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25. 30.4.08

Present: Mr. Joyonta Kumar Mitra, Sr. Advocate with Mr. Rudraman Bhattacharya and Mr. Sudesh Joshi, Advocates for the petitioners.

Mr. J.B. Pradhan and Mr. Karma Thinlay, Government Advocates for the State-Respondents.

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This is a writ petition at the instance of an incorporated Company which is writ petitioner No. 1 and Shri Omprakash Kedia, who is the Director of the said Company.

The instant writ petition was filed in or about in the year 2005 but the management of the Company had changed during the period 2002-2004. As such, the persons now seeking to enforce personal rights under the Constitution of India are not the persons who started the whole story which was as early as in 1998.

The writ petition is directed towards obtaining of concessional electrical rates for an industry set up in the State of Sikkim. The scheme was that on the basis of an agreement signed by the Government, the Company would be permitted to have concessional rates of high



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demand electricity for a period of five years from when the electricity started being supplied at full swing.

The agreement was entered into sometime in or about the year 1998 and the agreement states that for five years from the date of commencement of full supply, the tariff rate would be Re.1/- per unit of consumption of electricity and Rs.80/- for every K.W. of demand charge for high tension supply.

The high tension bills usually exhibit, as also here, a double tariff structure and the added tariff amount is the total amount of the bill. One part is the unit charge which shows how much electricity the unit has consumed for the whole month. The other part is the demand charge which shows what has been the maximum demand of the factory i.e. it is set by the instant^{or} one-hour time or so, when, during the whole month the factory was working at its busiest rate, i.e. the busiest as determined by the maximum drawal of electrical energy.

The tariff rate for low tension supply, which is not the industrial mode of supply, usually does not exhibit this two way structure,



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but in the State of Sikkim a modified two way structure is in operation, as explained below.

Depending on the total amount of load connected to the premises i.e., depending on the number of electrical points, the fixed load charge is given, (which was 25 KW in the present case). That is one part of the bill and the other part of the bill is the unit charge, as usual, showing total electricity consumed.

The agreement envisaged that the unit charge would be Re.1/- per unit and this Re.1/- is the same both for the period of low tension supply and for the period of high tension supply since no differentiation is made in the agreement.

These are all the technicality that we need to mention about the bill structure and the rest is about the dealings of the parties and the events that transpired in the past ten years.

From 1998 up to 2003 the writ petitioner's unit did not consume electricity at the industrial level i.e. on high tension basis or high voltage basis. For this period the unit charge, as per the agreement would have been one rupee but it was paid at higher rates, for some



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months going up to even Rs.2/-. These bills were raised and accepted even before the writ was filed and naturally the Writ Court cannot go back into the history beyond the period of limitation even if the parties argue otherwise.

After the high tension supply was given in December 2003, and full industrial high tension bills were being raised, there was a problem about the high tension tariff structure. The agreement mentioned Re.1/- per unit and Rs.80/- per K.W. of maximum demand up to a permissible maximum demand of 7500 KW.

By 2003, however, the rates had gone up and those had doubled or even more than doubled. The unit charge became Rs.2.50 and the demand charge became Rs.150/-. If these were to be paid then the industry from its very commencement would be paying at the normal rate and there would be no concession earned by it at all.

On the other hand, if the Government were to stick to the rates proposed in 1998 even in 2003, and continue with such half rates for another five years, it would be a huge loser. How much loss there would be, will be apparent from what we mentioned below.



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The Government of Sikkim constituted a committee to look into the matter. They went about it in a most reasonable manner. On the one hand, the binding nature of the first agreement was given weightage and on the other hand the reasonableness of the situation was looked into and a via media was found so that neither the industry was killed by insisting upon the full current rates, nor other industries discouraged from coming to Sikkim by not adhering to the original agreement at all. Notwithstanding the current unit rate of Rs.2.50 the Government accepted Rs.1.61 per unit as the unit rate for five years and instead of the current demand charge of Rs.150/- per K.W. the Government accepted Rs.88/- as the demand charge per month as being payable by the writ petitioner.

