

U.P. STATE ELECTRICITY BOARD, LUCKNOW & ORS.

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v.

CITY BOARD, MUSSOORIE & ORS. ETC.

(AND VICE VERSA)

February 8, 1985

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[O. CHINNAPPA REDDY, E.S. VENKATARAMIAH AND SABYASACHI  
MUKHARJI, JJ.]

*Electricity (Supply) Act, 1948, sections 46 and 56—Grid tariff—Fixation of—Framing of Regulations under section 79(h)—Whether condition precedent—A common tariff for all licensees in an area served by the grid—Whether permissible.*

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Section 46 of the Electricity (Supply) Act 1948 provides that a tariff to be known as the Grid Tariff shall, in accordance with any regulations made, be fixed from time to time by the Electricity Board. Section 58 enables a local authority to implement the directions issued by the Electricity Board or the Government with regard to amortisation and tariffs policies.

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The U.P. Electricity Board under a notification dated 24 April 1962, fixed the tariff payable by licensees who used to get bulk supply of electric energy. The tariff so fixed was enhanced by another notification dated September 30, 1967 by 20% which came into force on December, 1, 1967. The City Board, a licensee, moved the State Government on September 13, 1966 for permission to enhance the rates for supply; but no such sanction was given till March 23, 1968.

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The City Board questioned the validity of the tariff fixed and its subsequent enhancement under Art. 226 on the grounds : (1) that the notification dated April 24, 1962 was not in conformity with s. 46, and (2) that it had not been permitted to enhance correspondingly the rates chargeable by it. The petition was, however, dismissed.

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On appeal the Division Bench partly allowed the appeal, holding : (i) that ample guidance is available in the Act, and that the rates fixed are subject to the control of the State Government : (ii) that the levy of an additional 7.1/2 % as an additional charge and subsequent enhancement under the two notifications was illegal; (iii) that it was open to the Electricity Board to make an additional charge to the extent of the actual expenditure incurred by supplying energy at 6600 volts, and (iv) that the Electricity Board should consider afresh rates at which electric energy could be supplied.

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Both the City Board and the Electricity Board filed appeals to this Court. It was contended on behalf of the City Board that in the absence of any regulations laying down the principles for fixing the tariff under s. 79, the

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A two Notifications issued under s. 46 of the Act were void as they had been issued without any guidance and were, therefore, arbitrary.

On the question whether the grid tariff fixed suffered from vice of arbitrariness,

B HELD : (1) While s. 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs, s. 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariffs shall be fixed in accordance with any regulations made in this behalf. The framing of regulation under s. 79(h) of the Act cannot, therefore, be a condition precedent for fixing the Grid Tariff. In the instant case, the Grid Tariff fixed did not suffer from the vice of arbitrariness. [821E-G; 822E]

C *Mysore State Road Transport Corporation v. Gopinath Gundachar Char* [1968] 1 S.C.R. 767, followed.

D (2) The Electricity (Supply) Act 1948 had been enacted to provide for the rationalisation of the production of supply of electricity and generally for taking measures conducive to electrical development. It is, therefore, permissible for the Electricity Board to fix a common Grid Tariff for an area so that there may be a reasonably uniform development of the area by the supply of electric energy to all licensees or consumers in the area at a uniform rate with such reasonable variations as may be permissible in law subject to the condition that no undue preference is shown to any of them. The Act also furnishes ample guidance regarding the determination of tariffs by an Electricity Board. [823A-C]

E *Maharashtra State Electricity Board v. Kalyan Borough Municipality and Anr.*, [1968] 3 S.C.R. 137, followed.

