



2025 INSC 1006

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2592 OF 2013

EDCONS(MKS) CASTINGS PVT.LTD.

...APPELLANT(S)

VERSUS

**WEST BENGAL STATE ELECTRICITY BOARD
& ORS.**

...RESPONDENT(S)

J U D G M E N T

1. This Civil Appeal is against the judgment and order of the Division Bench of the High Court of Calcutta¹, confirming the order of the Single Judge² dismissing the writ petition filed by the appellant challenging the arbitrary action of the West Bengal State Electricity Board³ withdrawing the concessional rate of power supply under Agreement dated 18.01.1999.

2. Facts, to the extent they are relevant for our purpose are that the respondent Board issued a notification dated 18.10.1996 revising the tariff applicable. The notification also provided concessional tariff to new and expanding industries as well as sick and closed industries being

¹ A.P.O.T. No. 519 of 2010 dated 19.05.2011.

² W.P. No. 1131 of 2002 dated 10.08.2010.

³ Hereinafter referred to as the 'Board'.

re-opened. The relevant provisions of the concession notification are as follows:

"Concessions to New Industries, Expanding Industries and Sick and closed Industries being reopened.

(a) Concession for New Industries:-

All new HT and EHT industries will be eligible for a concession in the Tariff (energy charge) based on consumption on the following pattern with effect from the date permanent connection is effected for a period of 3 (three) years.

All new industrial consumers drawing power at 66/132 KV will be given a concession of 40% on the total energy charges for three years.

All new HT industrial consumer drawing power at 33 KV will be given a concession of 30% on the total energy charges for three years.

All new HT industrial consumers drawing power at 6/6, 6/11 KV will be given a concession of 25% on the total energy charges for three years."

3. The appellant, an industry involved in manufacture of cast iron, had a Low Tension (LT) power supply connection for its factory at Dankuni, Hooghly, West Bengal. In order to expand its business and to cope with clean and technologically advanced industrial growth, the appellant installed 500 Kgs. capacity Induction Furnace (300 KVA) having production capacity of 1500 Mt. p/a in grey iron casting and additional capacity of 1200 Mt. p/a in ductile iron casting for its industry. By such upgradation, the appellant transitioned into a 'New Industry'.

4. With the aforesaid installation and upgradation, appellant needed a HT/Bulk Power Supply from the Board. Accordingly, appellant filed an application for HT power supply in place of its existing LT Power Supply by furnishing all details in the prescribed proforma on 31.08.1998.

5. Pursuant to the above application, the Superintending Engineer vide his letter dated 03.09.1998 asked the appellant to deposit a sum of Rs.5,000/- for processing the application and for inspection of the factory premises. The appellant deposited the said amount and by its letter dated 05.09.1998 requested for an inspection. A joint inspection was held on 15.09.1998 and the appellant was informed that the authorities were fully satisfied and an estimation/quotation for service connection charges for effecting HT/Bulk Power Supply will be processed immediately.

6. By a Memo dated 10.10.1998, the Board sanctioned and proposed a HT/Bulk Power Supply to the appellant's factory, subject to certain conditions. The relevant portion of the Memo is as follows:

"This has reference to your application No. Nil Dtd. 7.9.98 and subsequent joint inspection of site on 15.9.98 based on your load forecast conveyed to us through year above letter we have framed an estimate for the proposed Bulk Power Supply to your factory/at Jagannathpur, P.S. Serampore, District-Hooghly supply may be available to you under the following terms and conditions.

a) You will have to pay us in advance a Service Connection charges of Rs.3,99,381-00.....

b) *You will have to make an advance of Rs. 30,000-00 only to the Board towards cost of T.O.D. meter.....*

2) *You will have to execute an agreement with us for five years. Based on your load forecast, you will have to Guarantee Annual Minimum Guaranteed Revenue for each year of operation.....*

3) *A security amount of Rs.8,00,600 (Rupees Eight lakhs six hundred only) is to be deposited as this officer.....*

4) (i)

(ii).....

