Z¨ Item NO.IA Court No.11 SECTION X
(For judgment)

SUPREME COUR T OF I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No.5952 of 2002

UTTARAKHAND POWER CORPORATION LTD. & ANR. Appellant (s)

VERSUS

ASP Sealing Products Ltd. Respondent (s)

Date : 08/09/2009 The matter was called on for Judgment today.

For Appellant (s) Mr. Pradeep Misra, Adv.

For Respondent (s) Ms. Neeru Vaid, Adv.

Hon'ble Mr. Justice G.S. Singhvi pronounced the judgment of the Bench comprising His Lordship and Hon'ble Dr. Justice B.S. Chauhan.

The appeal is allowed in terms of the signed judgment.

(Pawan Kumar) (M.S. Negi)
AR-cum-PS Court Master
(signed non-reportable judgment is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5952 OF 2002

Uttarakhand Power Corporation Ltd. and another ... Appellants

Versus

ASP Sealing Products Ltd. ... Respondent

JUDGMENT

G.S. Singhvi, J.

1. Whether the respondent, who was a consumer of electricity supplied by Uttar Pradesh State Electricity Board [for short, "the Board"]

(predecessor of appellant No.1 herein) is liable to pay minimum charges in terms of second proviso to para 11 of agreement dated 21st September, 1998 read with Clause 17 (ii) of the Electricity Supply (Consumers) Regulations, 1984 [for short, "the Regulations"] after disconnection of the supply of electricity is the question which arises for consideration in this appeal.

2. The respondent had set up a factory at Rudrapur, District Udham Singh Nagar, which now forms part of the State of Uttarakhand for manufacture of PVC and EPDM rubber profiles for automobile vehicles. In 1990, the Board sanctioned electric connection of 400 KVA load for the respondent's factory. Thereafter, as per the requirement of the Regulations, the respondent entered into an agreement with the Board. On 12th February, 1997, the respondent applied for an additional load of 200 KVA, which was duly sanctioned. As a sequel to this, fresh agreement was executed between the parties for the total load of 600 KVA. After one year and seven months, the respondent approached the Board for reduction of load from 600 KVA to 250 KVA. The competent authority of the Board accepted the respondent's request, who then executed another agreement dated 21st September, 1998.

3. In May 1999, the supply of electricity to the respondent's factory was discontinued at the latter's request. After five months, the concerned Executive Engineer sent communication on 5.10.1999 to the respondent requiring it to pay Rs.6,13,592/- towards minimum charges for six months. This was followed by notice dated 4.5.2000 and recovery certificate dated 4.8.2000 issued under Sections 3 and 5 respectively of the U.P. Government Electricity Undertakings (Recovery of Dues) Act, 1958 [for short, "the 1958 Act"].

4. The respondent challenged the demand of minimum charges in Civil Miscellaneous Writ Petition No.511 (M/B) of 2001 by contending that being an old consumer, it was not liable to pay minimum charges after disconnection of the supply of electricity. The Board contested the writ petition and pleaded that in terms of agreement dated 21st September, 1998 and the Regulations framed under Section 49 read with Section 79 of the Electricity (Supply) Act, 1948 [for short, "the 1948 Act"], the respondent is bound to pay minimum charges for the period of six months counted from the date of disconnection.

5. By the impugned order, a Division Bench of the High Court quashed the demand of minimum charges by observing that Clause 17 of the Regulations is not applicable to the respondent's case because the initial guarantee period of two years had ended long ago. The Division Bench also held that the demand of minimum charges cannot be raised after disconnection of the supply of electricity.

