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ANDHRA STEEL CORPORATION LTD. ETC.

v.

ANDHRA PRADESH STATE ELECTRICITY BOARD AND ORS.

MAY 2, 1991

B

[M.N. VENKATACHALIAH, J.S. VERMA AND N.D. OJHA, JJ.]

Electricity Supply Act, 1948: Sections 48 and 78-A—Mini steel plants—Electricity supply—State Government fixing concessional tariff and directing the Electricity Board to supply electricity at such rates—

C *Whether amounts to granting of immunity to the plants from payment of minimum charges—Concessional tariff and minimum supply—Imposition of conditions by Electricity Board—Validity of.*

Administrative Law: Establishment of mini steel plants—Supply

D *of electricity at concessional tariff—Applicability of principles of natural justice, doctrine of promissory estoppel and doctrine of legitimate expectation.*

The appellants owning mini steel plants have been getting supply of electricity from the Respondent-Board. The Board revised its terms

E **and conditions for supply of electricity, and concessional tariff of 11 paise per unit for 3 years from 1.11.1977 was applied to five steel plants. This tariff was subsequently enhanced to 12.5 paise per unit. However, the concessional tariff was not extended to one of the appellants viz. M/s. Andhra Steel Corporation since a Writ Petition had been filed by it claiming that the agreement entered into with the Res-**

F **pondent-Board for availing high tension electric supply was no longer in force. In respect of the other steel plants, the Board extended the concessional tariff subject to escalations and other terms and conditions and fixed a certain minimum consumption. However, the tariff was revised to 16 paise without reference to the maximum demand charges from 1.3.1978. In reply to a clarification sought by the Respondent-**

G **Board, the State Government clarified that the Government order did not preclude the Board from applying the normal terms and conditions of supply and prescribing the monthly minimum charges and the working out of the escalated rate from time to time. Subsequently the State Government withdrew the concessional tariff. The State Government made a further clarification that its intention was to allow the conces-**

H **sional tariff without limiting the concession by imposition of minimum**

consumption charges till the end of March, 1979. A

Aggrieved by the withdrawal of the concessional tariff, the mini steel plants filed Writ Petitions before the High Court contending that it was not open to the Electricity Board to have levied minimum charges and it was bound to supply electricity to them at the concessional tariff fixed by the State Government. It was also contended that the State B Government's subsequent clarification should prevail over the earlier one. Violation of principles of natural justice, doctrine of promissory estoppel and right based on doctrine of legitimate expectation were also contended.

It was further contended that the directions were issued under section 78A of the Electricity Supply Act and hence they were of a C compulsory nature and binding on the Board.

The Andhra Steel Corporation contended that while applying the concessional tariff to other mini steel plants, the Electricity Board was not justified in refusing the same to it thereby singling it out and hence D its action was discriminatory and *mala fide*.

The High Court rejected the various contentions and dismissed the Writ Petitions.

Aggrieved by the dismissal of their Writ Petitions, the mini steel E plants filed appeals before this Court, raising the same contentions as were advanced before the High Court,

Dismissing the appeals, this Court,

HELD: 1. In granting concessional tariff obviously it does not F appear to be the purpose to compel the Electricity Board to maintain the supply of the contracted load of electricity to the appellants by incurring losses. The only purpose in directing supply of energy at concessional rates was to reduce the charges of actual energy consumed by the appellants and this purpose could not be frustrated till the Electricity Board complied with the direction of supplying electricity to G them at the concessional rate. Though the order dated 16.1.80 in substance amounts to a clarification of the earlier order of clarification dated 5th December, 1978, it states nothing as to why the clarification contained in the order dated 5th December, 1978 in categorical terms did not express the real intention of the State Government in issuing the earlier Government orders granting concessional tariff. The orders H

granting concessional tariff, did not either expressly or by necessary implication grant immunity to the mini steel plants from their obligation to pay minimum charges and this having been categorically stated by the State Government in its clarificatory order dated 5th December, 1978 there was apparently no basis for issuing the second clarificatory order dated 16th January, 1980. It was issued on some representation made by the mini steel plants at a point of time when Writ Petition on their behalf had already been filed in the High Court and the matter was sub-judice. In such a situation, apart from the propriety of issuing the second clarificatory order on 16th January, 1980 it is obvious that what was contained in this order is analogous to an averment made by the State Government in reply to the Writ Petitions filed on behalf of the appellants and it has no bearing in finding out the true import of the orders of the State Government granting concessional tariff. [633C-D; 636A-E]

Amalgamated Electricity Co. v. *Jalgaon Borough Municipality,* [1975] 2 SCC 508 and *Bihar State Electricity Board* v. *Green Rubber Industries,* [1990] 1 SCC 731, referred to.

