SUPREME COURT OF INDIA

Grid Corpn. of Orissa Ltd.

Vs.

Eastern Metals & Ferro Alloys

C.A.Nos.5842-5889 of 1998

(R V Raveendran and H.L.Gokhale JJ.)

31.08.2010

JUDGEMENT

R.V.RAVEENDRAN, J.

1. Leave granted in SLP(C) No.4596 of 1999.

These appeals involve the interpretation of a tariff provision in the provisional supply and distribution Licence issued under the Orissa Electricity Reform Act, 1995 (`Act' for short).

2. The State of Orissa enacted the said Act, to restructure and rationalize the generation, transmission, distribution and supply of electricity in the state.

2.1) Section 3 of the Act provided for the establishment of the Orissa Electricity Regulatory

Commission (`Commission' for short), to discharge functions including the issue of licences in accordance with the Act and determine the conditions of such licences.

2.2) Chapter VI of the Act deals with licensing of transmission and supply.

Section 14(iv) of the said Act authorized the State Government to grant provisional licences for a period not exceeding twelve months, for carrying on the business of transmission or supply of electricity, as a transitional measure till the establishment of the Orissa Electricity Regulatory Commission (`Commission' for short).

2.3) Section 13 of the Act provided that the Grid Corporation of India Ltd.

(`GRIDCO' for short, the appellant herein) incorporated with the main object of engaging in the "business powers" of the state government under section 12 of the Act, would be the principal company to undertake the planning and co-ordination in regard to transmission and to determine the electricity requirements in the state in co-ordination with various stakeholders.

2.4 Chapter VIII of the Act dealt with tariffs. It contained two sections - section 26 dealing with licencee's revenues and tariffs and section 27 dealing with finances of licencees.

3. In exercise of the power under section 14(iv) of the Act, the State Government, by notification dated 30.3.1996, issued three licences to the appellant - the Provisional Orissa Transmission Licence 1996, Provisional Orissa Supply Licence (Bulk Supply) 1966 and the Provisional Orissa Supply Licence (Retail Supply and Distribution), 1996 -- authorising the appellant to engage in the business of transmission, bulk supply and retail supply and distribution of electrical energy within the State of Orissa, upon the terms and conditions mentioned in those licences. In pursuance of such licences, the appellant took over the transmission, distribution and supply of electricity from the Orissa State Electricity Board (`OSEB' for short) with effect from 1.4.1996. Part III of the Retail Supply and Distribution Licence (similar provisions were contained in the Provisional Transmission Licence and Provisional Bulk Supply Licence also) related to "Tariffs" and it is extracted below:

"9. Basis of Charges

9.1 The charges made by the licensee shall not exceed on average 117% of those permitted under

the interim tariffs issued by the State Government and in force on 1st April 1996.

9.2 The authority granted in clause 9.1 expires with the expiration of this license."

The "interim tariffs in force as on 1.4.1996 issued by the state government", referred to in the said clause 9.1 were the tariffs which came into effect on 5.11.1995, contained in the Notification dated 28.10.1995 issued by the Orissa State Electricity Board, predecessor of GRIDCO.

4. By notification dated 13.5.1996, the appellant revised/prescribed the electricity charges for different categories of consumers of electricity in the State as per the tariff schedule appended to the said notification with effect from 21.5.1996, in supersession of the tariff rates prescribed in the OSEB Notification dated 28.10.1995. The tariff schedule under the Notification dated 13.5.1996, prescribed different tariff rates for (i) large industries, (ii) medium industries, (iii) small industries, (iv) irrigation pumping and agriculture, (v) public water works and sewerage pumping, (vi) commercial, (vii) domestic, (viii) railway traction supply, (ix) street lighting, (x) direct current service, (xi) power intensive industries, (xii) heavy industries, (xiii) general purpose supply, (xiv) public institutions, (xv) mini-steel plants; and (xvi) emergency power supply to captive power plants.

5. Several industries which were consumers of electricity and the Utkal Chamber of Commerce, filed writ petitions before the High Court, challenging (i) the validity of section 14(iv) of the Act; (ii) the validity of the provisional Retail Supply and Distribution Licence issued by the State Government under section 14(iv) of the Act to the appellant, in particular the provision of the licence which enabled the appellant to increase the tariff not exceeding on average 117% of those permitted under the interim tariff issued by the State Government; and (iii) the tariff notification dated 13.9.1996 issued by the appellant.

