

TRANSMISSION CORPORATION OF A.P. LTD. AND ORS.

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v.

M/S SRI RAMA KRISHNA RICE MILL

FEBRUARY 20, 2006

[ARIJIT PASAYAT AND R.V. RAVEENDRAN, JJ.]

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Electricity (Supply) Act, 1948—Terms and Conditions of Supply of Electrical Energy—Clause 39.9 sub clause (1) to (3)—Pilferage of energy by consumer—Final Order of assessment made on basis of reports of departmental officer without granting opportunity to consumer—Opportunity to cross-examine departmental officer—Grant of—Held: Right of cross examination is not inbuilt—Terms and conditions of supply do not contemplate recording oral or documentary evidence—However provides for reasonable opportunity which depends on factual situation—Consumer has to make out a case for cross-examination which would be duly considered by the Adjudicating Authority.

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Appellant no. 1—Corporation successor company of erstwhile A.P. State Electricity Board inspected business premises of respondent and made provisional assessment alleging pilferage of energy and raised a demand. Thereafter, appellant issued notice to respondent proposing to charge on final assessment. Respondent filed its objections and subsequently final order of assessment was passed confirming the amount stated in the notice. Respondent filed an appeal under the Terms and Conditions of Supply of Electrical Energy of State Electricity Board praying for grant of opportunity to cross-examine certain officials of the Corporation on basis of whose statements final assessment was made but the same was refused. Respondent filed writ petition which was allowed holding that if the authorities relied on statement or report pointing out the act of pilferage petitioner would be entitled to call such person for cross-examination. Hence the present appeal.

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Disposing of the appeal, the Court

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HELD: 1.1. The parameters of the principles of natural justice cannot be covered by any straight-jacket formula. It would vary depending upon the circumstances involved. [376-F]

A 1.2. Under Clause 39.9.2 of Terms and Conditions of Supply it cannot be laid down as a rule of universal application that whenever the statement of departmental officer is pressed into service for the purpose of adjudication, a right of cross examination is in built. The Terms and Conditions of Supply did not contemplate anything like recording oral or documentary evidence in the way as is normally done in the Courts of law.

B But Clause 39.9.2 itself provides for a reasonable opportunity being granted. What would be a reasonable opportunity would also depend upon the fact situation. [377-E; 376-G]

Advanced Law Lexicon by P. Ramanatha Aiyar 3rd Edition, Vol.4 pages 3959 and 3968, referred to.

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1.3. In order to establish that cross-examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilized for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting

D for grant of an opportunity to cross examine any official, the same has to be considered by the adjudicating authority who would have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the appellate authority as to how he has been prejudiced by the refusal to grant opportunity to

E cross-examine any official. Where the reliance is only on accounts prepared by a person, cross examination is not necessary. But where it is based on reports alleging tampering or pilferage, the fact situation may be different. Before asking for cross examination the consumer may be granted an opportunity to look into the documents on which the adjudication is

F proposed. In that event, he will be in a position to know as to the author of which statement is necessary to be cross-examined. The applications for cross-examination are not to be filed in routine manner and equally also not to be disposed of by adjudicator in casual or routine manner. There has to be application of mind by him. [377-G, H; 378-A-C]

G 1.4. In the instant case without even granting an opportunity to the respondent, the final order of assessment was passed. Merely taking note of the objection filed cannot be said to be compliance of the provisions contained in Clause 39.9.2. Therefore, respondent had made a prayer before the appellate authority. Respondent did not indicate as to why the cross-examination was necessary. If a fresh application is made, the same

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would be duly considered by the appellate authority, keeping in view the principles. [376-E; 377-D-F]

Hyderabad Vanaspathi Ltd. v. A.P. State Electricity Board and Ors., [1998] 4 SCC 470 and *The State of Jammu and Kashmir and Ors. v. Bakshi Gulam Mohammad and Anr.*, [1966] Suppl. SCR 401, distinguished.

M.P. Electricity Board v. Harsh Wood Products, [1996] 4 SCC 522; *The New Prakash Transport Co. Ltd. v. The New Suwarna Transport Co. Ltd.*, [1957] SCR 98; *Nagendra Nath Bora and Anr. v. Commissioner of Hills Division and Appeals, Assam and Ors.*, [1958] SCR 1240 and *Khem Chand v. Union of India*, AIR (1958) SC 200, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2137 of 2000.

From the Judgment and Order dated 16.6.1999 of Andhra Pradesh High Court in Writ Petition No. 7586/1999.

Ashok Grover and Rakesh K. Sharma for the Appellant.

