

## **M/s. Hyundai Engineering and Construction Co. Ltd. Vs State of U.P. and Others**

**Court:** Allahabad High Court

**Date of Decision:** Oct. 10, 2013

**Citation:** (2013) 9 ADJ 512 : (2014) 4 ALJ 200 : (2013) 101 ALR 846 : (2014) 122 RD 300

**Hon'ble Judges:** Manoj Misra, J

**Bench:** Single Bench

**Advocate:** Archana Pandey and Rajendra Kumar Pandey, for the Appellant; Mahboob Ahmad and W.H. Khan, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

Manoj Misra, J.

I have heard Sri Rajendra Kumar Pandey, learned counsel for the petitioner, Sri Mahboob Ahmad, learned counsel for the respondent Nos. 2 to 4 and the learned Standing Counsel for the respondent Nos. 1 and 5. As the parties have exchanged their affidavits, with

the consent of learned counsel for the parties, the writ petition is being finally decided at the admission stage itself.

2. Briefly stated the facts giving rise to the present petition are that the petitioner being a construction company was awarded a contract by the

National Highway Authority of India for construction of a bridge over river Yamuna connecting the city of Allahabad to Naini. For the said

purpose, the petitioner entered into an agreement with the U.P. Power Corporation Ltd. (hereinafter referred to as "Corporation") on 22.12.2000

(Annexure ""2"" to the writ petition) for supply of electricity. The title of the agreement reads thus:

AGREEMENT FOR SUPPLY OF ELECTRICAL ENERGY TO THE CONSUMERS HAVING CONTRACTED DEMAND OF MORE

THAN 75 KW (OR 100 BHP)

The opening sentence of Clause 1 of the agreement (at page 22 of the petition) provides as follows:

(1) Subject to the provisions hereinafter contained and during the continuance of the agreement, the Supplier shall supply to the consumer at near

office of the Ganga Pradushan Jal Nigam, Naini, Allahabad (place) for Naini Bridge Works (process) electrical energy in the form of a three phase

alternating current at a declared pressure of 11 KV volts exceeding 300 KVA kilovolt amperes/kilowatts (hereinafter referred to as the

"Contracted load/Contract Demand) and the supply shall be made available from the Board's mains in accordance with the availability in the

grid....

Clause 7 of the agreement (at page 24 of the petition) provides as follows:

(7)(a) The consumer shall pay for the supply of electric energy at the rates enforced by the Supplier from time to time as may be applicable to the

consumer.

(b) The Rates Schedule applicable to the consumer at the time of execution of this agreement is annexed hereto, as Annexure-2. HV-2 (Large and

Heavy Power)

(c) The Rate Schedule above mentioned may, at the discretion of the Supplier, be revised by the Supplier from time to time and in the case of

revision, the Rate Schedule so revised shall be applicable to the consumer.

(d) Any levy as Sales Tax, Excise Duty, Electricity Duty or any other charge by whatsoever name called by Central/State Government or other

competent authority, on the electricity supplied to the consumer shall also be paid by the consumer.

3. The period for which the electricity supply was to be made under the agreement has been mentioned in Clause 11 of the agreement (at page 25

of the petition), as follows:

(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.

4. Pursuant to the aforesaid agreement, the Corporation supplied electricity and submitted bills to the petitioner at the rate provided for HV-2

category in the Rates Schedule, which the petitioner, allegedly, paid. However, on 29.3.2004, the Executive Engineer, Electricity Urban

Distribution Division, Rambagh, Allahabad of the Corporation addressed a letter to the petitioner raising a demand of Rs. 11,67,697/- by way of

25% additional charge payable by the petitioner for the period starting from May, 2001 to August, 2003.

5. A perusal of the said letter reveals that the demand was raised consequent to a letter dated 16.12.2003 written by the Accountant General

(Auditing) II, U.P. to the General Manager of the Corporation stating therein that with respect to temporary electricity connection for civil works,

an additional charge of 25% on the tariff, as applicable, is payable.