F (3) The validity of the levy of additional charges could not be questioned by the City Board under Article 226 of the Constitution in respect of the period prior to the filing of the writ petition. The additional charge of 7.1/2% was levied in 1962 and the City Board did not question it before the Court till March 23, 1968 when it filed the Writ Petition. Moreover, the City Board had not stated that it had not collected charges from the consumers of electric energy supplied by it at the rates which would cover the additional 7.1/2% and had not recouped itself by collecting the charges from the consumers. The presumption in this situation would be that the City Board had not suffered any loss by the levy of 7.1/2% by way of additional charges. [823 G-H 824 A-B]

G In the instant case, the City Board has been given directions from time to time by the Government regarding the charges it may collect from the consumers in the light of the charges it has to pay to the Electricity Board and its own investment expenditure on the undertaking. The City Board cannot question the Grid Tariff only without at the same time questioning the directions pursuant to which it has been collecting charges from its consumers. H No satisfactory material has been placed before the Court showing that the charges which were being collected by the City Board from the consumers were uneconomical and did not satisfy the reasonable standards which should

govern the directions issued by the Electricity Board or the Government from time to time regarding the tariffs policies of the City Board. Therefore, it would not be proper to reopen the claims of the City Board in regard to the period prior to the filing of the writ petition arising on the basis of the alleged invalidity of the notification dated April 24, 1962. The decision of the High Court on the above point is allowed to remain only for the period between March 23, 1968 and July 1, 1968. No opinion on its correctness is expressed because the period is small one and the Electricity Board has not insisted upon a decision on this question. The relief granted by the High Court with regard to the levy of additional charge of 20% with effect from December 1, 1967 till July 1, 1968 is also not disturbed for the same reasons. [824D-H; 825A]

The matter may be reconsidered by the Electricity Board as directed by the High Court on the other points in regard to the above specified periods.

[824B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 814 and 815 of 1974.

From the Judgment and Order dated 13. 8. 1970 of the High Court of Allahabad in Special Appeal No. 34 of 1969.

*S. N. Kacker, Gopal Subramaniam and Mrs. Shobha Dikshit* for the Appellant in CA. No. 814 and respondent in CA. No. 815.

*U. R. Lalit and B. S. Chauhan* for the Respondent in CA. No. 814 and Appellant in CA. No. 815.

The Judgment of the Court was delivered by

VENKATARAMIAH, J. These two appeals by special leave are filed against the judgment dated August 13, 1970 of the High Court of Allahabad in Special Appeal No. 34 of 1969 (*City Board, Mussoorie v State Electricity Board & Ors.*)<sup>(1)</sup> by the Uttar Pradesh Electricity Board (hereinafter referred to as 'the Electricity Board') constituted under the Electricity (Supply) Act, 1948 (hereinafter referred to as 'the Act') and the City Board, Mussoorie, a local authority (hereinafter referred to as 'the City Board') respectively.

The City Board as a licensee under the Indian Electricity Act, 1910 used to get bulk supply of electric energy from the Electricity Board from the Ganga-Sarda Grid and in its turn was distributing it to the consumers within its jurisdiction. In the year 1962, under a

(1) A.I.R. 1971 Allahabad 219.

A notification dated April 24, 1962 issued under section 46 of the Act, the tariff payable by the City Board and other licensees in the Ganga-Sarda Grid was fixed by the Electricity Board. The relevant portion of the Tariff was as follows:

B "1. *Applicability*—This rate schedule is applicable to all licensees situated in Ganga Sarda Grid area and taking supply in bulk from the Board.

C 2. *Character of service*—A. C., 3, Phase, 50 cycles, 11,000 volts, Alternatively, the supply can be given at a voltage lower than 11 KV in which case an additional charge at 7. 1/2 per cent on the total amount of the bill will be levied.

D If the consumer takes supply at a standard voltage above 11 KV, a rebate of 5% will be allowed to him by the Board on the total amount of the bill calculated at the rates prescribed for supply at KV.