Y. Prabhakara Rao for the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Challenge in this appeal is to the legality of the judgment rendered by a Division Bench of the Andhra Pradesh High Court. The controversy lies within a very narrow compass and, therefore, the factual position needs to be noted in brief. The appellant No.1-corporation is the successor company of the erstwhile Andhra Pradesh State Electricity Board (in short the 'Board').

The business premises of the respondent were inspected by the officials of the appellant No.1-Corporation. The respondent was a low tension category consumer. On 10.9.1993 a provisional assessment was made alleging pilferage of energy and a sum of Rs.27,610/- was demanded. It was indicated to the respondent that if it wanted to avoid disconnection it should deposit 50% of the amount fixed on provisional assessment. The same was deposited. On 15.12.1993 a show cause notice was issued proposing to charge Rs.1,41,270/- on final assessment. The respondent filed its objection. On 29.9.1998 the final assessment was made confirming the amount indicated in the show cause notice.

A Appeal as provided under the Terms and Conditions of Supply of Electrical Energy of the Andhra Pradesh State Electricity Board was filed. The said Terms and Conditions of Supply were notified by the Board in exercise of powers conferred by Section 49 of the Electricity (Supply) Act, 1948. A prayer was made to grant opportunity to cross examine certain officials of the appellant No.1-Corporation on the basis of whose statements B the final assessment was made. By order dated 6.3.1999 the request was declined on the ground that there was no provision for such a prayer being accepted. A Writ Petition was filed before the High Court. While hearing the matter on the issue, learned Single Judge noted that there were inconsistent views expressed by different learned Single Judges. This is how the matter C was referred to a Division Bench. By the impugned order the High Court noted that there was no dispute that the amount on being determined by the final assessment on the ground of alleged pilferage if recovered would result in civil consequences. Therefore, the enquiry being quasi judicial in nature fair play is required and fair play implies the fair opportunity which includes cross examination of persons whose statements were going to be relied by the D authorities. The High Court accordingly held as follows:

E “In the instant case, if the authorities are relying only on accounts and not on any statements or reports, may be the cross examination of any person who has prepared the accounts is not necessary. But if any statement or report is made pointing out the act of pilferage, the petitioner shall be entitled to call the said person for cross examination”.

F Learned counsel for the appellants submitted that the High Court’s view about the desirability of granting opportunity for cross examination is not supportable in law. According to him, the officers have no personal interest in the matter and, therefore, their statements are to be considered in the proper perspective by the authority making the final assessment. There was no question of any cross examination of such persons. Strong reliance was placed on a decision of this Court in *Hyderabad Vanaspathi Ltd. v. A.P. State Electricity Board and Ors.*, [1998] 4 SCC 470, more particularly, G paragraphs 39 and 43. With reference to a decision of this Court in *The New Prakash Transport Co. Ltd. v The New Suwarna Transport Co. Ltd.*, [1957] SCR 98 it was submitted that the Terms and Conditions of Supply do not envisage grant of an opportunity for cross examination as the procedure provided for does not contemplate of anything like recording oral evidence and receiving documentary evidence in the normal way as in Courts of law. H

What is necessary is granting a fair and proper hearing and this has been done. With reference to another decision of this Court in *Nagendra Nath Bora and Anr. v. Commissioner of Hills Division and Appeals, Assam and Ors.*, [1958] SCR 1240 it was submitted that as in the said case, the rules in the present case make no provisions for the reception of evidence oral or documentary and even for issuing of any notice; therefore also the High Court was not right. Finally, with reference to a decision of this Court in *The State of Jammu and Kashmir and Ors. v. Bakshi Gulam Mohammad and Anr.*, [1966] Suppl. SCR 401 it was submitted that the right to hearing did not include the right to cross examine and the right must depend upon the circumstances.

In response, learned counsel for the respondent submitted that Clause 39.9.2 provides for grant of a “reasonable opportunity” to the consumer. If the statements of the officers are to be relied upon without being tested by cross-examination, the consumer will be highly prejudiced and, therefore, the right to cross-examine them is in built in clause 39.9.2 of the Terms and Conditions of Supply. Clause 39.9.2 deals with final assessment. Sub-clauses (1) to (3) thereof are extracted below for ready reference :

39.9.1 After the provisional assessment notice is served upon the consumer as mentioned in clause 39.3 thereof. The Officer authorized in this behalf by the Board (see statement referred to in clause 39.4 above) shall issue a show cause notice in the forms prescribed therefore advising the consumer to file his representation, if any, within 30 days from the receipt of the notice.