(iii) *You will be eligible for a concession of 25% on total energy Charges (excluding demand charge & fuel surcharge) for 3 (three) years from the date of permanent connection provided you do not avail of subsidy on purchase and installation of captive power generation sets as per W.S. Incentive Scheme, 1993. However, concession is the energy charge will be withdrawn without notice if you default in payment or delay payment beyond due date of your dues to the Board for a period of 3 (three) years during which the concession is available."*

7. After the appellant deposited the service connection charge and also the cost of TOD meter, an Agreement for HT/Bulk Power Supply with contractual demand of 400 KVA for the first two years of operation and 450 KVA from the third year of operation was executed on 18.01.1999. The Agreement also incorporates the obligations of the Board contemplated in Memo dated 10.10.1998 to grant 25% concession on total energy consumed for three years. In furtherance of the Agreement, permanent new HT/Bulk Power Supply connection with the contractual demand of 400 KVA at 11 KW, three phase 50 circle was effected on 29.07.1999.

8. Finally, in terms of the Memo, Agreement and the Supply Connection, the Board also granted 25% concession on the total energy consumed by the appellant for the months of August, September and November, 1999 in their bills dated 01.09.1999, 01.11.1999 and 06.12.1999.

9. However, when a demand for the entire amount, without the benefit of a 25% concession for consumption of power in the month of October, 1999 was raised in the bill dated 01.11.1999, the appellant raised objections through their letter dated 22.11.1999. In its reply the Board demanded that the appellant must provide the necessary certificate that it has never claimed any subsidy under any government scheme. The reply dated 24.11.1999 is reproduced below for ready reference:

“WEST BENGAL STATE ELECTRICITY BOARD

*Office of the Superintending Engineer,
Hooghly (D) Circle,
Taldanga Municipal Market Complex,
P.O.Buroshibatala, Chinsurach, Hooghly.*

DISTRIBUTION WING

Memo.No.SE/HG/Bulk/715/1609/

Date: 24.11.99

To

*M/s Edcons (MKS) Castings Pvt. Ltd.
Vill. Jagannathpur,
P.O. Bamunari,
Distt. Hooghly.*

Sub: Availing of concession on energy charge to new industries

as per W.B. Incentive Scheme 1993 in respect of bulk power connection to M/s Edcons (MKS) Castings Pvt. Ltd. Bamanori, Hooghly.

Dear Sirs,

While acknowledging receipt of your letter Dt. 22.11.99 in regard to the above subject we like to inform you that the papers which you have submitted will not serve the purpose.

As such, with a view to availing of concession in the energy charge you will have to furnish a certificate either from WBIDC or Director, Cottage and Small Scale Industries, Govt. of West Bengal (which one is applicable in your case) to the effect that you have not applied or availed of subsidy on purchase and installation of captive power generation set as per W.B. Incentive Scheme 1993 in accordance with the norms of the Board.

In view of above, you are requests to please do the needful towards submission of the above documents for enabling us to process your case for extending subject concession.

Your early action in the matter will highly be appreciated."

10. It is evident from the above that the sole objection for stopping the concessional rate of supply of energy is that the appellant must furnish a certificate from the West Bengal Industrial Development Corporation or the Director of Cottage or Small Scale Industries, Government of West Bengal, to the effect that the appellant has not applied or availed subsidy on purchase or escalation of capital power generation as per the 1993 scheme. The appellant obtained the certificate dated 18.11.1999 and submitted it to the Board. A copy of the certificate is extracted herein for ready reference:

"TO WHOM IT MAY CONCERN

*This is to certify that M/s EDCONS (MKS) CASTING PVT. LTD.
DELHI ROAD, VILLAGE: JAGANNATHPUR POST OFFICE:*

BAMUNARI RISHRA- HOOGHLY HAS NOT AVAILED ANY STATE INCENTIVE UNDER W.B. STATE INCENTIVE SCHEME OF 1993 GUIDELINES.

