

**Case Note:** Case concerning rebate of water cess rate.

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AIR1991SC597, 1990(2)SCALE750, (1991)1SCC93, [1990]Supp2SCR120

## **IN THE SUPREME COURT OF INDIA**

Decided On: 08.10.1990

**Rajasthan State Electricity Board**

**v.**

**Cess Appellate Committee and Anr.**

**Hon'ble Judges:**

S. Ranganathan and A.M. Ahmadi, JJ.

## **ORDER**

**A.M. Ahmadi, J.**

1. Special leave granted in all the cases.

2. Pursuant to the resolution passed by certain State Legislatures including that of Rajasthan under Clause 1 of Article 252 of the Constitution, Parliament enacted The Water (Prevention & Control of Pollution) Act, 1974 (Act VI of 1974), (hereinafter called the '1974 Act'), to provide for the prevention and control of water pollution, the maintaining or restoring of wholesomeness of water, the establishment of Boards for the prevention and control of water pollution, the conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. 'Pollution', as defined in Section 2(e), means "such contamination of water or such alteration of physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms". "Sewage effluent" according to Section 2(g) means "effluent from any sewerage system or sewage disposal works and includes sullage from open drains". "Trade effluent" according to Section 2(k) includes "any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any trade or industry, other than domestic sewage". Section 3, 4 and 13 provide for the Constitution of a Central Board, a State Board and a Joint Board, respectively. Section 16 enumerates the functions of the Central Board Constitution for promoting cleanliness of streams and wells in different areas of the State. Section 17 sets out the functions of the State Board which, amongst others, include preparing a

comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and for securing its execution; inspection of sewage or trade effluents, works and plants for the treatment of sewage and trade effluents: evolving methods for treatment of sewage and trade effluents and for the disposal thereof and laying down standards of treatment of sewage and trade effluents to be discharged into any particular stream. Sections 21 and 22 confer power on the State Board or any officer empowered by it to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from any other place into any stream or well and to send the samples for analysis to the Laboratory established or recognised for that purpose by the concerned Board. Section 24 prohibits the use of any stream or well for the disposal of polluting matters. Section 25 imposes restrictions on new outlets and new discharges. Section 25(1) reads as under:

Subject to the provisions of this section, no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well, or begin to make any new discharge of sewage or trade effluent into a stream or well.

Under these provisions the application for consent has to be made to the State Board in the prescribed form containing the particulars relating to the proposed construction, installation or operation of any treatment or disposal system or of any extension or addition thereto. Sub-section (7), which is relevant for our purpose, reads as under:

The consent referred to in Sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

Section 26 provides that persons discharging sewage or trade effluent into a stream or well before the commencement of the Act shall apply for consent within a period of three months of the Constitution of the State Board. If the State Board refuses to grant consent or withdraws consent already granted an appeal is provided to the appellate authority. Section 29 confers revisional powers on the State Government to call for the records of any case where an order has been made by the State Board Under Sections 25, 26 and 27 for the purpose of satisfying itself as to the legality or propriety of any such order. Failure to comply with the requirements of the statute is punishable under Chapter VII. Thus, this law aims at prevention and control of water pollution.

3. On 7th December, 1977, the President gave his assent to the Water (Prevention and Control of Pollution) Cess act, 1977(Act No. XXXVI of 1977), (hereinafter referred to as 'the 1977 Act'). This Act was enacted to provide for the levy and collection of a cess on water consumed by persons carrying on certain industries, with a view to augment the resources of the statutory Boards for the prevention and control of water pollution. Section 2(c) defines "specified industry" to mean "any industry specified in Schedule I". Power (Thermal & Diesel) Generating Industry is included at item No. 14 in Schedule I to the Act. Section 3 which is the charging section inter alia provides that there shall be levied and collected a cess for the purposes of the 1974 Act and utilisation thereunder.

