisions of the proviso to Section 22 of the Act which ensures a provision for minimum guarantee for the supply of electricity.

9. Moreover it is obvious that if the plaintiff company was to give bulk supply of electricity at a concessional rate of 0.5 anna per unit it had to lay down lines and to keep the power ready for being supplied as and when required. The consumers could put their switches on whenever they liked and therefore the plaintiff had to keep everything ready so that power is supplied the moment the switch was put on. In these circumstances it was absolutely essential that the plaintiff should have been ensured the payment of the minimum charges for the supply of meet the bare maintenance expenses.

10. For these reasons, therefore, we are satisfied that the interpretation put by the courts below on the agreement Ext. 39 was legally erroneous and cannot be accepted.

11. The next question that falls to be considered is about the question of quantum of interest to be allowed to the appellant company. Mr. F. S. Nariman, learned Counsel for the appellant, fairly conceded that he would not be in a position to press his claim for interest prior to the date of the suit and would be satisfied if he is awarded interest at the rate of 4 per cent per annum from the date of the suit.

12. The result is that the appeal is allowed, the judgments of the trial Court and the High Court are set aside, the plaintiff's suit is decreed with interest at the rate of 4% per annum from the date of the suit till payment. In the peculiar circumstances of the case, we leave the parties to bear their own leave the parties to bear their own costs throughout.

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