

SUPREME COURT OF INDIA

Kothari Industrial Corp. Ltd.

Vs.

T.N.Electricity Board

C.A.No.9748 of 2003

(Markandey Katju and T.S.Thakur JJ.)

01.10.2010

JUDGEMENT

Markandey Katju, J.

1. These appeals have been filed against the common judgment and order of the Madras High Court dated 06.12.2001 in Writ Appeals Nos. 421 & 488 of 1985 etc. The facts have been stated out in great detail in the impugned judgment of the High Court in which the points contended by the parties herein have been dealt with. Hence we are not repeating the same here.

2. The appellants have set up new industries in which a major raw material is said to be power (electricity). It is alleged by the appellants that due to large consumption of power, the economic viability of their project is very sensitive to power tariffs. It is further alleged that the appellants were attracted by the tariff concessions given under Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978 (Tamil Nadu Act 1 of 1979). In the Schedule to the said Act, new industries were to be given the benefit of concessional tariffs for the first five years of production. It is alleged that on the basis of said promise the appellants proceeded in setting up their projects and established their industrial units which commenced production. The appellants were sanctioned the power supply by the respondents and started production.

3. Subsequently, by notification dated 30.4.1982 the respondents by revising the tariff introduced a new condition to the tariff concession, namely, that the said concession was not to apply from the year when the industry starts earning profits. On the basis of the above notification, the appellants were asked by the respondents to give an undertaking, which they gave, fearing disconnection of their power supply.

4. It is alleged by M/s. Kothari Industrial Corporation Limited, which is one of the appellants before us, that in the year 1982-83 they disclosed a net profit of Rs.7,07,572/- which under Income Tax Act was available for set off against carry forward losses which amounted to

Rs.45,20,611/- . Hence it was alleged that in fact the said appellant incurred losses. The appellant has been served notice to pay Rs.2,09,433/- to avoid disconnection of power supply.

5. The appellants have relied on the decisions of this Court in *Pawan Alloys & Casting (P) Ltd. vs. U.P. State Electricity Board & Ors.* (1997) 7 SCC 251, *Southern Petrochemical Industries Company Limited vs. Electricity Inspector and E.T.I.O. & Ors.* (2007) 5 SCC 447, *Shri Bakul Oil Industries & Anr. vs. State of Gujarat & Anr.* (1987) 1 SCC 31 etc. On the basis of the aforesaid decisions the appellants relied on the doctrine of promissory estoppel and legitimate expectation.

6. On the other hand, the respondents have alleged that there is no estoppel against the statute, and the amendment to the Schedule by which the concession was restricted was a legislative act. They have relied on the decisions of this Court in *Union of India & Ors. vs. Godfrey Philips India Limited*¹, *State of Tamil Nadu vs. K. Sabanayagam & Anr.*² and *Jalan Trading Co. (Pvt. Ltd.) vs. Mill Mazdoor Union*³. The respondents have also alleged that since the appellants have given a specific undertaking to abide by the G.O. dated 30.4.1982 they are estopped from challenging the same vide *Kasinka Trading & Anr. vs. Union of India & Anr.*⁴ and *Shrijee Sales Corporation & Anr. vs. Union of India*⁵. The respondents have also alleged that Section 4 of the 1978 Act empowered the Government to amend the Schedule to the Act vide *Tamil Nadu Electricity Board vs. Status Spinning Mills Ltd. & Anr.*⁶.

7. We are of the opinion that there seems to be some difference of opinion in the various decisions by different benches of this Court. Hence the matter needs to be decided by a larger bench of this Court, on the issue as to whether the principles of promissory estoppel and legitimate expectation are applicable in this case. The larger bench may also consider whether the undertaking given by the appellants acts as an estoppel against them.

8. Let the papers of this case be placed before Hon'ble the Chief Justice of India for constitution of a larger bench.

¹(1985) 4 SCC 369

²(1998) 1 SCC 318

³1967(1) SCR 15

⁴(1995) 1 SCC 274

⁵(1997) 3 SCC 398

⁶(2008) 7 SCC 353