3. *Rate:—*

E (a) *Demand Charges—*

First 500 KVA of Chargeable demand during the month at the rate of..... ...Rs. 12.75 per KVA

F Next 1500 KVA of the charge—demand during the month at the rate of ..... ...Rs. 10.00 per KVA

All above 2000 KVA of the chargeable demand during the month at the rate of..... ...Rs. 8.50 per KVA

G PLUS

(b) *Energy Charges—*

H First 170 Kwh, per KVA of Chargeable demand consumed during the month at the rate of..... 5P. per Kwh

Next 170 Kwh. per KVA of chargeable demand consumed during the month at the rate of.....4P. per Kwh.

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Remaining Kwh. per KVA of the chargeable demand consumed during the month at the rate of.....3P. per KWh

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4. (i) *Chargeable Demand*—The chargeable demand for the month shall be defined as the actual demand during the month or 60 per cent of the contracted demand or 75 per cent of the highest demand which occurred during the preceding 11 months, whichever is the highest.

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(ii) *Coal—Clause*—The above rates shall be subject to a coal price adjustment at the rate of 0.001 per Kwh. increase or decrease for every one P. of variation above or below Rs. 40 per tonne of coal delivered at the bunkers in the Harduaganj Generating Station .....

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5. *Determination of Demand*:—Demand measurement shall be made by suitable instruments at the point of delivery. The demand for any month shall be defined at the highest average load measured in Kilovolt-amperes during any 30 consecutive minutes period of the month."

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The tariff so fixed was enhanced by another notification dated September 30, 1967 by twenty per cent and the enhanced rate come into force on December 1, 1967. Under section 58 of the Act, the Electricity Board or where no such Board was constituted, the State Government had the power to direct the amortisation and tariffs policies of any licensee, being a local authority, with respect to its licensed undertaking in such manner as the Electricity Board or the State Government, as the case may be, after giving the local authority a reasonable opportunity of being heard, considered expedient for the purposes of the Act. The licensee, being a local authority, the provisions of any other law or of any rules made or directions given thereunder notwithstanding, was bound to give effect to any such directions of the Electricity Board, or the State Government, as the case may be. The Electricity Board however, could not issue any directions under section 58 of the Act except after obtaining the prior approval of the State Government. The City Board had

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A moved the State Government on September 13, 1966 for permission to enhance the rates for supply of electric energy to Consumers. No such sanction was given till March 23, 1968. The City Board, therefore, filed a petition under Article 226 of the Constitution questioning the validity of the tariff fixed under the notification dated April 24, 1962 and the enhancement made under the notification dated September 30, 1967. It may, however, be stated here that B subsequently on April 20, 1968, the City Board was permitted to raise the charges for light and fan by two paise per unit which came to 6% or 7% of the original rates and by 10% for electric energy supplied for other purposes.

C The City Board challenged the notification issued on April 24, 1962 on the ground that it was not in conformity with section 46 of the Act. It questioned the enhancement made on September 30, 1967 on the ground that it had not been permitted to enhance D correspondingly the rates chargeable by it to the consumers even though in its vicinity the Electricity Board itself was supplying electric energy to consumers at a much higher rate. The petition was contested by the Electricity Board.

E The Writ Petition was heard by a Single Judge of the High Court. He dismissed the petition. The City Board, thereafter filed an appeal before the Division Bench of the High Court. The Division Bench allowed the appeal in part. Aggrieved by the judgment of the Division Bench, the City Board and the Electricity Board have filed the above appeals by special leave.

F The material part of section 46 of the Act reads thus:

G "46. (1) A tariff to be known as the Grid Tariff shall in accordance with any regulations made in this behalf, be fixed from time to time by the Board in respect of each area for which a scheme is in force, and tariffs fixed under this section may, if the Board thinks fit, differ for different areas.

H (2) Without prejudice to the provisions of section 47, the Grid Tariff shall apply to sales of electricity by the Board to licensees where so required under any of the First, Second and Third Schedules, and shall, subject as herein-

after provided, also be applicable to sales of electricity by the Board to licensees in other cases:

Provided that if in any such other case it appears to the Board that, having regard to the extent of the supply required, the transmission expenses involved in affording the supply are higher than those allowed in fixing the Grid Tariff, the Board may make such additional charges as it considers appropriate.....”