6. A Division Bench of the High Court disposed of the said writ petitions by the impugned judgment dated 30.10.1998. The High Court upheld the vires of section 14 (iv) of the Act and the Notification dated 30.3.1996 of the State of Orissa granting the provisional licences in favour of the appellant. It also upheld the power of the appellant to revise the tariff under the provisional licence. It however held that the increase in tariff rates under the tariff notification dated 13.5.1996 issued by the appellant was more than 17% (over the tariff rates contained in OSEB Notification dated 28.10.1995) in regard to some categories of consumers and as such was in excess of the power given to the appellant under clause 9.1 of the provisional supply & distribution licence. The High Court held that while the appellant could increase the tariff upto 17% in terms of the licence, there was no power or authority to increase the tariff rates beyond 17% in respect of any particular category of consumers; and as the appellant had increased the tariff rates by different percentages in regard to different categories of consumers, in the absence of a specific authorization for enhancement beyond 17% in regard to any category of consumers, it was not competent for the appellant to

enhance the tariff rate beyond 17% in respect of any category of consumer.

The High Court negatived the contention of the appellant that it could increase the tariff by more than 17% in regard to some categories, provided the increase in respect of other categories was less than 17%, and the net overall result by way of average did not exceed 17%. As a consequence, the High Court quashed the tariff notification dated 13.5.1996 as also the demands under the respective bills raised against the various writ petitioners.

The High Court directed the Commission to redetermine the tariff as per law and further directed that any excess payments collected from the consumers shall be adjusted towards future demand/s.

7. The said judgment is challenged in these appeals by special leave. The appellant contends that Clause 9.1 of the Provisional Licence clearly provided that the charges made by the licensee shall not exceed 17% on an average, which implied that while the increase in case of some categories of consumers could be more than 17%, it could be less than 17% in case of other categories so that the total increase on an average does not exceed 17%. It is submitted that the interim tariffs permitted by the State Government and which was in force on 1.4.1996 was an average 171.6 paisa per unit. The revised tariff under the notification dated 13.5.1996 effective from 21.5.1996 was estimated to yield a revenue of Rs.1241.12 crore by sale of 629.1 crore units during the whole of the year 1996-97, which would mean that the average tariff would be 200.15 paise per unit. During the year 1996-97, the interim tariffs were in force for the period 1.4.1996 to 20.5.1996 and the revised tariff under notification dated 13.5.1996 was in force from 21.5.1996 to 31.3.1997. In view of it, the estimated yield of revenue during the year 1996-97 worked out to Rs.1216.81 crore by sale of 620.1 crore units, and the average tariff for the full year 1996-97 worked out to 195.228 paise per unit. Therefore it is contended that the average increase in the tariff for the year 1996-97 over the interim tariff in force on 1.4.1996 was 14.35%, well within the permissible limits and did not violate the provisions of clause 9.1 of the provisional supply and distribution licence.

8. This Court by interim order dated 3.4.2000 directed the Orissa Electricity Regulatory Commission to determine the tariff by two methods, that is by taking into account the observations made by the High Court in the impugned judgment, and the second, without reference to the observations/directions of the High Court.

9. In pursuance of the said direction, the Commission submitted a report dated 24.11.2000 to this Court in regard to the tariff determination. The Report stated:

"We have carefully examined the basic facts and figures on which the impugned tariff notification dated 13.05.96 was issued. The mandate for us is to redetermine tariff within the parameters