Sd/-

18.11.99

*Industrial Development Officer
Serampore-Uttarpara Dev. Block."*

11. This certificate demonstrates that the appellant had not availed any State incentive under the West Bengal State Incentive Scheme, 1993. The certificate issued by the Industrial Development Officer Serampore, Uttarpara Development Block was communicated to the Board on 22.11.1999. However, the Board was not satisfied with this certificate. Instead, by its letter dated 04.02.2000 the Board called upon the appellant to provide another certificate in the following terms:

"WEST BENGAL STATE ELECTRICITY BOARD

*Office of the Superintending Engineer,
Hooghly (D) Circle,
Taldanga Municipal Market Complex,
P.O.Buroshibtala, Chinsurach, Hooghly.*

DISTRIBUTION WING

Memo.No.SE/HG/Bulk/715/2061/

Date: 4.2.2000

To

*M/s Edcons (MKS) Castings Pvt. Ltd.
Vill. Jagannathpur, P.O. Bamunari,
Distt. Hooghly.*

*Sub: Availing of concession on energy charge to new industries
as per W.B. Incentive Scheme 1993 in respect of bulk power
connection to M/s Edcons (MKS) Castings Pvt. Ltd. Bamanori,
Hooghly.*

Ref: Your letter dated 21.01.2000.

Dear Sir,

On the above mentioned subject we like to inform you that with a view to availing of concession in the energy charge you will have to furnish a certificate as our letter already communicated through our letter No.SE/HG/Bulk/715/1609 dated 24.11.99 either from WBIDC or Director, Cottage and Small Scale Industries, Govt. of West Bengal (which one is applicable in your case) to the effect that you have not applied or availed of subsidy on purchase and installation of captive power generation set as per W.B. Incentive Scheme 1993 in accordance with the norms of the Board.

Please also note that the expiry of validity period of W.B. Incentive Scheme 1993 as stated by you in your letter is not known to us but on the contrary we like to intimate you that we have received copy of eligibility certificate for incentives under W.B. Incentive Scheme 1993 issued by W.B.I.C.D. Ltd. in the month December, 1998 in respect of some other consumer.

Please acknowledge the receipt of the letter for early compliance."

12. In compliance, the appellant obtained the necessary certificate from the Director, Cottage and Small Scale Industries, West Bengal on 12.07.2000 and submitted the same on 13.07.2000. The new certificate is as under:

"TO WHOM IT MAY CONCERN

Certified that M/s EDCONS (MKS) Castings Pvt. Ltd, having factory at Jagannathpur, P.S. Dankuni, Dist. Hooghly is permanently registered SSI Unit having S.S.I. Registration Certificate No.21/08/0348 2/PMT/SSI dated 21.11.1984. As per record of District Industries Centre, Hooghly the date of commencement of production of the unit is 01.03.1984 and undertaking has neither applied for nor availed of any subsidy on purchase and installation of captive Power Generating Set under State Scheme of Incentive for Cottage and Small Scale Industries 1993. The captioned unit has already started their expansion programme. The expansion programme of the unit has been incorporated in the Permanent SSI registration certificate of the unit.

Sd/-12.7.00

Director

*Cottage & Small Scale Industries,
West Bengal"*

13. With the submission of the two certificates, as required by the Board the appellant, one would have expected a quietus to the issue, as this solitary objection was answered fully. Instead, the Board issued yet another letter on 16.11.2000 raising a new ground, that is the appellant is not a 'New Industry' and as such the 25% concessional supply of energy is not admissible. Letter dated 16.11.2000 is as under:

"WEST BENGAL STATE ELECTRICITY BOARD

*Office of the Superintending Engineer,
Hooghly (D) Circle,
Taldanga Municipal Market Complex,
P.O.Buroshibatala, Chinsurach, Hooghly.*

DISTRIBUTION WING

Memo.No.SE/HG/Bulk/ 715/ 1418/M

Date: 16.11.2000

To

*M/s Edcons (MKS) Castings Pvt. Ltd.
Vill. Jagannathpur,
P.O. Bamunari,
Distt. Hooghly.*

*Sub: Your prayer for concession in energy charge.
Ref: Your letter Dt. 13.7.2000.*

Dear Sirs,

Your prayer for concession in energy charge was considered sympathetically by our competent authority but we regret to inform you that your industry is not eligible to enjoy such concession in energy charge.

As your industry is not a new one, the 25% concession in energy charge is not admissible in your case.

Also, it was not an existing HV or EHV industry which was expanded, but, it was originally a medium voltage consumer converted to bulk consumer category.

Under the circumstances stated above, your industry is not eligible for availing 25% concession in energy charge.

This is for your information please.