The first contention urged before us by the City Board is that in the absence of any regulations framed by the Electricity Board under section 79 of the Act regarding the principles governing the fixing of Grid Tariffs, it was not open to the Electricity Board to issue the impugned notifications. This contention is based on subsection (1) of section 46 of the Act which provides that a tariff to be known as the Grid Tariff shall *in accordance with any regulations made in this behalf*, be fixed from time to time by the Electricity Board. It is urged that in the absence of any regulations laying down the principles for fixing the tariff, the impugned notifications were void as they had been issued without any guidelines and were, therefore, arbitrary. It is admitted that no such regulations had been made by the Electricity Board by the time the impugned notifications were issued. The Division Bench has negatived the above plea and according to us, rightly. It is true that section 79 (h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But section 46 (1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations, made in this behalf. That means that if there were any regulations the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under section 79 (h) of the Act cannot be a condition precedent for fixing the Grid Tariff. A similar contention was rejected by this Court in *Mysore State Road Transport Corporation v. Gopinath Gundachar Char*<sup>(1)</sup> which was a case arising under the Road Transport Corporation Act, 1950. Under section 14 of that Act a Road Transport Corporation was entitled to appoint officers and servants as it considered necessary for the efficient performance of its functions. Under section 34 (1) of the Road Transport Corporation Act, 1950

(1) [1968] 1 S.C.R. 767.

A the State Government had been empowered *inter alia* to issue directions to the Road Transport Corporation regarding recruitment, conditions of service and training of its employees. Under section 45 (2) (c) of that Act, the Road Transport Corporation was empowered to make regulations regarding the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief Executive Officer, General Manager and the Chief Accounts Officer. Admittedly no regulations had been framed under section 45 (2) (c) of that Act. It was contended that the Corporation could not appoint officers and servants referred to therein or make any provision regarding their conditions of service until such regulations were made. This Court rejected the said plea with the following observation at page 770:

D “The conjoint effect of ss. 14 (3) (b), 34 and 45 (2) (c) is that the appointment of officers and servants and their conditions of service must conform to the directions, if any given by the State Government under s. 34 and the regulations, if any, framed under s. 45 (2) (c). But until such regulations are framed or directions are given, the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it thinks fit.”

E We do not also find any merit in the submission that the Grid Tariff fixed in this case suffered from the vice of arbitrariness.

F As observed by the Division Bench of the High Court, there is ample guidance available in the various provisions of the Act and that the rates fixed are subject to the control of the State Government. We do not find it necessary to repeat what is stated by the Division Bench except observing that we respectfully agree with the reasons given by it for rejecting the said plea. In *Maharashtra State Electricity Board v. Kalyan Borough Municipality & Anr.*,<sup>(1)</sup> this Court has discussed the relevant provisions of the Act while dealing with section 49 thereof which show that the Act furnishes ample guidance generally regarding the determination of tariffs by an Electricity Board functioning under the Act. There is also no merit in the submission that there cannot be a common tariff for all licensees in an area served by a Grid and that there should be a separate rate

H (1) [1968] 3 S.C.R. 137.

of charge for each licensee. While it may not be objectionable to have a reasonable tariff fixed in the case of a particular licensee without offending the rule of non-discrimination, fixation of a common Grid Tariff is in consonance with the spirit of the Act. The preamble to the Act says that it had been enacted to provide for the rationalisation of the production and supply of electricity and generally for taking measures conducive to electrical development. Looked at against this background, it is permissible for the Electricity Board to fix a common Grid Tariff for an area so that there may be a reasonably uniform development of the area by the supply of electric energy to all licensees or consumers in the area at a uniform rate with such reasonable variations as may be permissible in law subject to the condition that no undue preference is shown to any of them.