stipulated in the provisional license that the charges shall not exceed 117% of those permitted under the interim tariffs in force. As per law, revised tariff can be proposed by licensee when it finds that its annual revenue requirement cannot be met by the charges fixed under prevailing tariff notification. As the estimated revenue fell short of annual revenue requirement, the licensee was authorized under the temporary licensee to increase the tariff, subject to the limit aforesaid. Gridco estimated its annual revenue requirement for 1996-97 at Rs.1413 crores which was at a substantially higher level than estimated realization of Rs.1033.94 crores on prevailing interim tariff. Hence Gridco was entitled to revise tariff but within the parameters indicated at clause 9 of the Licence. The charges proposed under impugned notification dated 13.5.1996 would raise a total revenue of Rs.1241.22 Crores for a whole year and Rs.1212.83 Crores for the period upto 31.3.1997 when provisional license was to expire. Thus, Gridco's notification authorized charges considerably short of its annual revenue requirements. Hence legitimacy of tariff increase cannot be assailed. We have come to this conclusion after taking into account objections raised before us during the redetermination proceeding. We do not consider it appropriate to burden this note with the facts, statements and views presented by the objectors during the proceeding. It may suffice to say that there has been no serious or reasonable challenge to the calculation of actual revenue requirement of Gridco even though objectors have challenged Gridco on various grounds such as lack of prudence in purchase of power, in expenditure, failure to restrict T & D Loss, unreasonableness of increase in tariff and lack of concern for affordability etc. In view of wide gap between revenue requirement and revenue realizable, Gridco was justified in increasing tariff. But what has to be ensured is whether the increase was hit by the ceiling imposed under clause 9 of provisional license."

(emphasis supplied) The report also noticed the submission of the appellant that as the average of the interim tariff (as per OSEB Notification dated 28.10.1995) which was in force till 20.5.1996 was 171.6 paise per unit and as it was empowered to raise the average tariff to 117%, it had the mandate to raise the average tariff to 200.772 paise per unit (that is 117% of 171.6 paise); that as the interim tariff under OSEB notification dated 28.10.1995 was in operation till 20.5.1996 and the new tariff under GRIDCO notification dated 13.5.1996 was in operation from 21.5.1996 to 31.3.1997, the percentage of increase over the interim tariff with reference to the revenue receipts for the said period was only 200.166 paise, that is an increase of 16.65% and therefore, was not hit by the ceiling of 117% imposed by the provisional lincence.

(For this purpose, the average tariff rate (200.166 paise) was arrived at by dividing the Revenue for the period when the tariff was in force, by the total consumption during that period). The Report did not find anything unreasonable in the said contention of the appellant. But the commission proceeded to opine that in the light of the definition of the word `tariff' in the Act and the clear difference between the words `tariff' and `charges', clause 9 of the Provision Supply Licence by using the words "charges made by the licencee", conferred on the appellant only a limited power of raising charges by a maximum of 17% for any category of consumer. It observed that `tariff' referred to the Schedule of standard prices/charges, and "charge" referred to the rate to be charged for a particular category of customers and therefore, `charges' meant `prices'. Consequently the report rejected the appellant's method of calculating the ceiling with reference to overall rate of tariff. The commission held that even if the observations of the High Court were not taken into account, there would be a need to cut the charges in respect of those categories of consumers where the increase was more than 17% as being in excess of appellant's authorization. Consequently it held

that while the increase in charges for the category of "irrigation" and category of "railway traction" will remain unchanged (as the increase therein was less than 17%), there should be reduction in the tariff rates or charges for all other categories of consumers (where the increase was more than 17%). The Commission in effect supported the decision of the High Court.

10. The appellant contended that the interpretation of clause 9.1, adopted by the High Court and the Commission was erroneous. According to the appellant, the High Court and the Commission while reading and interpreting the words "charges made by the licensee shall not exceed on average 117% ....." in clause 9.1, have ignored the significance of the words `on average' and rendered the said words redundant and otiose. The appellant contended that they also overlooked the fact that clause 9.1 used the words "charges made" and not the words "charges imposed" or "tariff rates". It was also pointed out that clause 9.1 neither referred to "consumers"

or "category of consumers". The appellant submitted that the object of the provision was not to bar category-wise revisions, but to provide for different increases which on averaging increased the overall revenue by 17% over the revenue that would have been derived with reference to pre-revision tariff rates. The appellant contended that the use of the word `average' was intended to mean that the appellant was entitled to apply different rates to different categories of consumers provided the aggregate of revenue on account of the increases did not exceed 17% of the revenue with reference to pre-revision tariff rates. The appellant contended that the provision did not place a ceiling of 17% in regard to increase in the tariff rates for each of the categories; that it was entitled to increase the tariff rates in respect of some categories of consumers beyond 17% while restricting the increase in the tariff rates for other categories to a lesser percentage, to ensure that the total revenue for the electricity consumed during the relevant period, did not exceed 17% over the revenue for such quantum based on the previous interim tariff rates. It was therefore submitted that the tariff notification dated 13.5.1996 was valid.