By increasing 61 paise per unit from Re.1/-, the monthly bill of the writ petitioner came to be increased by about Rs.35,000/- or so and by increasing the demand charge to Rs.88/- from Rs.80/- the monthly demand charge came to be increased by about Rs.25,000/- or so. These rough figures might be found out by appropriate calculation on the



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basis of the bill for 3.46 lac (approx.) for December 2003 (Annexure P3 : p.39).

These are the figures at the time of 2003-04 when the industry had just about started production. It is submitted at the bar that these have gone up far more now, double or even more.

On the other hand, the Government by conceding the demand charge of Rs.88/- instead of Rs.150/-, at the rates of electricity consumption of 2003-04 nearly gave up to Rs.2.4 lac per moth on account of demand charge, and by conceding Rs.1.61 per unit instead of Rs.2.50 per unit, gave up energy charge by about Rs.70,000/- per month at the rates of 2003-04 production. It is quite clear that the Government leaned more heavily in favour of the writ petitioner than in favour of themselves. The figures above clearly demonstrate the point.

This Court cannot find favour with the Government's case that the five year contractual period ran out in 2003 and the commencement thereof is to be taken as in 1998 when only low tension supply was commenced and the



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production of the unit or the high tension supply necessary for it were nowhere in sight. However, as this is a writ matter, and evidence of both documentary and oral nature would be needed to specify exactly the contract between the parties, as followed by both of them on mutual consent, as well as to make exact money calculations, our finding is not to be treated as final in any suit or such other Court.

It is on record that the State of Sikkim had to spend Rs.10 – 15 crore for the purpose of bringing electricity at the power station and the doorstep of the writ petitioner.

The writ petitioner's production is going on in full swing and from the submission at the bar, it appears, as mentioned already, that the production now is about double of what it was in 2003-04, may be even more.

Electricity was thus continued to be supplied on the above basis, and after filing of the writ in 2005, under orders which prevented disconnection of the supply, provided the system as above formulated and accepted, was continued and bills were raised and paid on the above basis.



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This system is continuing even now.

When parties have acted so reasonably, it is not for the Court to disturb the situation. There is a mention in the writ petition that attempts were being made to impose the full current energy charge of Rs.150/- for demand charge and Rs.2.50 for unit charge and the writ petitioner came to Court inter alia for redressal of the said grievance.

Although we are not granting any relief by way of payment of money or refund of money in the writ Court to either side, or entering into details or calculations therefor, it appears to us that the monthly charging rate of Rs.1.61 per unit and Rs.88/- for demand charge should continue until December 2008, which would have been no doubt the case also, had we not heard the matter at all and the case had been simply adjourned up to December 2008.

From January 2009 there is going to be a very steep rise in the electricity bill of the writ petitioner as the current rate will become applicable, the five year tariff concession, even going by the case of the writ petitioner itself, being over by then.



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We make it clear that the writ petitioner should be prepared to absorb the shock of the first high bill of January 2009 on the current rate, without troubling the Court or trying to set off any moneys which have been claimed by them in this writ.

It is said that with the coming into operation of Tista Stage V project, the Government had agreed to go back to the original rate of 1998 i.e. Re.1/- and Rs.80/- per unit and KW demand. There is a recommendatory note of the Finance Department to that effect by way of a provision. However, the existing position of Tista Stage V project, whether completed two months ago, as said from the bar, or not, is not in any affidavit, and we are of the opinion that lowering or increasing the rates of electricity as on the present date until December 2008 is not a reasonable or an appropriate exercise of the Writ Court in the present circumstances.

So far as reasonable exercise is concerned, we would pronounce to this effect that the rates of Rs.1.61 and Rs.88/- might continue up to December 2008 as those are continuing now. If



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bills are paid at those concessional rates an uninterrupted supply should continue.

Our finding of a reasonable rate is a finding in a writ, and not meant to bind parties in the suit or any other such Court. If exact money claims are insisted upon, it ^{is} there that the parties have to go. The parties will take future steps in accordance with law. If any moneys are outstanding against one another, as they might be advised, then and in that event, they are relegated to suit. This writ petition is disposed of without any orders, but merely with the observations as above for guidance, and not enforcement, of the parties. No order as to costs.

(A.N. Ray, CJ)

(A.P. Subba, J)