6. Shri Pradeep Misra, learned counsel for the appellants argued that the High Court committed an error by entertaining the writ petition ignoring that an equally efficacious alternative remedy was available to the respondent by way of arbitration in terms of para 16 of agreement dated 21st September, 1998. He further argued that in view of second proviso to para 11 of agreement dated 21st September, 1998 and Clause 17(ii) of the Regulations, the respondent is bound to pay minimum charges for the period of six months despite the fact that supply of electricity was disconnected sometime in May 1999. Learned counsel then submitted that the High Court's view on the issue of applicability of Clause 17 of the Regulations to the respondent's case is ex facie erroneous and is liable to be upset because in terms of para 6 of agreement dated 21st September, 1998 read with para (C) thereof, the date of commencement of supply was 21st September, 1998 and by May 1999, a period of less than one year had been completed. Learned counsel argued that with the execution of fresh agreement, the respondent lost its status as an old consumer and in terms of Clause 17(ii) of the Regulations, it is liable to pay the minimum charges.

7. Ms. Neeru Vaid, learned counsel for the respondent submitted that her client should not be non-suited on the specious ground of availability of alternative remedy because no argument on this issue was made before the High Court. She emphasized that minimum charges are levied in lieu of the actual investment made by the licensee in laying infrastructure for supply of electricity to the consumer and argued that the High Court did not commit any error by quashing the demand of minimum charges because the Board did not provide additional infrastructure for supply of electricity with reduced load of 250 KVA.

8. We have considered the respective submissions. In our opinion, the respondent cannot be non-suited on the ground of availability of alternative remedy of arbitration, because even though, an objection to

this effect was taken in the written statement filed on behalf of the Board, no such argument appears to have been made before the High Court. In any case, at this belated stage, we do not find any justification to non-suit the respondent on the ground that it did not avail the alternative remedy of arbitration.

9. We shall now deal with the question posed in the opening paragraph of this order. For this purpose, it will be profitable to notice the relevant provisions of agreement dated 21st September, 1998 and Clauses 10(b) and 17(i) and (ii) of the Regulations.

Agreement dated 21st September, 1998

6. 'Date of commencement of supply' means the date mentioned in Para (C) hereunder and if no such date is mentioned then the date of actual connection of Consumer's installation or the date of expiry of a period of one month from the date of intimation to the consumer about the availability of power after completion of the arrangements required to connect his installation whichever is earlier.

C. AND WHEREAS this agreement shall be deemed to have been effective from the 21st day of September One thousand nine hundred ninety eight which date shall be construed as the date of commencement of supply under this agreement.

11. This agreement shall subject herein before provided be and remain in force for two years from the date of commencement of supply (hereinafter / called the initial period of supply) and thereafter from year to year basis on the terms and conditions herein contained.

Provided that either party shall be at liberty to determine this agreement at any time after the expiration of the initial period of supply on giving one month's notice in writing of such intention, and on the expiration of such notice this agreement shall absolutely cease and determine, but without prejudice to the rights and remedies if any, of either party, which may have accrued or arisen hereunder in the meantime.

Provided further that if the consumer ceases taking supply of electrical energy due to any reason, he shall be liable to pay to the supplier necessary charges as per provision made in the regulation framed by the supplier under Sections 49 and 79 of Electricity (Supply) Act, 1948.

17(a). In case of shifting of the connections, change or addition of process, the consumer hereby covenants that for all purposes he shall be deemed as old registered consumer of the supplier and the supplier shall treat him accordingly.

(b) In case of reduction/addition of loads, the consumer hereby covenants that for all the purposes he shall be deemed as old registered consumer--the supplier having taken supply for different loads before execution of this agreement. The supplier shall treat him accordingly.

Regulations

10(b) Application for reduction of load.- If a consumer, in whose name the service is connected, wishes to have his contracted load reduced, he shall submit an application thereof, giving full particular of reduction of load required by him. The reduction in the contracted load of various categories of power consumers on such an application shall be allowed by the Supplier on the terms and

conditions detailed below, after completion of necessary formalities by the consumer, which are subject to revision by the Supplier from time to time.

(i) xxx
(ii) xxx
(iii) xxx

(iv) The existing agreement will stand terminated with effect from the date of allowing reduction in load and the consumer will be required to sign a fresh agreement for the reduced load effective from the date of allowing reduction of load.