2. By the Government Orders dated 2nd November, 1977 and 26th November, 1977 concession was granted to the appellants. This is manifest from the Government Orders themselves which expressly used the expression "concessional power tariff" or "concessional tariff". At no stage, the appellants disputed that what was extended to them by the said Government Orders was by way of concession. In view of the settled law, neither of the two orders viz., orders dated 5.12.78 and 12.3.79 can be said to be illegal on the ground that they were passed in violation of principles of natural justice. [633F—H]

Shri Bakul Oil Industries v. *State of Gujarat,* [1987] 1 SCC 31; relied on.

3. With regard to the plea of promissory estoppel, it is not the case of the appellants that they established their mini plants after the grant of concessional Tariff by the said two Government Orders and but for the grant of such concessional tariff they would not have established their mini steel plants. The necessary facts so as to sustain the plea of promissory estoppel are not pleaded or established by the appellants. [635B-D]

4. There is nothing on record to substantiate the plea of doctrine of legitimate expectation on the basis of which the appellants could be held entitled to any relief. [635G]

5. On the facts of the present appeals it is not necessary to go into the question whether the power of fixing tariff under section 49 of the Electricity Supply Act could be regulated by a direction under section 78A thereof. The Electricity Board proceeded to implement the directions with regard to fixation of concessional tariff issued by the State Government and resolved to realise electricity charges from the appellants only at the concessional tariff of 12.2 p. as fixed in the Government Order dated 26th November, 1977. It, however, took the further view that the directions issued by the Government did not have any bearing on the obligation of the appellants to pay minimum charges which they were bound to pay under the agreements executed by them even though such minimum charges were to be calculated at the rate of 12.2 p. per unit subject to escalation as indicated in the Government Orders in question. Such minimum charges were payable even if no electricity was consumed by the appellants for any reason whatsoever. [631B-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1454 -63 & 1642-45 of 1981.

From the Judgment and Order dated 10.4.1981 of the Andhra Pradesh High Court in Writ Petition No. 3720 of 1979.

G. Ramaswamy, M.S. Ganesh, S. Murlidhar, Sanjeev Ahuja and B. Parthasarthy for the Appellants.

C. Sitaramaiya, T.V.S.N. Chari and Mrs. B. Sunita Rao for the Respondents.

The Judgment of the Court was delivered by

OJHA, J. These appeals are directed against the judgment of the Andhra Pradesh High Court dated 10th April, 1981 rendered in a batch of writ petitions, reported in *M/s. Poddar Projects Ltd. (Multi Steels)* v. *A.P.S.E. Board,* AIR 1982 Andhra Pradesh 189. For the sake of convenience, these appeals are being decided by a common judgment. In order to appreciate the respective submissions made by learned counsel for the parties necessary facts may be stated in brief.

The appellants are some of the mini steel plants of Andhra Pradesh. Revised terms and conditions of electricity supply were notified by the Andhra Pradesh State Electricity Board (for short the Electricity Board) in B.P. Ms. No. 690 (Coml.) on 17.9.75 to be effec-

A tive from 20th October, 1975. Subsequently, G.O. Ms. No. 832 dated 2nd November, 1977 was issued by the State Government whereby concessional tariff of 0.11 p. per unit for the period of three years commencing from Ist November, 1977 and ending with 31st October, 1980 was applied in respect of the following five consumers:

B 1. Andhra Pradesh State Corporation Limited 2. Poddar Projects Limited 3. A.K. Corporation Limited 4. Andhra Steels, Vishakapatnam 5. A.K. Corporation, Vishakapatnam.