The Cess under Sub-section (1) is made payable by every person carrying on any specified industry to be calculated on the basis of water actually consumed for any of the purposes specified in column 1 of Schedule II, at such rate not exceeding the rate specified in the corresponding entry in column 2 thereof. Schedule II enumerates in column 1 the purposes for which water is consumed and sets out the maximum rate of cess therefor in column 2. The rate of cess for industrial cooling is three-fourths of a paisa, per kilolitre, while it is one paisa per kilolitre for domestic purpose. Where water gets polluted and the pollutants are easily bio-degradable, the rate is 2 paise per kilolitre but where the pollutants are not easily bio-degradable and are toxic, the rate is two and a half paise per kilolitre. It is obvious that the rate of cess depends on the degree of pollution. It may also be noticed at this stage that the cess is to be calculated on the basis of the water 'consumed' for any of the purposes specified in column 1 of Schedule II at the rate set out in the notification issued by the Central Government not exceeding the rates specified in column 2 of the said schedule. Section 4 provides for affixing of meters for the purposes of measuring and recording the quantity of water consumed. Section 5 requires every person carrying on any specified industry and every local authority, liable to pay the cess Under Section 3, to furnish returns in such forms and at such intervals containing such particulars as may be prescribed to the officer or authority appointed therefor. The officer or authority to whom the return has been furnished Under Section 5 is charged with the duty to make an inquiry as to the particulars stated in the return and then pass an assessment order stating the amount of cess payable by the concerned person or local authority, as the case may be. Section 14 prescribes a penalty for failure to file a return and Section 11 provides a penalty for failure to pay the cess within the specified time. Any person or local authority aggrieved by an order of assessment made Under Section 6 or by an order imposing penalty Under Section 11, may file an appeal Under Section 13 within the prescribed time. Section 7 provides for a rebate if the cess is payable. It reads as under:

Where any person or local authority, liable to pay the cess under this Act, instals any plant for the treatment of sewage or trade effluent, such person or local authority shall from such date as may be prescribed, be entitled to rebate of seventy per cent of the cess payable by such person or, as the case may be, local authority.

The expressions 'sewage' and 'trade effluents' having not been defined would have the same meanings respectively assigned to them under the 1974 Act. Section 17 empowers the Central Government to make rules for carrying out the purposes of the Act. Under that section, the Central Government made the Water (Prevention & Control of Pollution) Cess Rules, 1978, (hereinafter called 'the Rules'). Rule 6 thereof deals with rebate. Under that rule where a consumer instals any plant for the treatment of sewage or trade effluent such consumer becomes entitled to the rebate Under Section 7 on or from the expiry of 15 days from the date on which such plant is successfully commissioned and so long as it functions successfully.

4. The appellant, the Rajasthan State Electricity Board constituted in 1957 Under Section 5 of the Electricity (Supply) Act, 1948, established a Thermal Power Station on the bank of River Chambal in Kota for generating energy. It admittedly consumes water from the

river for Condensor Cooling. The water drawn from the river is filtered and thereafter passes through an enclosed pipeline over the condensor unit for cooling the condensor. After the water is used for cooling, it is treated as a trade effluent in the neutralisation plant installed by the appellant at considerable expense with a view to preserving the whole-someness of water before it is discharged into the river. After condensor cooling, the water passes through an enclosed underground steel pipeline of the length of about 478 meters upto the seal pit. On reaching the seal pit the water is pumped to a height of about 22 feet from where it is made to fall into an open channel and is then carried in that channel to a distance of about 150 feet before it plunges into the river. In this manner the water at the seal pit comes in contact with air. Its temperature is reduced firstly by the 22 feet fall into the open channel and thereafter by covering a distance of about 150 feet before getting merged in the river or stream. The temperature is thus brought down to below 40C, the standard prescribed under the Minimum National Acceptable Standards published by the State Board. The appellant had also installed a 0.4 MGD plant for treatment of sewage. Both these plants, contends the appellant, are working satisfactorily.