11. The respondents on the other hand contended that the word "charges"

in clauses 9.1 referred to the tariff rates. They relied upon the definition of `tariff' in clause (b) of explanation to section 26 of the Act which reads as under : "tariff" means a schedule of standard prices or charges for specified services which are applicable to all such specified services provided to the type or types of customers specified in the tariff". They submitted that "charges made" in clause 9.1 do not refer to the total revenue received by appellant, but referred to the tariff rates prescribed by appellant. It was next contended that even assuming that the words `charges made' were capable of being interpreted in more than one way, the interpretation that is beneficial to the consumer should be adopted. They further contended that where the opinion/ views of a technically competent body, that is the Commission, was available in regard to the interpretation that should normally be accepted unless it was shown to be arbitrary and unreasonable.

12. The report of the Commission discloses that in regard to consumers falling under the category `irrigation', the increase was only 8.33% and for the Railways falling under the category `railway traction', the increase was only 10.09%. In regard to the domestic consumers, the increase was 17.47%. In regard to all other categories of consumers, the increase was much more.

In particular, for small industries, the increase is said to be 27.59%, for medium industries the increase is said to be 29.73% and for large industries the increase is said to be 32.25%. The question is whether clause 9.1 authorized and permitted the appellant to increase the tariff rate in regard to each category of consumers, by a percentage not exceeding 17% over the pre-revision tariff rate, or whether the appellants had the discretion to increase the tariff rate relating to different categories by different percentages (that is even more than 17% in regard to some categories) so long as the overall revenue on account of different increases, did not exceed on the whole, 17% of the overall revenue calculated at the pre-revision tariff rates. The entire question would thus revolve around the interpretation of the words "shall not exceed on average 117%" in clause 9.1.

13. It is not disputed that clause 9.1 is capable of different interpretations.

The three possible interpretations are:

Interpretation (i) : There can be an increase in tariff rates, but the increase in tariff rate in respect of any category of consumers, could not exceed 17% of the interim tariff rates.

Interpretation (ii) : So long as the average of the different increases does not exceed 17% of the interim tariff rates, the appellant had the discretion to apply different rates of increases to different categories and some of them can exceed 17%.

Interpretation (iii) : The increase in tariff rates for different categories of consumers could be of different percentages, provided the average realization per unit during the relevant period (arrived at by dividing the estimated revenue during the period, by the estimated consumption during that period) was not more than 17% of the average realization per unit during the previous period when the interim tariff was in force.

The first interpretation has found favour with the High Court and the Commission, having regard to the definition of `tariff' in the Explanation to section 26 of the Act.

14. This takes us to the correct interpretation of clause 9.1. The golden rule of interpretation is that the words of a statute have to be read and understood in their natural, ordinary and popular sense. Where however the words used are capable of bearing two or more constructions, it is necessary to adopt purposive construction, to identify the construction to be preferred, by posing the following questions: (i) What is the purpose for which the provision is made? (ii) What was the position before making the provision? (iii) Whether any of the constructions proposed would lead to an absurd result or would render any part of the provision redundant? (iv) Which of the interpretations will advance the object of the provision? The answers to these questions will enable the court to identify the purposive interpretation to be preferred while excluding others. Such an exercise involving ascertainment of the object of the provision and choosing the interpretation that will advance the object of the provision can be undertaken, only where the language of the provision is capable of more than one construction. (See Bengal Immunity Co. v. State of Bihar - 1955 (2) SCR 603 and Kanailal Sur v. Paramnidhi Sadhukhan - 1958 SCR 360 and generally Justice G.P.Singh's Principles of Statutory Interpretation, 12th Edition, published by Lexis Nexis - Pages 124 to 131, dealing with the rule in Haydon's case).

15. In this case, we have noticed above that clause 9.1 is reasonably capable of more than one construction, that is at least three interpretations.

We may therefore attempt to ascertain the true meaning of the provision by answering the four questions referred in the earlier para. On a careful consideration, the answers to the four questions posed are : (i) The purpose of clause 9.1 is to provide for an increase in revenue by revising the tariff rates, by balancing the needs of the Licencee with the interests and needs of different categories of electricity consumers. (ii) Clause 9.1 being a fresh provision, the question of considering the position that existed before making of the said provision does not arise. (iii) The interpretation canvassed by the respondents, (that is interpretation (i) that increase in respect of any category of consumers cannot exceed 17%) which found favour with the High Court and the Commission, though may not lead to an absurd result, would render the words `on average' occurring in the clause, redundant and otiose. (iv) The interpretation put forth by the appellant gives meaning to every part of the clause and also achieves the object of the clause. We will elaborate the reasons therefor.