This concessional tariff was subsequently enhanced to 12.5 p. by the State Government vide G.O. Ms. No. 876 dated 26th November, 1977. The concessional tariff referred to above, however, was not C extended to M/s. Andhra Steel Corporation by the Electricity Board by passing a resolution in its meeting held on 26th November, 1977 inasmuch as the Andhra Steel Corporation had already filed a writ petition *inter alia* claiming that the agreement which it had entered into with the Electricity Board for availing high tension electric supply D was no longer in force. In respect of the remaining four steel plants referred to above the Electricity Board extended the concessional tariff of 12.2 p. subject to escalations and other terms and conditions of supply and fixed minimum consumption of 403.325 units/KVA. This was done by issuing B.P. Ms. No. 78 dated 20th January, 1978. These four mini steel plants were, however, subsequently directed by the E Electricity Board vide B.P. Ms. No. 436/Coml. dated 3rd May, 1978 to be charged at a tariff rate of 16 p. per unit instead of 12.2 p. without reference to the maximum demand charges from Ist March, 1978. The Electricity Board also sought clarification from the State Government vide its letter No. DE (Coml.) 1205-11/76-32 dated 27th November, 1978 with regard to fixation of minimum consumption of 403.325 units/ F KVA and fixation of concessional tariff at 0.16 p. per unit in view of the new levy of central excise duty and in view of the increased cost of generation. The State Government vide G.O. Ms. No. 697 dated 5th December, 1978 issued a clarification that the aforesaid G.O. Ms. Nos. 832 and 876 did not preclude the Electricity Board from applying the normal terms and conditions of supply and prescribing the monthly G minimum charges and the working out of the escalated rate from time to time. Subsequently the State Government vide G.O. Ms. No. 146 dated 12th March, 1979 withdrew the concessional tariff contemplated by G.O. Ms. Nos. 832 and 876 referred to above. This was done on the representation of the Electricity Board which in its turn through its B.P. Ms. No. 830 dated 2nd April, 1979 cancelled B.P. Ms. Nos. 78 H and 436 with effect from 12th March, 1979. The State Government

subsequently also issued G.O. Ms. No. 10 dated 16th January, 1980 whereby it was clarified that its intention in issuing the earlier G.O. Ms. No. 697 dated 5th December, 1978 was to allow the concessional tariff rate notified in G.O. Ms. No. 876 without limiting the concession by imposition of minimum consumption charges till the end of March, 1979. The Electricity Board felt aggrieved by this G.O. and requested the Government to cancel it for the reasons set out in its letter dated 28th January, 1980.

One of the grievances of the Andhra Steel Corporation in its writ petition before the High Court was that the Electricity Board while applying the concessional tariff to the other mini steel plants was not justified in refusing the said concession to it merely because it had filed a writ petition. The action of the Electricity Board in singling it out was, according to the Andhra Steel Corporation, discriminatory and *mala fide*. This plea has been reiterated before us also and is confined to the appeal preferred by the Andhra Steel Corporation.

The pleas common to all the appellants which were raised before the High Court as also before us may now be enumerated. It has been asserted that in view of the direction issued by the State Government fixing concessional tariff for the appellants it was not open to the Electricity Board to have levied minimum charges and it was bound to supply electricity to the appellants on the concessional tariff alone as fixed by the State Government. As regards the order of the State Government dated 5th December, 1978 which clarified that its earlier orders fixing concessional tariff did not preclude the Electricity Board from levying *inter alia* minimum charges it has been asserted that the said order is illegal. In the alternative, it is asserted that if clarificatory orders could be issued by the State Government with regard to its orders fixing concessional tariff the subsequent clarification made by order dated 16th January, 1980 had to prevail over the earlier clarification dated 5th December, 1978.

The order of the State Government dated 12th March, 1979 withdrawing the concessional tariff with effect from that date had also been assailed on the ground that it was passed on the representation of the Electricity Board without giving any opportunity to the appellants to show cause against the said representation and consequently the said order was in violation of principles of natural justice. Pleas of promissory estoppel and right based on the doctrine of legitimate expectation have also been raised.

A As regards the submission made on behalf of the Andhra Steel Corporation about singling it out in the matter of grant of concessional tariff on the basis of the order issued by the State Government for the period ending 12th March, 1979 Shri Shanti Bhushan, learned counsel for the Electricity Board has very fairly stated that the Electricity Board would extend to the Andhra Steel Corporation also the same B benefit which was extended to the other four mini steel plants in the matter of grant of concessional tariff for the said period ending 12th March, 1979. In this view of the matter it is not now necessary to deal with this plea.

