SUPREME COURT OF INDIA

Modi Tele Fibres Ltd

Vs.

U.P. State Electricity Board

C.A.No.5976 of 2001

(R.V. Raveendran and P. Sathasivam JJ.)

06.12.2007

JUDGMENT

P. SATHASIVAM, J.

1) This appeal is directed against the final judgment and order dated 23.09.1999 passed by the Division Bench of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 37862 of 1999, whereby the High Court dismissed the writ petition preferred by the appellant-herein.

BACKGROUND FACTS:

2) The appellant-Modi Tele Fibres Ltd. was carrying on business of manufacturing threads at Modinagar, Dist. Ghaziabad. However, the appellant-Company started suffering huge losses on account of various factors such as fall in production, non-availability of capital funds for meeting operational expenses etc. which were beyond the control of the appellant. The appellant, on 16.06.1994, wrote a letter to respondent No.1-U.P. State Electricity Board (hereinafter referred to as the 'UPSEB') to provide electric supply directly to the residential colonies as the appellant was unable to continue the payment directly on account of lack of funds. It is pertinent to mention here that electricity to the residential colonies is fed through Modi Tele Fibres Ltd. Service Connection No. 1008. The appellant-company entered into an agreement on 30.09.1994 in supersession of an earlier agreement dated 28.09.1983, with the UPSEB for supply of electricity for 4000 KVA load of 11 KV voltage through the above-said Service Connection. It is also pertinent to mention that an amount of Rs.67,46,700/- is lying with the UPSEB as security, whereas the appellant has already been paying regularly the bills for the electricity consumed by the company and the residential colonies. The appellant wrote another letter on 30.06.1995 to the UPSEB informing that an application has been made to the State Government for closing down of the unit and the UPSEB should discontinue permanently the supply of electrical energy to the appellant vide S.C. No. 1008 reiterating its earlier request to provide separate domestic connection to residential colonies. It was also reiterated that w.e.f. 01.08.1995, the appellant-company shall not be liable for the supply made. Despite repeated requests, the UPSEB continued to supply electricity through the service connection to the company as well as the residential colonies at commercial rates. In reply, respondent No.2, vide letter dated 13.07.1995, informed the appellant that only the person who had signed the agreement with the UPSEB is empowered to apply for permanent disconnection and the request of the appellant for permanent disconnection was not being considered. Thereafter, on 07.08.1995, the then Chairman of the appellant-Company who had signed the agreement wrote a letter for

permanent disconnection and to provide separate domestic connections to the residential colonies reiterating that w.e.f. 06.09.1995, the Company shall not be liable for the supply. Thereafter, on 04.09.1995, because of the heavy losses being incurred, the appellant- company had to effect permanent closure and a notice of closure dated 02.09.1995 was issued to all the employees. It is an admitted position that the company w.e.f 04.09.1995 was not using any electric power for its factory, but electricity was being given to the residential colonies through service connection No. 1008. The appellant also brought to the notice of UPSEB that for realizing the electricity dues from the residents of the colony, the High Court, in a similar case, passed an order in pursuance of which bills directly were charged from the persons occupying the residential quarters. Under these circumstances, the appellant again requested that it would hand over all the infrastructure free of cost which is already used to provide separate domestic connection to the residential colonies and asked to immediately discontinue electric supply through the service connection. However, no heed was paid to the request of the appellant and UPSEB kept on sending bills including the bills of electricity consumed by the residential quarters. In the meantime, Punjab National Bank which extended financial assistance to the appellant initiated recovery proceedings before the Debts Recovery Tribunal. The Tribunal passed an interim order whereby the appellant was restrained from leasing out the factory premises. Against that order, the appellant filed a petition under Article 227 of the Constitution before the Delhi High Court, which vide order dated 08.03.1999 allowed the appellant to lease out the factory with a direction that 50% of the rent amount shall be paid directly to the Punjab National Bank. Thereafter, 50% of the rent is being received by the Bank and 50% rent by the appellant from the lessee. 3) On 24.02.1999, UPSEB raised a bill demanding Rs.11,35,80,301/- from the appellant for the period from April, 1995 to February, 1999 which includes electric supply to the factory and to the residential quarters, surcharge, penalty etc. The appellant raised an objection to the said bill on 24.04.1999 stating that it has repeatedly objected inasmuch as firstly after closure of the factory on 04.09.1995 no electricity was being consumed and was used by the factory and the bills pertain to consumption by the residential quarters for which it had time and again requested for a separate connection.

4) On 24.07.1999 the Sub-Divisional Magistrate, Modinagar, Dist. Ghaziabad issued an order to the lessee Lucky Tex Spinners Pvt. Ltd. directing that since an amount of Rs.11,61,61,574.31 is due on the appellant as Government dues 50% of the rent amount was attached and further directed to pay the same by pay order every month directly to the Tehsildar. The UPSEB again issued a bill on 31.07.1999 for a sum of Rs.13,40,42,018/-. In the meantime, the appellant made a reference to the BIFR under Section 15 of the Sick Industrial Companies Act. On 20.08.1999, the appellant sent its objection reiterating the stand that they were not liable to pay and returned the bills to the UPSEB for cancellation. Being aggrieved by the order passed by the Sub Divisional Magistrate, the appellant filed a writ petition in the High Court. The Division Bench of the High Court by order dated 23.09.1999 dismissed the writ petition on the ground that merely because the appellant had informed the UPSEB to provide separate domestic connections to the residential colonies knowing fully well that they were already consuming power through service connection No. 1008 in accordance with the terms of the agreement, the liability will not cease. The High Court was of the view that while on the one hand there was a prayer for disconnection but on the other hand regular consumption not for a short period, but for years, the only conclusion was that the consumer was enjoying the power supply and therefore the liability to pay for the power consumed must be upheld. Dissatisfied with the order of the High Court the appellant preferred the above appeal.