5. The appellant submitted monthly returns of the water consumed from river Chambal for its Thermal Station, units 1 and 2, for the period from July, 1983 to January, 1984 and February, 1984 to June 1984. The Assessing Authority, respondent No. 2, assessed the cess at Rs. 13,13,710 for the first period and Rs. 9,42,013 for the subsequent period. No rebate was allowed Under Section 7 of the 1977 Act on the ground that the so-called neutralisation plant was not a plant for the treatment of sewage or trade effluents within the meaning of the said provision. Nothing was said about the plant for the treatment of sewage. The appellant filed an appeal Under Section 13 in respect of the cess claimed for the period from July, 1983 to January, 1984. The appellate authority dismissed the appeal holding that the cess was correctly assessed and the appellant was not entitled to rebate. In respect of the assessment for the period from February, 1984 to June, 1984 the appellant submitted a review petition which was rejected by respondent No. 2. The appellant then preferred an appeal but the same was dismissed as barred by limitation. The appellant preferred separate Writ Petitions Nos. 121/85 and 966/86 in the High Court challenging the two assessment orders. In the former writ petition the High Court granted interim stay against the recovery of the disputed cess amount to the extent of seventy percent till the disposal of the writ petition. In the second writ petition since the appellant had already paid the amount of cess, the application for stay did not survive but for future assessment orders, it directed the appellant to pay thirty percent regularly and the remaining seventy percent with interest at 15% per annum in the event the challenge failed. Both the aforesaid writ petitions were finally disposed of by a Division Bench on 28th October, 1988 which dismissed them holding that the cess was correctly assessed and the appellant was not entitled to rebate. In taking this view the Division Bench came to the conclusion that there was no material on record to show that the appellant had applied for consent of the State Board to instal a plant either Under Section 25 or Section 26 of the 1974 Act nor was there evidence to show that such consent was given. It, therefore, opined that the authorities below had rightly concluded that the benefit of rebate Under Section 7 was not admissible to the appellant. While dismissing the writ petitions the Division Bench, however, observed as under:

Anyhow if the consent after the period of assessment in dispute has either been obtained for discharge of effluent etc., or can be deemed to have been obtained and if the treatment plants are working satisfactorily, the petitioner shall be entitled to rebate according to the provisions of rules for that period.

It follows therefrom that the Division Bench refused to grant rebate to the extent of seventy per cent for want of consent Under Section 25 or 26 of the 1974 Act.

6. Feeling aggrieved by the Judgment and order passed by the Division Bench of the High Court, the appellant preferred special leave petitions (Civil) Nos. 1429 and 2157 of 1989 challenging the dismissal of the said two writ petitions. During the pendency of these proceedings several assessment orders came to be made for the subsequent periods upto may, 1989 for the water consumed at the appellant's Thermal Units. The Assessing Authority also refused to grant rebate. The appellant preferred appeals against the assessment orders passed from time to time but to no avail. Instead of approaching the High Court the appellant has filed Special Leave Petitions Nos. 3223, 3262, 3272, 4599 and 4600 of 1990 in this Court against the said assessment orders as well as the refusal to grant rebate on the ground that similar questions were involved in the earlier two special leave petitions which were pending in this Court. We have granted special leave in all cases under Article 136 of the Constitution and we now proceed to dispose them of by this common Judgment.

7. Dr. Singhvi, the learned Counsel for the appellant contended that the 1977 Act was an independent piece of legislation and was not, what he called, 'the part materia or parasite legislation' to the 1974 Act, and hence once it is shown that the appellant had installed a plant for the treatment of a trade effluent within the meaning of Section 7 of the 1977 Act read with Rule 6 of the Rules, the appellant was entitled to rebate regardless of whether or not the appellant had secured the consent of the State Board Under Section 25(1) of the 1974 Act. He contended that the State Board's consent became necessary only if an outlet new or altered, was sought to be used for the discharge of sewage or trade effluent in the stream and not otherwise. In the present case, contended Dr. Singhvi, the appellant had put up an independent sewage plant for the treatment of sewage and an independent neutralisation plant for the treatment of water discharged from the condensor cooling plant of the Thermal Station. So far as the former is concerned the consumption of water is negligible; the bulk consumption takes place at the condensor cooling plant from where water is discharged after use at a temperature far above the standard of 40°C, which if discharged into the stream without treatment would be harmful and injurious to aquatic organisms in the stream. That is why the neutralisation plant was necessary to bring down the temperature of water to 40°C or below before its actual discharge in the stream. At the point where this water merges into the stream its temperature is below 40°C and therefore it ceases to be a contaminated trade effluent. Since the outlet is used for the discharge of this water which is no more polluted it cannot be said that it is used for the discharge of a trade effluent within the meaning of Section 25(1) of the 1974 Act. According to Dr. Singhvi the enactment being essentially for the prevention, control and abatement of pollution of streams and wells, the duty to ensure the purity of streams and wells is cast on the State Board and for the effective performance of the same, Section