As regards the plea that in view of the direction issued by the State Government fixing concessional tariff for the appellants it was C not open to the Electricity Board to have levied minimum c[illegible]ges as it was bound to supply electricity to the appellants on the concessional tariff alone as fixed by the State Government it was submitted by learned counsel for the appellants that not only it was specifically stated in the G.O. dated 26th November, 1977 that the directions D contained therein were issued under Section 78A of the Act, it was accepted even by the Electricity Board to be a direction under Section 78A of the Act as is apparent from its proceedings dated 20th January, 1978. According to learned counsel for the appellants a direction issued under Section 78A of the Act was of a compulsive nature and was binding on the Electricity Board. The only dispute which the E Electricity Board could raise was as envisaged and in the manner provided by Section 78A(2) of the Act about the direction being a matter of policy. The Electricity Board according to learned counsel not having taken recourse to the procedure contained in Section 78A(2) of the Act was precluded from asserting before the High Court that the Government orders granting concessional tariff to the appellants did F not fall within the purview of Section 78A of the Act. The contention of the learned counsel for the Electricity Board on the other hand has been that a direction under Section 78A of the Act can be only with regard to a matter of policy vis-a-vis the consumers generally or of a particular class or category as distinguished from individual consumers and even such a direction does not have a binding force and is G calculated only to guide the Electricity Board in the discharge of its statutory functions. Learned counsel for the parties were at variance even on the question as to whether the power of fixing tariff under Section 49 of the Act could be regulated by a direction under Section 78A thereof. In support of the submission that a direction issued by the Government is compulsive in nature learned counsel appearing for H the appellants and the State of Andhra Pradesh drew our attention to

certain decisions and principles of administrative law laying down the scope of a direction.

Having considered the respective submissions of learned counsel for the parties on this point we are of the opinion that on the facts of the instant appeals it is not necessary to go into the rival contentions referred to above on this point. Here, the Electricity Board as is apparent from its proceedings dated 20th January, 1978 proceeded to implement the directions with regard to fixation of concessional tariff issued by the State Government and resolved to realise electricity charges from the appellants only at the concessional tariff of 12.2 p. as fixed in the Government Order dated 26th November, 1977. It, however, took the further view in the said proceedings that the directions issued by the Government did not have any bearing on the obligation of the appellants to pay minimum charges which they were bound to pay under the agreements executed by them even though such minimum charges were to be calculated at the rate of 12.2 p. per unit subject to escalation as indicated in the Government Orders in question. Such minimum charges were payable even if no electricity was consumed by the appellants for any reason whatsoever. It is in this context that we are of the opinion that the question with regard to the nature of a direction issued under section 78A of the Act is only of academic value in these appeals. The basic question which falls for our consideration, however, is as to whether the obligation of the appellants to pay minimum charges under the agreements executed by them ceased to be operative on account of the directions issued by the State Government fixing concessional tariff as has been asserted by learned counsel for the appellants. As indicated earlier the case of the Electricity Board in this behalf has been that the directions in question did not have any bearing on the obligation of the appellants to continue to pay minimum charges, of course, to be calculated on the basis of the concessional tariff of 12.2 p. per unit. A plain reading of the Government Orders dated 2nd November, 1977 and 26th November, 1977 makes it clear that there is no specific direction contained therein that the appellants would not be bound to pay minimum charges or that the obligation to pay minimum charges under the agreements executed by them would remain suspended during the period when the concessional tariff would be operative. What was, however, urged by learned counsel for the appellants was that the very purpose of fixing concessional tariff by the State Government would be frustrated if the appellants are held to be bound to continue to pay minimum charges in pursuance of the agreements entered into by them. With regard to this submission it is at the outset necessary to appreciate the genesis of