5) We heard Mr. Rajiv Dutta, learned counsel for the appellant and Mr. Pradeep Misra, learned counsel for the respondents.

6) The grievance of the appellant is that even after the closure of their mill and in spite of requests by way of letters and reminders for stopping the electrical supply to the residential colony and for providing a separate metre connection to the residential quarters of their employees, the respondent-UPSEB was unjustifiably claiming power consumption charges from the appellant herein. Alternatively, it was submitted that it had made payment upto March, 1995. However, if the bills for the period upto the date of closure (i.e. upto 10.09.1995) are to be taken into account, then for the period from 01.04.1995 to 10.09.1995, the total amount of bills comes to Rs.1,14,10,734.00 Out of the above, a sum of Rs.49,84,894/- is on account of supply of electricity to the residential quarters which the appellant is not liable to pay as it had sent a notice in June, 1994. In this regard, the admitted liability of the appellant is up to 10.09.1995 which comes to Rs.64,25,840.00. The appellant had a security deposit of Rs.67,46,700/- with the UPSEB and after adjusting the same, it is entitled to receive a sum of Rs.3,20,860/- from the UPSEB.

7) It is not in dispute that the appellant was provided electric connection No. 1008 for supply of electrical energy and an agreement had been executed on 30.09.1994 for supply of 4000 KVA electric load. In the counter affidavit filed on behalf of respondent-UPSEB, it has been specifically stated that the UPSEB, the predecessor in the interest of UP Power Corporation, has no distributing means or any kind of control for contribution and supply of electrical energy to the residential colonies of the workers of the appellant. In fact in the counter affidavit the Board has stated that they were not aware about arrangements made by the appellant for supply of power to their workers and the terms and conditions for such supply as to whether it was free supply or whether the cost of electricity consumed was being deducted from their wages. According to them, the appellant was their consumer and bulk supply of 4000 KVA was being given to it and no bifurcation in the connection as industrial or residential.

8) Learned counsel appearing for the appellant, by drawing our attention to various clauses in the agreement and requests made by them in the form of letters seeking for dis-connection of power supply to the residence of their employees and providing separate meter for their colonies, contended that the respondents were not justified in demanding the amount as if arrears of power consumed by them. We verified the requests made by the appellant. As rightly pointed out by the respondents and in fact it was not disputed that electrical connection was provided to the appellant-factory in service connection No 1008 for supply of electrical energy and an agreement had been executed for the same on 30.09.1994 and supply to residential colony was made by appellant under service connection No. 1008 of appellant. Therefore, appellant cannot escape liability for electricity consumed in the residential colony. It should also be noted that the requests for permanent disconnection made by appellant on 30.06.1995, 13.07.1995 and 07.08.1995 could not be acted upon as under the terms of the supply agreement dated 30.09.1994, there could be no request for termination before the end of two years. Significantly there was no letter for permanent disconnection after the two year period, that is after 30.09.1996. Insofar as letter dated 16.06.1994 requesting for electricity supply to residential quarters, it has to be ignored in view of the subsequent agreement dated 30.09.1994 without separating supply to residential colony. 9) As rightly stated in para 15 of the additional affidavit filed on behalf of the UP Power Corporation, in case the appellant did not want to supply the electricity to the residential colonies of their workers they could have switched off the supply form their distributing mains which were in their custody and possession. Admittedly, the appellant having such a course available, did not do so because of their anticipation that law and order problem would arise. Having failed to disconnect the electricity supply themselves, the appellant can not blame the respondents for not disconnecting the supply. It

is true that pursuant to the requests made by the appellant, the respondents/Board could have provided separate connection for the residential connections in their colonies for the benefit of appellant's employees. However, as pointed out in the additional affidavit necessary charges, namely, costs and expenses for separate domestic connections were not paid. On the other hand, the appellant was drawing power to their residential colonies in order to provide uninterrupted supply to their employees. In those circumstances and in the light of the specific information furnished in the additional affidavit particularly in paras 4,8,12 and 15, we are unable to accept the stand taken by the appellant.

10) With the materials place before us, we are satisfied that the appellant being consumer and consumed electricity through their service connection No. 1008 it has to pay the amount for the same. We are also of the view that the appellant could have taken effective steps for providing separate power connection to the residential colony of their employees by approaching the respondents depositing necessary charges, cost and by complying with the provisions of the Indian Electricity Act, the Electricity Supply Act, rules and regulations made therein, which they failed to do. All the relevant aspects have duly been considered and rightly rejected by the High Court. In regard to the alternative contentions relating to excessive billing and non-adjustment of security deposit, these factual aspects were not urged before the High Court and cannot be urged for the first time before us. If there is any error in calculation of the amount shown as due, it is open to the appellant to take up that issue separately with the respondents.

11) We do not find any ground for interference, consequently, the appeal fails and the same is dismissed. However, there shall be no order as to costs.