25(1) provides for previous consent if any new or altered outlet is intended to be brought to use for the discharge of sewage or trade effluent. But no such previous consent would be necessary if uncontaminated water is sought to be discharged into the stream. In other words according to Dr. Singhvi the expression 'trade effluent' in Section 2(k) must be read in the context of the purpose and object of the law and the mischief it seeks to curb. Yet, by way of abundant caution, the appellant applied for the grant of consent Under Section 25/26 of the 1974 Act by the letter dated 9th April, 1984 for the neutralisation plant and by the letter dated 12th April, 1984 for the sewage plant meant for the colony of workmen situate within the power Station. Under Sub-section (7) of Section 25 since the State Board neither granted nor refused consent within the period of four months from the receipt of the applications, it must be deemed to have been granted unconditionally on the expiry of the said period. Lastly, he pointed out that during the pendency of the two writ petitions in the High Court, the Secretary of the State Board granted the required consent and conveyed it by his letter No. F. 5(B-14)RSEB/Tech/86/11472 dated 24th March, 1988. Therefore, when the Division Bench of the High Court disposed of both the writ petitions the consent of the State Board Under Section 25(1) was already granted and hence the High Court was not right in making the observations it made in paragraphs 7 and 9 of the impugned judgment.

8. We may clarify that in the present appeals we are not concerned with the legality and validity of the levy of cess. Dr. Singhvi, however, stated that the appellant reserved the right to challenge the validity of the 1977 Act, if the interpretation placed by the authorities below on the true scope and meaning of Section 7 read with Rule 6 is found to be correct. We may state that since we are not required to go into the question of Parliament's competence to enact the 1977 Act, we do not propose to delve into this aspect of the matter.

9. Now, on a plain reading of Sub-section (1) of Section 25 it becomes clear that the previous consent of the State Board is necessary where any new or altered outlet is proposed to be used for the discharge of sewage or trade effluent into a stream or well. If what is discharged in the stream or well is not a polluted 'trade effluent' (Section 2(k)) or a 'sewage effluent' (Section 2(g)), can there be any question of seeking the previous consent of the State Board? The appellant has a separate sewage plant. Since the bulk of the water is consumed at the condenser cooling plant and the same is recycled into the stream, the question is whether what is discharged in the stream can be said to be a trade effluent? Dr. Singhvi emphasised that the consent of the State Board would not be necessary Under Section 25(1) for the discharge of that recycled water, unless it is shown that what the appellant discharged in the stream or river was polluted water. According to Dr. Singhvi, the use of water at the condenser cooling plant merely raises the temperature of water above the tolerance limit of 40° C. if the water is discharged in the river or stream before its temperature is reduced to 40° C or below, it may well be contended that within the broad meaning of the expression 'pollution' in Section 2(e), it was imperative for the appellant to obtain the previous consent of the State Board for making use of that outlet. But if, on the other hand, it is shown that the temperature of water is brought down to the prescribed standard and the water is no more harmful or injurious to aquatic organisms in the river or stream i.e. is not polluted, the discharge of such water cannot be

equated with discharge of a trade effluent. This raises a mixed question of law and fact, viz., whether the recycled water returned to the stream in the same condition in which it was drawn with the temperature reduced to less than 40° C, can still be said to be a 'trade effluent' requiring consent Under Section 25(1) ? It may, in this context be mentioned that samples of the trade effluent were collected by the State Board for analysis on 24th May, 1984. By letter dated 3rd December, 1984, the appellant requested the Assistant Engineer, State Board, to supply a copy of the analysis report which was refused by the letter dated 26th December, 1984. The appellant was informed that the monitoring results conducted by the Board were not supplied to the concerned industries. He added that the appellant could get the sample tested, if so desired, at the Board's Laboratory on payment basis. We think that if the Board was in possession of this vital information, it should have in all fairness brought it on record rather than withhold it. If that information was available on record Dr. Singhvi's contention could have been met. We are, however, not inclined to raise any adverse inference as was suggested.