39.9.2 The said officer of the Board shall, after the expiry of the aforesaid notice period, enquire into the matter and after giving reasonable opportunity to the consumer and taking into account all relevant facts and circumstances shall decide whether the consumer has committed malpractice or pilferage of energy and if so satisfied proceed to assess to the best of his judgment, the loss sustained by the Board on account of such malpractice or pilferage of energy by the consumer. The consumer may be represented by an advocate or any other person at the time of personal hearing provided the consumer files proper Vakalatnama or power of Attorney as the case may be.

39.9.3 The final assessing authority shall then pass an order setting out

A his conclusions and the reasons thereof and communicate a copy of the order to the consumer and demand the amount, if any, due from the consumer on the basis of such order after giving credit to the amounts paid by him.

B At this juncture, it is to be noted that in paragraph 39 of *Hyderabad Vanaspathi's*, case (supra) what was observed by this Court was in relation to disconnection and for that purpose reliance was placed on an earlier decision of this Court in *M.P. Electricity Board v. Harsh Wood Products*, [1996] 4 SCC 522. At the stage of issuing notice of dis-connection there is no question of granting any opportunity to the consumer. On the basis of *prima facie* view of the concerned officer, notice of disconnection is issued. In that context it was held both in *M.P. electricity Board's and Hyderabad Vanaspathi's* cases (supra) that the procedure laid down was not in violation of the principles of natural justice. So far as paragraphs 43 of *Hyderabad Vanaspathi's* case (supra) is concerned, that related to the absence of personal lis or interest of adjudicator. In that background it was held that merely because the departmental authority was adjudicating there was no prejudice involved. Those principles are not of any assistance in the present case. In the case at hand without even granting of an opportunity to the respondent, the final order of assessment was passed. Merely taking note of the objection filed cannot be said to be compliance of the provisions contained in Clause 39.9.2.

C Therefore, the respondent had made a prayer before the appellate authority. The parameters of the principles of natural justice cannot be covered by any straight-jacket formula. It would vary depending upon the circumstances involved. It is true that the Terms and Conditions of Supply did not contemplate anything like recording oral or documentary evidence in the way as is normally done in the Courts of law. But the Clause 39.9.2 itself provides for a reasonable opportunity being granted. What would be a reasonable opportunity would also depend upon the fact situation. In *Advanced Law Lexicon* by P. Ramanatha Aiyar (3rd Edition, Vol.4 page 3959 and 3968) the word "reasonable" has been described as follows:

G "(i) What is 'fair' and proper under the circumstances.

(ii) The expression "reasonable" is not susceptible of a clear and precise definition. A thing which is reasonable in one case may not be reasonable in another. Reasonable does not mean the best, it means most suitable in a given set of circumstances.

H (iii) There is no point on which a greater amount of decision is to be

found in Courts of law and equity than as to what is reasonable : It is impossible a priori to state what is reasonable as such in all cases. You must have the particular facts of each case established before you can ascertain what is meant by reasonable under the circumstance Lord Romilly. *M.R. Labouchere v. Dawson*, (1872), LR 13 Eq.CA.325.

In *Khem Chand v. Union of India*, AIR (1958) SC 200 a Constitution Bench of this court explained the meaning of 'reasonable opportunity' thus in the context of Article 311(2) of the Constitution of the, 1950 (in short the 'Constitution):

- (a) an opportunity to deny his guilt and establish his innocence.
- (b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally
- (c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him."

The nature of adjudication under Clause 39.9.2 of Terms and Conditions of Supply is some what different from an enquiry under Article 311(2) of the Constitution. It cannot be laid down as a rule of universal application that whenever the statement of departmental officer is pressed into service for the purpose of adjudication, a right of cross examination is in built. On the other hand, what was said in *Bakshi's* case (supra) has also really no relevance because that was a case where no penal consequences were involved and the Commission was only a fact finding Commission and, therefore, is clearly distinguishable of facts.

In order to establish that the cross examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilized for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the appellate authority as to how he has been prejudiced by the refusal to grant opportunity to cross-examine any official. As has been rightly noted by the High Court in the impugned judgment where the reliance is only on accounts prepared by a person, cross examination is not necessary. But where it is

A based on reports alleging tampering or pilferage, the fact situation may be different. Before asking for cross examination the consumer may be granted an opportunity to look into the documents on which the adjudication is proposed. In that event, he will be in a position to know as to the author of which statement is necessary to be cross-examined. The applications for cross-examination are not to be filed in routine manner and equally also not to be disposed of by adjudicator in casual or routine manner. There has to be application of mind by him. Similarly, as noted above, the consumer has to show as to why cross examination is necessary.

C In the instant case the respondent had not indicated as to why the cross-examination was necessary. If a fresh application is made, the same shall be duly considered by the appellate authority, keeping in view the principles indicated above. The appeal is accordingly disposed of. No costs.

N.J.

Appeal disposed of.