

SUPREME COURT OF INDIA

The Transmission Corporation

Vs.

Hemson Steels Alloys Pvt.

C.A.No.1425 of 2001

(H.K.Sema and Markandey Katju,JJ.)

19.02.2008

ORDER

C.A.Nos.1469 and 1470 of 2008 Arising Out of SLP(C)Nos.3088 and 3991 of 2004

1. Leave granted.

2. We have heard the parties at length.

3. In these three appeals a common question of law and fact has arisen. For the sake of brevity we are taking facts from C.A.No.1425 of 2001. The appellant the Transmission Corporation of A.P. is a statutory authority constituted under Section 5 of the Electricity (Supply) Act, 1948 (hereinafter as 'the Act'). In exercise of power under Section 49 of the Act by an order dated 20.09.1975 the Corporation allowed certain concessions to the respondents. Paragraph 7 of the concessions reads :

"7. Concession for New Industries..... A rebate of 25% on Demand and Energy charges for specified H.T. Industries will be allowed for the first three years from the date of their going into production." It is alleged that the respondents did not go into production within the stipulated time. Consequently, the aforesaid concession was withdrawn on 14.10.1987. Undisputedly, the respondent Company, namely, M/s. Hemson Steels Alloys Pvt. Ltd. went into commercial production with effect from 09.07.1988. The respondent in C.A.No1470/2008 arising out of SLP(C)No.3991/2004, namely, Shanti Castings went into commercial production on 09.01.1988. It is, therefore, contended strenuously by Mr. Shanti Bhushan, learned senior counsel appearing for the appellants that since the respondents Company did not go into production within three years period the Corporation has validly withdrawn the concession on 14.10.1987. Per contra, Mr. P.S. Narasimha, learned coounsel appearing for the respondent in C.A.No.1470/2008 arising out of SLP(C)No.3991/2004 contended that as the State has exercised power under Section 78A of the Act, the Board was incompetent to withdraw the concession and therefore the impugned order of withdrawal of concession was not tenable in law.

Mr. Shanti Bhushan, learned senior counsel, appearing for the appellants has invited our attention to the provision of Section 49 of the Act where it is provided that the Board has power to grant such concession. By our order dated 28.11.2007 we directed Shri H.S. Gururaja Rao, learned senior counsel appearing for the State to file affidavit within two weeks to clarify whether the order 27.07.1989 passed by the State Government was passed in exercise of power under Section 78A of the Electricity (Supply) Act, 1948 or not.”

4. Pursuant to our aforesaid direction the State has filed counter-affidavit. It is explained in paragraph 9 of the affidavit that the State of Andhra Pradesh has not issued any directive to the A.P. State Electricity Board in respect of 25% tariff concession to certain industries in the State of Andhra Pradesh. It is also stated that G.O.Ms. No.375 dated 28.8.1985 & G.O.Ms. No.379 dated 27.7.1989 do not constitute directives to the Board under Section 78A of the Electricity (Supply) Act, 1948.

5. In view of the clarification in the State's affidavit, we could have disposed of these appeals on their own merits. However, it has been brought to our notice the judgment of the Division Bench of this Court rendered in earlier C.A.No.9746/1996 disposed of on 07.01.1997 in the case of A.P. State Electricity Board and Others vs. M/s. V.K. Ferro Alloys Industries Pvt. Ltd. The Division Bench of this Court having considered the G.O.Ms No.379 dated 27th July, 1989 has recorded the following conclusion :

" We have heard learned counsel for the parties and perused various Government Orders issued in relation to the grant of 25% concession in electricity tariff including G.O.Ms No.379 dated 27th July, 1989. A perusal of the said G.O.Ms unmistakably shows that the concession was withdrawn only after 27th July, 1989 and since the respondent company had admittedly gone into commercial production prior thereto, it was entitled to the 25% rebate in the tariff and the withdrawal of the concession on 27.7.1989 did not apply to the respondent industry. The High Court, therefore, rightly allowed the writ petition. No case for interference is made out. The appeal fails and is dismissed."

6. In our view the two Judge Bench of this Court did not go into the core question as to whether concession was accorded by the State in exercise of the direction as provided under Section 78A of the Act or it was accorded by the Board in exercise of its power under Section 49 of the Act. In our view, therefore, this point deserves to be considered by a larger Bench. Place the matter before Hon'ble Chief Justice for appropriate orders.