6. In response to the letter dated 29.3.2004, the petitioner submitted a representation on 8.4.2004 thereby challenging the demand on the

following grounds: (a) that the agreement clearly stipulates that the rate schedule applicable will be HV-2 (Large and Heavy Power), which does

not require payment of any charges other than the Demand Charges, Energy Charges and TOD rates; and (b) that the additional demand of 25%

charge is for Temporary Supply, which is categorized under rate schedule LMV-9, whereas the supply agreement between the petitioner and the

Corporation does not at all come in the category of Temporary Supply, inasmuch as, supply to the petitioner had exceeded three years in contrast

to a temporary connection, which is meant for a short period only.

7. The Executive Engineer, vide his letter dated 19.4.2004, rejected the representation of the petitioner stating therein that under Part-C of Clause

(1) and (3) of the rate schedule pertaining to LMV-9 category, the rate of charge is to be the corresponding net rate of charge in the appropriate

schedule + 25%. The petitioner was thus informed that even if the agreement had been entered into in HV-2 category, which related to higher load

electricity connection, the connection being for the purpose of civil construction, was liable to additional charge of 25% under Part-C, clauses (1)

and (3) of LMV-9 category, as given in the Rates Schedule.

8. Aggrieved by the aforesaid demand, the petitioner approached this Court vide writ petition No. 20730 of 2004. Initially, an interim order was

passed thereby directing that the electricity connection of the petitioner would be restored provided the petitioner deposits 50% of the disputed

amount. However, later, vide order dated 24.2.2005, the said writ petition was dismissed on ground of availability of alternative remedy of appeal

under clause 7.20 of the U.P. Electricity Supply Code, 2002. While dismissing the writ petition, this Court observed that if petitioner files an

appeal within a specified period, the Appellate Authority would entertain the same without raising the objection of limitation. It was further

provided that if the petitioner had already deposited 50% of the disputed amount, the Appellate Authority would not require the petitioner to

deposit any further amount, till the decision of the appeal.

9. Pursuant to the order dated 24.2.2005 passed in writ petition No. 20730 of 2004, the petitioner preferred an appeal before the Appellate

Committee, which was dismissed and information to that effect was given to the petitioner, vide letter dated 7.11.2005.

10. Challenging the appellate order, the instant petition has been filed.

11. The learned counsel for the petitioner submitted that under the agreement, the rate schedule applicable to the petitioner was as applicable to

HV-2 category, therefore, the 25% excess charge demanded from the petitioner by treating the electricity connection to be under LMV-9

category is wholly arbitrary, illegal and unjustified. It was further submitted that as the electricity has been supplied for a period exceeding two

years, as specified in the agreement, the supply cannot be treated as temporary so as to bring it within the purview of LMV-9 category, which

relates to temporary supply only.

12. Per contra, the learned counsel appearing for the Corporation submitted that, admittedly, the electricity connection was for a limited duration

that is, initially, for two years, extendable by one year at a time, as would be evident from Clause 11 of the agreement, and the purpose of the

connection was to carry out Naini Bridge Works, which, in any case, would not last forever, therefore, it was a temporary supply of electricity for

a particular purpose only. It was submitted that under sub-clause (a) of clause (7) of the agreement the consumer was liable to pay for the supply

of electric energy at the rates enforced by the Supplier from time to time, and under sub-clause (d) of clause (7) of the agreement the consumer

was also required to pay any other charge, by whatever name called by Central/State Government or other competent authority, on the electricity

supplied to the consumer. It was submitted that Part-C of the rate schedule of LMV-9 category specifically applies to the case of the petitioner,

inasmuch as, it is provided therein that the said schedule shall apply to supply taken for construction purposes including civil work by all consumers

including Government Departments. It was submitted that under clause (3) of Part-C of Rate Schedule (LMV-9) it is provided that the rate of

charges for such category of consumer will be corresponding net rates of charge in the appropriate schedule plus 25%. Meaning thereby, that the

charge applicable to the petitioner would be that of HV-2 category plus 25% as additional charge for the nature and purpose of the electricity

connection, as provided by clause (1) of Part C of the Rates Schedule (LMV-9). It was thus submitted that the additional demand of 25%, by

way of additional charge, cannot be said to be arbitrary, illegal or dehors the agreement.