Yours faithfully,

*Sd/-
(B.K. Das)
Superintending Engineer
Hooghly(D) Circle.”*

14. Questioning the legality, validity and propriety of the letter dated 16.11.2000, the appellant filed a Writ Petition before the High Court seeking a writ order or direction to the Board to grant 25% concessional rate of supply of power from 29.07.1999 for three years, either by way of refund or adjustment of the excess amount paid and collected.

15. We have already indicated that the Writ Petition was dismissed by the Single Judge as well as the Division Bench of the High Court.

16. The Single Judge vide its judgement dated 10.08.2010, relied on the decision of this Court in *BSES Ltd. v. M/s. Tata Power Company Ltd.*⁴ to hold that the appellant was not entitled to get concession, as the said concession was provided only for new HT/EHT industries and for existing industries expanding for additional production on or after 26.01.1999. However, on the ground that HT supply was affected to the appellant's factory with effect from 29.07.1999, it was held that appellant's case was one of conversion from a medium voltage consumer

⁴ AIR 2004 SC 760.

to a Bulk consumer category making it ineligible for the concessional rate of tariff. Accordingly, appellant's writ petition came to be dismissed. The Division Bench, vide impugned judgment dated 19.05.2011, accepted the reasoning expressed by the Single Judge.

17. Heard Mr. Gaurav Jain, learned counsel, as assisted by Ms. Abha Jain for the appellant and Mr. Saurabh Mishra, learned senior counsel for the Board, assisted by Ms. Bhumi Agrawal and Mr. Shrimay Mishra.

18. The issue that arises for our consideration is whether the Board was justified in questioning the status of the appellant as a 'New Industry' by its letter dated 16.11.2000, after its initial approval dated 10.10.1998, followed by the Agreement dated 18.01.1999 and its implementation.

19. Pursuant to its application for HT connection on 31.08.1998, the appellant was asked to deposit a certain amount for processing and for inspection of the factory premises. After compliance, a joint inspection of the site was undertaken on 15.09.1998. and after due verification, the Board issued Memo dated 10.10.1998 sanctioning Bulk Power Supply. This sanction included the eligibility of the appellant for concession of 25% for total energy charge. The sanction Memo was followed up and a proper Agreement dated 18.01.1999 was entered into between the appellant and the Board. The Agreement clearly incorporated the obligation of the Board to provide concession of 25%

on the total energy charge for three years. Further, there is sufficient evidence to show that the Agreement was in fact implemented and HT/Bulk Power Supply Connection with a contractual demand of 400KVA at 11KWA was affected on 29.07.1999. In terms of the above, energy bills for months of August, September and November with the necessary concession were issued on 01.09.1999, 01.11.1999 and 06.12.1999.

20. Despite the above, even if the Board wanted confirmation of the fact that the appellant has not availed subsidy either under the West Bengal State Incentive Scheme or from the Director, Cottage and Small Scale Industries, it would have been justified. However, there was no justification whatsoever for the Board to take a plea that the appellant would not qualify as a 'New Industry' to avail the concession of 25% on the total energy charge for three years. We are of the opinion that the Board is not justified in changing its stand after more than 2 years.

21. The Single Judge as well as the Division Bench of the High Court have committed a serious error in not scrutinizing the letter of the Board dated 16.11.2000 in the context of the admitted facts, whereunder the position of the Board is completely different. The facts speak for themselves and there is no need for any further discussion or analysis. We have no hesitation in holding that decision of the Board dated 16.11.2000 is unsustainable, illegal and arbitrary.

22. For the reasons stated above, we allow Civil Appeal No. 2592 of 2013 and set aside the judgment and order passed by the High Court in A.P.O.T No. 519 of 2010 dated 19.05.2011. The writ petition is allowed and Memo No. SE/HG/Bulk/715/1418/M dated 16.11.2000 is set aside. The appellant will be entitled to 25% concession on the total energy charge for three years as per the agreement dated 18.01.1999.

23. We are informed by Mr. Gaurav Jain that during the pendency of the matter before the Single Judge and the Division Bench, the concessional rate of supply was granted for the period of three years and also adjusted in subsequent bills. In this view of the matter and in view of the fact that we have allowed the appeal, the question of refund does not arise.

24. With these observations, the appeal stands allowed and parties are directed to bear their own costs.

25. Pending application(s), if any, shall stand disposed of.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ATUL S. CHANDURKAR]

**NEW DELHI;
AUGUST 07, 2025**