Re: Interpretation (i)

16. The first interpretation of clause 9.1 is that it permits increase in tariff rates but with a ceiling of 17% in regard to each and every category of consumers, and therefore the increase in case of no category can exceed 17%, has found favour with the High Court and the Commission. The fact that there can be different percentages of increases in tariff in regard to different categories is an accepted procedure. For example a lesser tariff is applied to agriculturists using electricity for irrigation purposes when compared to consumers using electricity for commercial or industrial purposes. Therefore, when there is a revision of tariff rates, the percentage of increase will and can

vary from category to category. If the aforesaid interpretation is applied by holding that in no case, the increase can be more than 17%, and if in regard to some categories, increases are to be nominal, it will be impossible to achieve a 17% increase which is permitted and contemplated under clause (9.1). Further, the words `on average' would be rendered meaningless if by average 17% increase cannot be achieved and if the increases cannot exceed 17% in any case. This interpretation, if accepted, would also prevent the licensee from creating or carving out any new category of consumers and fix the tariff rate for such category.

Therefore this interpretation apart from rendering the words `on average' redundant and meaningless, militates against the provisions of clause (9.1).

Re : Interpretation (ii)

17. The second interpretation is that so long as the average of the different increases does not exceed 17% of the interim tariff rates, the appellant has the discretion to apply different rates of increases to different categories and increases with reference to some categories can exceed 17%. This interpretation will also lead absurd result if put into effect. Let us illustrate with reference to a hypothetical example (not with reference to actuals):

S.No. Category of Use Consumption share out of Percentage in increase total quantity of electricity over the previous tariff generated and distributed rate

1. Industry 40% 60%

2. Domestic 30% 30%

3. Irrigation 10% 1%

4. Railway traction 10% 2%

5. Public Institutions 5% 3%

6. General purposes 5% 4% The average of the percentages of increase in regard to six categories will be only 16.66% which is less than 17%. But in terms of revenue realization, the increase would exceed not only 17%, but even as much as 40% with reference to revenue at the previous tariff rates. This obviously was not the object. The average should ensure that there is no increase beyond 17% in regard to the total revenue.

Re : Interpretation (iii)

18. The words used in clause (9.1) are "charges made by the licencee shall not exceed on average 117% of those permitted under the interim tariffs". It is significant to note that the clause does not use the words "the tariff rates prescribed by the licencee shall not exceed 17% of those permitted under the interim tariffs." The use of the words "charges" and `tariffs' in the same clauses indicates that they were intended to signify different meanings. As rightly noticed by the Commission, the word `tariffs' referred to the schedule of rates. If the object of clause 9.1 was to refer to `tariff rates' prescribed by the Licence, there was no need to use the words "charges made". The use of the words `on average' while referring to 117% has also some significance. If the words "charges made by the licencee" are interpreted as "tariff rates fixed by the licencee", then, the words `on average' would be rendered meaningless and becomes an useless appendage.

The use of the words `charges made by the licencee' and use of the words "shall not exceed on average 117%" necessarily indicates that the rates fixed by the appellant should not result in an increase in realization or revenue in excess of 17% of what it would have realized with reference to the tariff rates that were earlier in force under the interim tariff. `Charges made by the licensee' therefore refers to the total revenue of appellant by sale of electricity to the different categories of consumers.

19. The appellant, discharging the functions of the state government under the Act, had to ensure that the burden of increase on the agriculturist - consumers, that is those consuming electricity for "irrigation", should be the minimum. Similarly, increase in the tariff rate for electricity consumed by railway traction had to be kept minimal in national economic interest.

