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Andhra Pradesh High Court

Case No: Writ Petition No. 8194 of 2001

Hemanth Fan Components		APPELLANT
	Vs	
Central Power Distribution Co. of A.P. Ltd. and Others		RESPONDENT

Date of Decision: April 26, 2001

Citation: (2002) 5 ALT 201

Hon'ble Judges: Goda Raghuram, J

Bench: Single Bench

Advocate: A. Sudarshan Reddy, for the Appellant; K.N. Jwala, SC for A.P. TRANSCO, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Goda Raghuram, J.
Petitioner assails the proceedings dated 19-3-2001 determining that the petitioner''s unit is liable to be assessed under the H.T. Service category.

2. Petitioner claims to be a manufacturer of fan components. It is located in the premises of Plot No. 1, S.No. 308, I.D.A., Jeedimetla, Qutbullapur Municipality, Ranga Reddy District. Three other fan components/fan assembling units are also located in the same and adjoining premises.

3. In purported exercise of the powers under Clause 27 of the statutory terms and conditions of supply, the respondents have treated the four establishments bearing Service Connection Nos. 1191 to 1194, as a single unit for the purpose of reckoning them as a H.T. category instead of L.T. category, which they were earlier. The reasons adduced for the exercise of power under Clause 27 as recorded in the order are worth reproduction and are as under:

"(1) The product manufactured is same and they are in the nature of split up of common process falling under the same tariff category.

(2) The total connected load under 4 L.T. Services situated in the same premises has exceeded the limit of 75 HP. applicable for L.T. supply. The total connected load under the 4 L.T. services is 296 HP. Hence H.T. supply is to be availed.

(3) The premises is the same. Though different gates are provided, they are not being used as per physical verification.

In view of the above, the A.P.CPDCL rejects your request for retaining L.T. connections".

4. The proviso to Clause 27 empowers the respondents, at their discretion, to treat two or more establishments situate within a single premises owned or leased by the same person and requiring electricity for purposes covered under same category of tariff, as single establishment.

5. It is therefore evident that the discretion conferred on the respondents is not in absolute terms but is hedged in with circumstances, existence of which as a condition precedent alone will enure to legitimise the exercise of such discretion. One of such conditions precedent is that the separate establishments should not only be situate within a single premises but should also be owned or leased by the same person apart from requiring electricity for purposes covered under the same category of tariff.

6. As is apparent from the reasons recorded in the order impugned, the respondents have stated that the product manufactured by all the four establishments is the same and they have also recorded that they are located in what could be characterised as "in the same premises". But, the second condition, namely, that the premises are owned or leased by the same person has not been demonstrated to be satisfied warranting exercise of the discretion. Absence of such a recording of the satisfaction as to this circumstance, the discretion available could not have been validly exercised.

7. The respondents urge that the establishment of the petitioner and the other establishments which are located in the same premises are a camouflage for a single unit which is interconnected for the manufacturing of fans. This submission at the Bar seems to have no foundation in the order impugned. Forensic dexterity is no substitute at law for recorded reasons when warranted. In the circumstances, this Court is not inclined to adjudicate the issue. It is open to the respondents to pass a fresh order incorporating any decision including as to whether the units are integrally one though facially separate.

8. It is synoptically agreed at the Bar that the respondents are required to record reasons which disclose that the discretion has been exercised in conformity with the locus of power presented under Clause 27 of the statutory terms and conditions.

9. As the order impugned does not comply with the obligation to record reasons in a degree warranted by the conditional grant of discretion under Clause 27, I am unable to sustain the order impugned. However, since the order dated 19-3-2001 is being invalidated on the short ground that it does not record adequate reasons in the context of Clause 27, the respondents shall be at liberty to pass a fresh order recording reasons with regard to the three components for exercise of the power, namely, location of the establishment within a single premises, ownership or lease by the same person and requirement of electricity for the purposes covered under same category of tariff. This decision shall be arrived at by the respondents after due notice and opportunity to the petitioner who shall co-operate for the expeditious disposal by the respondents. The respondents shall consider and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order and the petitioner shall co-operate with the respondents to enable the respondents to arrive at the decision within the time ordained above.

10. The supply of power to the petitioner, which has been disconnected, shall be restored forthwith. Petitioner shall be liable to pay any arrears of energy consumption and shall be liable to continue to pay the future consumption charges as an L.T. category till the decision of the respondents is taken as directed above and subject to such decision.

11. The writ petition is disposed of with the directions as above.