13. Having considered the rival submissions of the learned counsel for the parties and on perusal of the record, the Court finds that HV-2

category, as per the Rates Schedule, is for large and heavy power. Clause 1 of the Rates Schedule (HV-2) provides as follows:

1. Applicability.--This rate schedule shall apply to all consumers who have a contracted load above 75 KW (100 BHP) for industrial and/or

processing purposes as well as to Arc/Induction Furnaces, Rolling/Re-rolling mills, Mini steel plants and Floriculture & Mushroom farming units

and to any other HT consumer covered under any other Rate Schedule.

This rate schedule shall also apply to commercial/non-domestic light, fan & power consumers (LMV-2) and small & medium power consumers of

Rate Schedule LMV-6 subject to the condition that they opt for this Rate Schedule.

14. So far as LMV-9 category under the Rates Schedule is concerned, it relates to temporary supply. Part C of Rate Schedule LMV-9 provides

as follows:

(C) Temporary Supply for other Purposes:

1. Applicability.--This schedule shall apply to all temporary supplies of light, fan and power load for the purpose other than mentioned in (A) & (B)

above.

This schedule shall apply for power taken for construction purposes including civil work by all consumers including Government Departments.

15. A perusal of Part C of Rate Schedule (LMV-9) would go to show that it is not dependent upon the load factor but is dependent on the

nature/purpose of the supply. A careful reading of clause (1) of Part C of Rate Schedule (LMV-9) would go to show that it would apply to all

temporary supplies of light, fan and power load for the purpose other than mentioned in Part (A) & (B) and would apply where the power is taken

for construction purposes including civil work. Clause (3) of the Rate Schedule (LMV-9) clearly provides that ""the rate of charges would be

corresponding net rates of charge in the appropriate Schedule plus 25%"". Meaning thereby, that if a consumer falls in the LMV-9 category on

account of the nature/purpose of the supply and has a load factor which brings him under the HV-2 category, the charge payable by him would be

as payable under the HV-2 category plus additional charge of 25% over and above the rate payable by him under the HV-2 category.

16. As admittedly, the supply was obtained for carrying out ""Naini Bridge Works"" and the period for which the supply was obtained under the

agreement was limited by clause 11 of the agreement that is, for a period of two years, although, extendable from year to year, the supply of

electricity to the petitioner was temporary for the purpose of construction including civil work. Accordingly, the contention of the learned counsel

for the petitioner that as the supply had exceeded the period of two years, therefore, it should not be treated as temporary, cannot be accepted.

Even otherwise, in absence of any definition of what constitutes a temporary supply, the general meaning assigned to the word ""temporary"" would

have to be used to understand the meaning of temporary supply. In P. Ramanatha Aiyar's Advanced Law Lexicon (4th Edition), ""temporary

means lasting for a time only; existing or continuing for a limited time; not of long duration; not permanent; transitory; changing; lasting for a short

time."" Black's Law Dictionary (5th Edition) defines temporary as that which is to last for a limited time only, as distinguished from that which is

perpetual or indefinite, in its duration. Thus, where the period of supply is fixed by the agreement or where the supply is for a specific purpose

which, by its very nature, would not last indefinitely, there can be no doubt that such a supply would be treated as temporary, even if it had to

continue for two or three years. Moreover, clause (1) of Part C of the Rate Schedule (LMV-9), specifically provides that Part C of the Rate

Schedule (LMV-9) would apply for power taken for construction purposes including civil work by all consumers including Government

Departments. Therefore, in any case, Part C of the Rate Schedule (LMV-9) becomes applicable to the petitioner as the supply was contracted for

construction of Naini Bridge. Thus, by virtue of Clause 7(a) and 7(d) of the agreement, the petitioner was liable to pay additional 25% of the rates

of charge applicable to him. For the reasons stated above, I do not find any illegality in the additional demand raised, vide letter dated 29.3.2004,

which has been affirmed by the Appellate Authority. The writ petition, therefore, fails and is dismissed. There is no order as to costs.