A prescription of minimum charges. To put it succinctly the purpose of prescribing minimum charges is to ensure that no undue loss is caused to the Electricity Board because the absence of minimum charges is likely to create a tendency in a prospective consumer to have connection for an inflated requirement and having agreed to meet such requirement the Electricity Board would be under an obligation to B maintain the supply upto that requirement even if no or very little energy is consumed. In *Amalgamated Electricity Co.* v. *Jalgaon Borough Municipality,* [1975] 2 SCC Page 508 it was held in paragraph 9 of the Report:

> "Moreover it is obvious that if the plaintiff company was to C give bulk supply of electricity at a concessional rate of 0.5 anna per unit it had to lay down lines and to keep the power ready for being supplied as and when required. The consumers could put their switches on whenever they liked and therefore the plaintiff had to keep everything ready so that power is supplied the moment the switch was put on. In D these circumstances it was absolutely essential that the plaintiff should have been ensured the payment of the minimum charges for the supply of electrical energy whether consumed or not so that it may be able to meet the bare maintenance expenses."

E In *Bihar State Electricity Boara* v. *Green Rubber Industries,* [1990] 1 S.C.C. Page 731 while dealing with the question whether the stipulation to pay minimum guarantee charges irrespective of whether energy was consumed or not is reasonable and valid it was *inter alia* held that considered by the test of reasonableness it cannot be said to be unreasonable inasmuch as the supply of electricity to a consumer F 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.

The purpose of prescribing minimum charges being, as stated G above, can it be said that while issuing the direction to the Electricity Board to supply electricity to the five mini steel plants at concessional rate the State Government was oblivious of the said purpose and required the Electricity Board not only to supply electricity on the concessional rate but also incur undue loss in maintaining the required bulk of energy stipulated in the various agreements even if the con- H cerned mini plants either used no energy or used very little energy.

In our opinion, on the material placed before us it is not possible to take the view that such was the intention of the State Government in directing supply to be made to the appellants on concessional tariff. That it was not the intention of the State Government to do so was subsequently clarified by the State Government itself vide Government Order dated 5th December, 1978. In this view of the matter the submission made on behalf of the appellants that with the grant of concessional tariff the agreements in so far as they required the appellants to pay minimum charges ceased to be operative or that the purpose of granting concessional tariff was likely to be frustrated if they were required to continue to pay minimum charges cannot, therefore, be accepted. In granting concessional tariff obviously it does not appear to be the purpose to compel the Electricity Board to maintain the supply of the contracted load of electricity to the appellants by incurring losses in the manner stated above. The only purpose in directing supply of energy at concessional rates was to reduce the charges of actual energy consumed by the appellants and this purpose could not be frustrated till the Electricity Board complied with the direction of supplying electricity to them at the concessional rate. In this view of the matter it is apparent that the direction of the State Government to the Electricity Board to supply electricity to the appellants at concessional rate did not either expressly or by necessary implication grant immunity to the appellants from payment of minimum charges.

In support of the plea that the order of the State Government dated 5th December, 1978 which clarified that its earlier orders fixing concessional tariff did not preclude the Electricity Board from levying minimum charges and the subsequent order dated 12th March, 1979 withdrawing the concessional tariff were invalid it was submitted by learned counsel for the appellants that those orders were in violation of principles of natural justice as also the doctrine of promissory estoppel. In so far as this submission is concerned what is of significance is that by the Government Orders dated 2nd November, 1977 and 26th November, 1977 concession was granted to the appellants. This is manifest from the aforesaid Government Orders themselves which expressly used the expression "concessional power tariff" or "concessional tariff". At no stage, does it appear to have been disputed by the appellants that what was extended to them by the said Government Orders was by way of concession. In the context of granting exemption from sales tax certain observations were made by this Court in *Shri Bakul Oil Industries* v. *State of Gujarat*, [1987] 1 S.C.C. Page 31 which would, keeping in view the principle laid down therein with regard to

A the grant of concession, be, in our opinion, useful in considering the above stated submission made by the learned counsel for the appellants. It was held:

> "Viewed from another perspective, it may be noticed that the State Government was under no obligation to grant
B exemption from sales tax. The appellants could not, therefore, have insisted on the State Government granting exemption to them from payment of salex tax. What consequently follows is that the exemption granted by the government was only by way of concession. Once this position emerges it goes without saying that a concession can be withdrawn at any time and no time limit can be insisted
C upon before the concession is withdrawn. The notifications of the government clearly manifest that the State Government had earlier granted the exemption only by way of concession and subsequently by means of the revised notification issued on July 17, 1971, the concession had been
D withdrawn. As the State Government was under no obligation, in any manner known to law, to grant exemption it was fully within its powers to revoke the exemption by means of a subsequent notification. This is an additional factor militating against the contentions of the appellants."