17. Agreement.- (i) The consumer shall enter into a formal declaration/agreement for a minimum period of two years for taking electrical energy before release of supply. After expiry of the above period of two years, the declaration/agreement will continue on year to year basis on the same terms and conditions unless terminated in accordance with the provisions of the declaration/agreements.

All consumers shall execute declaration/agreements governing supply of energy in the form prescribed by the Board from time to time.

(ii) If the supply to a consumer is disconnected on request or in default before compulsory period of two years is over, he shall be liable for payment of minimum charge for the remaining period by which it falls short of two years or for the period of six months from the date of disconnection whichever is less, together with the estimated expenditure on the erection and demolition of the sub-station and the line (not paid by the consumer) actually dismantled due to the disconnection, together with the estimated expenditure on the cartage of the salvaged materials to stores and the cost of unsalvaged materials plus 15% supervision charges on the labour and cartage only.

(emphasis supplied)

10. A conjoint reading of various paragraphs of agreement dated 21st September, 1998 and the Regulations extracted hereinabove show that before release of supply, every consumer is required to enter into a declaration/agreement for taking electrical energy for minimum period of two years. This period of two years is counted from the date of commencement of supply and is treated as initial period of supply. After expiry of two years, the declaration/agreement continues on year to year basis on the same terms and conditions unless terminated by either party. In terms of para 17 of the agreement, the consumer is treated as old registered consumer of the supplier if there is shifting of connection, change or addition of process or addition or reduction of load. Clause 10(b) of the Regulations lays down that if the consumer applies for reduction of the contracted load and the same is sanctioned by the

competent authority, the existing agreement automatically ceases to exist and the consumer is required to sign a fresh agreement for the reduced load effective from the date of allowing such reduction. Clause 17(ii) of the Regulations lays down that if before expiry of the compulsory period of two years, supply is disconnected at the instance of the consumer or on account of default in payment of charges for the energy supplied by the licensee, then the consumer shall have to pay minimum charges for the remaining period or for six months from the date of disconnection, whichever is less. This clause also obligates the consumer to pay estimated expenditure on the erection and demolition of the sub-station and the line actually dismantled due to the disconnection, together with the estimated expenditure on the cartage of the salvaged materials to stores and the cost of unsalvaged materials plus 15% supervision charges on the labour and cartage.

11. From what we have noted above, it is clear that if a consumer applies for reduction of the contracted load, then the existing agreement stands automatically terminated with effect from the date of allowing reduction in load and the consumer is required to execute fresh agreement for the reduced load. If the supply of electricity is disconnected at the consumer’s request or on account of default in payment of the electricity charges before expiry of two years period specified in the agreement and the Regulations, then the consumer is bound to pay minimum charges for the remaining period or for six months counted from the date of disconnection, whichever is less.

12. There is no dispute between the parties that after sanction of electric connection with a load of 400 KVA, the respondent entered into an agreement with the Board as per the requirement of the Regulations. It is also not in dispute that fresh agreements were entered into between the parties on 12th February, 1997 when the load was increased from 400 KVA to 600 KVA and again on 21st September, 1998 when the load was reduced from 600 KVA to 250 KVA. The period of two years for which the Board was required to supply electricity to the respondent with a load of 250 KVA commenced from 21st September, 1998. The said period would have ended on 20th September, 2000 and if the respondent had not applied for disconnection, the Board would have supplied electricity to respondent’s factory till that date in accordance with the terms and conditions

enumerated in agreement dated 21st September, 1998 and the Regulations. However, the fact of the matter is that just after nine months of execution of fresh agreement, a request was made on behalf of the respondent for disconnection of the supply of electricity and the same was accepted by the competent authority of the Board. As a consequence, supply of electricity to the respondent's factory was discontinued in May, 1999. Therefore, in terms of second proviso to para 11 of the agreement and Clause 17(ii) of the Regulations, the respondent became liable to pay minimum charges and we do not find any illegality in the action of the Board to create the demand of minimum charges.