10. We now come to the second limb of Dr. Singhvi's submission. According to him, Section 7 of the 1977 Act is not dependent on the Board's consent Under Section 25(1) of the 1974 Act. In fact neither Section 7 nor Rule 6 speak about the same. All that Section 7 says is that any person or local authority which is liable to pay cess can claim rebate of 70% of the cess payable by him or it, if he or it has installed a plant for the treatment of sewage or trade effluent, as the case may be. A plant has undoubtedly been installed for the treatment of sewage and no dispute in that behalf was raised before us. However, as the bulk consumption of water from the river is used at the condensor cooling plant the question is whether the appellant can be said to have installed a plant for the treatment of a trade effluent. The Appellate Authority took the view that a 150 ft. long channel meant for carrying the trade effluent cannot be described as a treatment plant. The appellant contended that the treatment plant installed by it comprises of an arrangement to lift the water to a height of 22 ft. and then drop it from that height into an open channel so that it cools down on coming in contact with the atmosphere and then flows towards and into the river. It would appear that this arrangement was not specifically brought to the notice of the authorities below including the High Court and it seems the authorities decided the question of the existence of the treatment plant on the premise that it consisted of merely a single 150 ft. long channel. However, this aspect has to be looked into.

11. The High Court has, however, taken the view that in the absence of consent Under Section 25(1), the appellant is not entitled to rebate. We find it difficult to agree with this view. Section 7 as well as Rule 6 do not envisage the Board's consent Under Section 25(1) of the 1974 Act as a sine-qua-non. Under Section 7 the consumer has only to show that he has installed a plant for the treatment of sewage or trade effluent and that it functioned successfully during the relevant period to earn rebate. Section 25(1) operates in a different field and has nothing to do with a plant installed for the treatment of a trade effluent although the grant of consent to a new outlet can be conditional on the existence of a plant for the satisfactory treatment of effluents to safeguard against pollution of the water in the stream. The High Court refused the claim for rebate as it erroneously thought that the prior consent of the State Board was a must. That is why in the concluding part of the Judgment it observed that if the consent is subsequently obtained or deemed to be

obtained and the plant is working successfully, the appellant will be entitled to rebate. Since we are of the view that the Board's consent Under Section 25(1) was not imperative, we think that that part of the High Court's order cannot be sustained.

12. So far as the 1977 Act is concerned it would be necessary to consider the true scope and meaning of Section 7 and Rule 6. On a plain reading of the said provisions it would be necessary to decide (i) whether water discharged from the condensor cooling plant can be said to be a 'trade effluent' by reason only of the fact of its temperature being above the prescribed standard, (ii) whether but for the treatment given to it as described by the appellant and set out above such water would have been discharged in the stream or river at a temperature above 40°C, and (iii) whether the arrangement made by the appellant as set out above can, therefore, be described as a plant for the treatment of a trade effluent. These and the related questions must be answered to effectively deal with the appellant's claim for rebate. The authorities below including the High Court have not applied their minds to these essential for deciding the question of grant or refusal of rebate. If it is found that the plant in question is one for the treatment of a trade effluent, the appellant would be entitled to rebate notwithstanding the absence of consent Under Section 25(1) of the 1974 Act. We feel that the parties did not focus their attention on these vital aspects and, therefore, failed to place on record the material essential for deciding the application for grant of rebate. In the circumstances, we are left with no alternative but to remit the matter to the Assessing Authority with a direction to permit the appellant as well as the State Board to place on record such material as is considered relevant and thereafter give the parties an opportunity of being heard before deciding the matter. The Assessing Authority should do so without being influenced by the previous orders of the authorities as well as the High Court. In the meantime i.e. till the Assessing Authority decides the matter afresh, the appellant will continue to pay 30% of the cess amount and will file an undertaking in this Court within eight weeks from today to the effect that in the event the appellant is finally found liable to pay the balance of 70% the appellant will pay the same with interest at 15% per annum within six months from the final determination. The appeals are allowed accordingly. Having regard to the facts and circumstances of these cases, we make no order as to costs.

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