E It was further held:

> "The exemption granted by the government as already stated, was only by way of concession for encouraging entrepreneurs to start industries in rural and undeveloped areas and as such it was always open to the State Govern-
F ment to withdraw or revoke the concession. We must, however, observe that the power of revocation or withdrawal would be subject to one limitation viz. the power cannot be exercised in violation of the rule of promissory estoppel. In other words, the government can withdrawn an exemption granted by it earlier if such withdrawal could be done with-
G out offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said rule. If the government grants exemption to a new industry and if on the basis of the representation made by the government an industry is established in order to avail the benefit of exemption, it may then follow
H that the new industry can legitimately raise a grievance that

the exemption could not be withdrawn except by means of legislation having regard to the fact that promissory estoppel cannot be claimed against a statute." A

This being the law with regard to grant of concession we are of the opinion that neither of the two orders mentioned above can be said to be illegal on the ground that they were passed in violation of principles of natural justice. Who only question in this connection which survives is that of promissory estoppel. With regard to this plea it would be seen that it is not the case of the appellants that they established their mini plants after the grant of concessional tariff by the two Government Orders referred to above and but for the grant of such concessional tariff they would not have established their mini plants. The necessary facts so as to sustain the plea of promissory estoppel are not, in our opinion, to be found to have been either pleaded or established by the appellants. To take it by way of an illustration reference may be made to the special leave petition giving rise to Civil Appeal Nos. 1454-1463 of 1981 filed by M/s. Andhra Steel Corporation Ltd. The plea with regard to promissory estoppel is to be found in ground no. (i) which reads: B C D

"Whether in view of the fact that the Petitioner had acted upon the Government orders dated 2.11.1977 and 26.11.1977 and thus altered its position (as without the concessions being granted to the Petitioner they would not have *possibly* run the industry, since it was bound to suffer huge (losses) is the State Government estopped from revoking, or modifying the same before the full period of concession had run out of efflux of time that is, by 31-10-1980?" E

(emphasis supplied) F

Almost indentical is ground no. (i) in the special leave petition giving rise to Civil Appeal Nos. 1642-1645 of 1981. The use of the word "possibly" is obviously indicative of lack of specific averment with regard to principle of estoppel. Even such an averment has not been made qua the Electricity Board. With regard to the plea based on the doctrine of legitimate expectation suffice if to say that except invoking the said doctrine nothing substantial was brought to our notice on the basis of which the appellants could be held entitled to any relief. G

In so far as the Government Order dated 16th January, 1980 on which reliance has been placed by learned counsel for the appellants in H

A the alternative is concerned it may be pointed out that the said order even though in substance amounts to a clarification of the earlier order of clarification dated 5th December, 1978, states nothing as to why the clarification contained in the order dated 5th December, 1978 in categorical terms did not express the real intention of the State Government in issuing the earlier Government Orders granting concessional tariff. As already indicated above, the orders granting concessional tariff, in our opinion, did not either expressly or by necessary implication grant immunity to the mini steel plants from their obligation to pay minimum charges and this having been categorically stated by the State Government in its clarificatory order dated 5th December, 1978 there was apparently no basis for issuing the second clarificatory order dated 16th January, 1980. Further, the said order dated 16th January, 1980 had been issued on some representation made on behalf of the mini steel plants at a point of time when writ petitions on their behalf had already been filed in the High Court and the matter was subjudice. In such a situation, apart from the propriety of issuing the second clarificatory order dated 16th January, 1980 it is obvious that what was contained in this order is analogous to an averment made by the State Government in reply to the writ petitions filed on behalf of the appellants. In our opinion, in the circumstances pointed out above the order dated 16th January, 1980 has no bearing in finding out the true import of the orders of the State Government granting concessional tariff.

In view of the foregoing discussion, we do not find any substance in these appeals. They are accordingly dismissed. No costs.

G.N. Appeals dismissed.