Similarly, the increase in tariff for residential user should be comparatively lesser than commercial user. At the same time, the appellant had to ensure an increase in its revenue by 17%. If increase beyond 17% was not permissible in regard to any category of consumers, and if some categories had to be subjected to only small increases far below 17%, due to economic or social justice criteria, the appellant would never be able to achieve the increase anything in the range of 17%. Only by adopting the process of applying a higher than 17% increase in the case of some categories of consumers, it can offset the effect of small or marginal increase in the case of some other categories like `irrigation' and `railway traction". Therefore, if appellant chose to charge a lesser increase in percentage to some categories of consumers and higher increases in regard to other categories of consumers, it cannot be found fault with so long as its total revenue does not exceed 17% over the corresponding revenue with reference to the old interim tariff rates.

If appellant would have realized `X' amount as revenue at the interim tariff rates which were in force before 21.5.1996, the object of the increase was to provide an increase in revenue by 17% over `X' after 21.5.1996. That is why the word `on average' is used in clause 9.1. This gives the discretion to appellant to charge tariff rates with different increases depending upon the category of consumers, so long as the overall increase in revenue, that is the "charges made" by the licensee, does not exceed 17%. Any other interpretation would render the words `on average' otiose and have

the effect of substituting the words tariff rate for the word charges.

20. In fact, the Commission has accepted this contention of the appellant to a large extent as is evident from the following observations in the report:

"As there will be considerable uncovered gap between revenue requirement and revenue expected. We do not find scope to bring down the charges in any category. But in the present environment of cross-subsidy which is bound to continue for a number of years and in the absence of reliable data for calculating cost of supply and average tariff, we consider that the relative rates for different categories of consumers for the interim period as decided by GRIDCO is as good as any other alternative allocation of costs and charges.....

It appears that it has not been brought to the notice of the Court that all along in the past varying charges for different categories of consumers has been determined in consideration of nature and purpose of use and affordability of different categories of consumers. The cost of supply, the quality of supply and affordability are widely different for different classes of consumers. Due to socio-political decision to cross-subsidize some categories, it has never been considered desirable or possible to levy uniform charges or to decide upon a uniform percentage of increase of charges.....

In the practice followed by electrical utilities in the country as well as abroad, the average "charges" for electricity tariff is calculated by considering the total revenue realizable during a period divided by number of units estimated to be sold during the period. Percentage of increase in charges or tariff, normally refers to percentage of increase of the average rate over the overall average rate of prevailing tariff calculated in this method. This has been the practice mainly due to the prevalence of cross- subsidy in the electricity tariff structure in India. Even when there is no cross-subsidy the rate of increase in tariff for various categories are different because the determination is with reference to cost of supply for a particular category of consumer. The concept of uniform rate of increase for all categories of consumers is unknown because every time there is a revision the interests of different categories are rebalanced in consideration of public policy, pattern of consumption, consumer composition and revenue requirements. Viewed in this light we find some justification in Gridco's claim that ceiling of 117% was with reference to overall average of interim tariff and overall average rate of new tariff. This logic implies that there has been no clear distinction between `tariff' and `charges'."

21. The reliance upon clause (2) of Explanation to section 26 of the Act to interpret the wording of clause 9.1 is misconceived. The explanation to section 26 does not define the words `charges made', but defines the word `tariffs'. Under the erroneous assumption that the word "charges" referred to the actual tariff rates that were chargeable to different categories of consumers, the Commission ignored its own conclusions and held that clause 9.1 placed a ceiling of 17% in respect of increases in the tariff rates applicable to different categories of consumers. It is true that the interpretation by

a technical body in regard to purely technical matters deserves acceptance and will not be interfered, unless it is arbitrary or unreasonable. But in this case, on technical issues, the Commission has favoured the stand of the appellant. Having accepted the interpretation of the appellant as being technically sound and correct, it reached a different conclusion only because it thought that the word `charges' had to be interpreted as `tariff rates'. If that is found to be without basis or erroneous, and therefore ignored, the opinion of the Commission fully favours the appellant.

22. We are of the view that the High Court was not justified in holding that the tariff rate in regard to none of the category of consumers can exceed 17% over the previous rates. We accept the explanation and interpretation of the appellant. The Commission has found that the increase in revenue, on an average, under the tariff notification dated 13.5.1996 was only 16.65% over the revenue calculated with reference to the earlier interim tariff rates. We therefore, allow these appeals, set aside the judgment of the High Court dated 30.10.1998 and dismiss the writ petitions filed by the respondents before the High Court and uphold the validity of the Tariff notification dated 13.5.1996.