The Division Bench, however, held that the levy of an additional 7.1/2% as an additional charge made by the Electricity Board under the first para of clause (2) of the impugned notifications dated April 24, 1962 and September 30, 1967 was illegal and therefore liable to be quashed because according to it the additional charge of 7.1/2% could be imposed under the proviso to section 46 (2) of the Act to cover extra expenses only and not for supplying electric energy at a lower voltage of 6600 volts when the Grid Tariff had fixed rates for supplying electric energy at 11000 volts. It however, held that it was open to the Electricity Board to make an additional charge only to the extent of the actual expenditure incurred by supplying electric energy at 6600 volts. It also quashed the Government order dated April 20, 1968 by which the City Board was permitted to increase the charges payable by the consumers in some respects and the subsequent action taken on the above basis. The Division Bench directed the respondents to consider afresh the question of the rates at which electric energy could be supplied. We do not propose to go into the correctness of this part of the decision of the Division Bench because we are of the view that this case can be disposed of in a different way. The contention relating to the validity of the levy of additional charges could not be raised by the City Board under Article 226 of the Constitution in respect of the period prior to the filing of the writ petition. The above additional charge of 7.1/2% was levied in 1962 and the City Board did not question it before the Court till March 23, 1968 when it filed the writ petition. It is further seen that it has not stated that it had not collected charges from the consumers of electric energy supplied by it at the

A rates which would cover the additional 7.1/2%. The learned counsel for the City Board was not able to state that the City Board had not recouped itself by collecting the charges from the consumers. In this situation we have to presume that the City Board had not suffered any loss by the levy of 7.1/2% by way of additional charges.

B We are of the view that in cases of this nature where there is little or no possibility of refunding the excess amount collected from the ultimate consumer to him and the granting of the relief to the petitioner would result in his unjust enrichment, the Court should not ordinarily direct any refund in exercise of its discretion under Article 226 of the Constitution. Moreover in this case the City

C Board woke up nearly 6 years after the issue of the first notification and that too only after an enhancement by 20% was made under the second notification. In the case of the City Board, which is a local authority, there is an additional reason. Under section 58 of the Act which is already referred to above a local authority is bound to implement the directions issued by the Electricity Board or the

D Government, as the case may be, with regard to the amortisation and tariffs policies. The City Board has been given directions from time to time by the Government regarding the charges it may collect from the consumers in the light of the charges it has to pay to the Electricity Board and its own investment and expenditure on the undertaking. The City Board cannot question the Grid Tariff only without at the same time questioning the directions pursuant to

E which it has been collecting charges from its consumers. No satisfactory material is placed before the Court showing that the charges which were being collected by the City Board from the consumers were uneconomical and did not satisfy the reasonable standards which should govern the directions issued by the Electricity Board or the Government from time to time regarding the tariffs policies

F of the City Board. In this situation, we feel that it would not be proper to reopen the claims of the City Board in regard to the period prior to to the filing of the writ petition arising on the basis of the alleged invalidity of the notification dated April 24, 1962. Hence we refuse to grant any relief in this regard to the City Board for the period up to the date of the writ petition, that is, till March 23, 1968.

G The Grid Tariff was revised in this case on July 1, 1968. The decision of the High Court on the above point is, however, allowed to remain only for the period between March 23, 1968 and July 1, 1968 without expressing any opinion on its correctness because the period is a small one and the Electricity Board does not insist upon a decision on this question in this case. The question is left open by

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us. Similarly, the relief granted by the High Court with regard to the levy of additional charge of 2% with effect from December 1, 1967 till July 1, 1968 is not disturbed by us for the same reason without expressing any opinion on its correctness. This judgment shall not be construed as affirming the decision of the High Court in so far as the above points are concerned. The matter may be re-considered by the Electricity Board as directed by the Division Bench of the High Court but with regard to the periods specified above.

The appeals are accordingly disposed of. There shall be no order as to costs.

A.P.J.