

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).9410/2017
(Arising out of Special Leave Petition(C) No(s). 13081/2015)

M/S. DELUX ENTERPRISES

Petitioner(s)

VERSUS

H.P. STATE ELECTRICITY BOARD LTD. & ORS.

Respondent(s)

O R D E R

Leave granted.

We have heard the learned counsel for the parties at length.

The dispute raised in this matter is with respect to the levy of the new tariff system on the appellant. The appellant applied for an electricity connection in the year 1999 with a connected load of 495 KW. At that point of time, the consumers were charged at a fixed amount, i.e. monthly minimum charges and energy consumption charges, which were indicative of whatever electricity was consumed. In the year 2000, H.P. Electricity Regulatory Commission (hereinafter referred to as 'the Commission') was established vide Notification dated 30.12.2000. The Commissioner introduced two-part tariff, which came into force on 01.11.2001 and introduced the concept of 'Contract Demand Charges' along with the energy consumption charges thereby taking away the monthly minimum charges.

A dispute arose as to which consumers, who had filled their

application and agreement form before 01.11.2001, would be charged as their application/agreement did not contain any contract demand. The Commission passed an order dated 03.08.2002 stating that for consumers whose application and agreement did not contain contract demand, should enter into fresh agreement within a month from the issue of the order of the Court. It was also stated that process of entering into fresh agreements should be completed within three months. In the meantime, the demand charges for that one month till fresh agreements would be entered into, would be levied based upon the 'maximum recorded demand' during the month. As per this order, H.P. Electricity Board (hereinafter referred to as 'the Board') should have charged on the basis of 'maximum recorded demand' though the appellant was charged on the basis of contract demand.

Being aggrieved, the appellant made complaints for the settlement of 47 bills before the Zonal Level Disputes Settlement Committee at Shimla. The Board issued a letter dated 16.03.2004 *inter alia* stating that on scrutiny of the load sanction in the case of the appellant's firm it was observed that the column of the contract demand of the application and agreement form were kept blank. Pursuant to the order of the Commission, the appellant filed a new application and agreement form in August, 2004 and entered into a new contract with the Board. The complaints filed by the appellants were decided by the Zonal Level Disputes Settlement Committee on 18.04.2007 wherein the billing was upheld as per the new tariff order dated 01.11.2001.

The appellant challenged the order dated 18.04.2007 by filing

a complaint before the Forum of Redressal of Grievances of Consumers of Himachal Pradesh State Electricity Board (hereinafter referred to as 'Redressal Forum'), which was also dismissed by the Redressal Forum vide order dated 29.01.2008. Upon this, the appellant made a representation before the Himachal Pradesh Electricity Ombudsman with the prayer that 41 bills pertaining to the period November, 2001 to December, 2006 be set aside as they were based on contract demand. The Himachal Pradesh Electricity Ombudsman vide order dated 05.08.2008 held that the appellant had filled the application and agreement form and, therefore, should be charged as per the contract demand method. The appellant moved an application for recalling of the said order, which was dismissed vide order dated 19.11.2009.

Being aggrieved, the appellant filed a writ petition against the orders passed by the Himachal Pradesh Electricity Ombudsman before the High Court of Himachal Pradesh. The High Court dismissed the writ petition vide impugned judgment dated 21.10.2014.

From the aforesaid it is clear that learned Single Judge had entertained the writ petition on merits. It is a different aspect that the learned Single Judge did not find any force in the writ petition and dismissed the same on merits. The appellant challenged the same before the Division Bench. The Division Bench in the impugned order has not gone into the issue as to whether the judgment of the learned Single Judge is correct in law or not. On the contrary, it took a diversion and dismissed the appeal by holding that the writ petition itself was not maintainable. After going through the impugned judgment, we find that the conclusion of

the High Court that writ petition was not maintainable is not correct. It could have decided the appeal of the appellant herein on merits. We, thus, set aside the impugned order and remit the case to the High Court for the aforesaid purpose.

The appeal is, accordingly, disposed of.

.....J.
[A.K. SIKRI]

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
JULY 21, 2017.

ITEM NO.11

COURT NO.7

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 13081/2015

(Arising out of impugned final judgment and order dated 21-10-2014 in LPA No. 125/2014 passed by the High Court Of Himachal Pradesh At Shimla)

M/S. DELUX ENTERPRISES

Petitioner(s)

VERSUS

H.P. STATE ELECTRICITY BOARD LTD. & ORS.

Respondent(s)

Date : 21-07-2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Ms. Aishwarya Bhati, AOR
Mr. Himendra Sharma, Adv.

For Respondent(s) Mr. Naresh K. Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)