13. The reasons assigned by the High Court for quashing the demand created by the Board are ex facie untenable. A reading of the order under challenge shows that the High Court decided the writ petition by assuming that the respondent had completed initial guarantee period of two years and Clause 17 of the Regulations is not applicable to its case. In the process, the High Court not only omitted to consider the fact that the respondent had executed fresh agreement dated 21st September, 1998 and in terms thereof the period of two years commenced from the date of agreement, but also misconstrued Clause 17 of the Regulations, sub-clause (ii) whereof unequivocally lays down that if the supply of electricity is disconnected at the instance of the consumer, the latter is liable to pay minimum charges for the remaining period of the agreement or for six months, whichever is less. The High Court also failed to note that the supply of electricity was disconnected at the respondent's request within nine months of agreement dated 21st September, 1998. Therefore, the impugned order is liable to be set aside.

14. The argument of the respondent's counsel that the demand of minimum charges could not have been created against her client because no additional infrastructure was laid for supply of electricity at a reduced load of 250 KVA sounds attractive but the same cannot be accepted because the respondent did not challenge the vires of the Regulations or the terms of agreement dated 21st September, 1998.

15. Before concluding, we may also notice the judgment of this Court in Bihar State Electricity Board, Patna and others v. M/s.

Green Rubber Industries and others (1990) 1 SCC 731. In that case, a two-Judge Bench considered a question whether in terms of the agreement entered into between the Board and the consumer, the latter is liable to pay minimum guarantee charges irrespective of consumption of electricity and held:

"It is true that the agreement is in a standard form of contract. The standard clauses of this contract have been settled over the years and have been widely adopted because experience shows that they facilitate the supply of electric energy. Lord Diplock has observed: "If fairness or reasonableness were relevant to their enforceability the fact that they are widely used by parties whose bargaining power is fairly matched would raise a strong presumption that their terms are fair and reasonable." Schroeder (A.) Music Publishing Co. Ltd. v. Macaulay. In such contracts a standard form enables the supplier to say: "If you want these goods or services at all, these are the only terms on which they are available. Take it or leave it." It is a type of contract on which the conditions are fixed by one of the parties in advance and are open to acceptance by anyone. The contract, which frequently contains many conditions is presented for acceptance and is not open to discussion. It is settled law that a person who signs a document which contains contractual terms is normally bound by them even though he has not read them, even though he is ignorant of the precise legal effect. In view of clause 4 having formed one of the stipulations in the contract along with others it cannot be said to be nudum pactum and the maxim nudum pactum ex quo non oritur actio does not apply. Considered by the test of reasonableness it cannot be said to be unreasonable inasmuch as the supply of electricity to a consumer involves incurring of overhead installation expenses by the Board which do not vary with the quantity of electricity consumed and the installation has to be continued irrespective of whether the energy is consumed or not until the agreement comes to an end. Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of enquiry is the meaning of an isolated clause. This agreement with the stipulation of minimum guaranteed charges cannot be held to be ultra vires on the ground that it is incompatible with the statutory duty. Differences between this contractual element and the statutory duty have to be observed. A supply agreement to a consumer makes his relation with the Board mainly contractual, where the basis of supply is held to be statutory rather than contractual. In cases where such agreements are made the terms are supposed to have been negotiated between the consumer and the Board, and unless specifically assigned, the agreement normally would have affected the consumer with whom it is made, as was held in Northern Ontario Power Co. Ltd. v. La Roche Mines Ltd."

16. In the result, the appeal is allowed and the impugned order is set aside. As a corollary, the demand of minimum charges created by the predecessor of appellant No.1 is upheld and the writ petition filed by the respondent is dismissed. The appellant shall now be entitled to encash the bank guarantee furnished by the respondent in terms of interim orders dated 13th September, 2002 and 5th December, 2003 passed by this Court.

.....J.
[G.S. Singhvi]

.....J.

[Dr. B.S. Chauhan
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New Delhi
September 08, 2008.