

NOVEMBER 19, 1986

[M.P. THAKKAR AND B.C. RAY, JJ.]

*Indian Electricity Act, 1910 s. 22(B) and Electricity Supply Act, s. 49(3)—  
Electricity drawn in excess of the permissible limit—Levy of surcharge at the  
rate of 5.5 paise per unit—Validity and legality of.*

The Appellant-Company, in a writ petition, challenged the order passed by the respondent—Electricity Board levying surcharge of 5.5 paise per unit on electricity drawn by the Company in excess of the permissible 70% authorised by the State Government. The writ petition having been dismissed by a Single Judge of the High Court and the Division Bench having confirmed the decision, the appellant appealed to this Court.

In the appeal, it was contended; (i) that the Electricity Board had no authority to charge 5.5 paise per unit in excess of the agreed rate without giving one month's notice as contemplated by the agreement; and (ii) that the levy of the surcharge resulted in retrospective levy and was therefore not in accordance with law.

Dismissing the appeal,

**HELD:** 1. The Electricity Board had the legal authority to levy and collect surcharge of 5.5 paise per unit from the appellant in regard to the supply of electricity in excess of the 70% authorised in the context of s. 22-B of the Indian Electricity Act, 1910. [334 C]

2. The agreement itself does not envision the supply of electricity in violation of the ban imposed by the State Government in exercise of the power under s. 22B of the Act. [333 G-H]

3.1 Section 49(3) of the Electricity Supply Act authorises a Board to supply electricity by charging different tariff having regard to the geographical position of the area, the nature of the supply, purpose for which the supply is required and any other relevant factors, and is wide enough to cover a situation where electricity in excess of the authorised quantum is drawn in disregard of the ban imposed in view of the shortage of the supply under s. 22-B of the Indian Electricity Act, 1910 as also to cover a situation where at the express request of

A the consumer electricity is purchased from some other authority and is supplied. [334 D, B]

B 3.2 The combined effect of s.49 and the terms and conditions of supply is that having regard to the nature of supply and other relevant factors particularly when there is shortage of electricity the Board has the power to enhance the rates. If there is shortage of electricity there is justification to impose restriction on supply. The Board can also impose higher rates by way of sanction if the quota is exceeded. [334 E]

*Adoni Cotton Mills etc. v. The Andhra Pradesh State Electricity Board and Others*, [1977] 1 SCR 133, relied upon.

C In the instant case, having regard to the fact that the supply was made after obtaining it from the Damodar Valley Corporation at a higher rate and having further regard to the fact that the impost of the surcharge is construed as having been made under the statutory authority, the stipulation in the agreement does not come into play. [335 A-B]

D CIVIL APPELLATE JURISDICTION: Civil Appeal No. 812 of 1973.

From the Judgment and Order dated 18.2.1970 of the Allahabad High Court in Spl. Appeal No. 1032 of 1968.

E G.L. Sanghi, K.K. Jain, Pramod Dayal, A.D. Sangar and Bishambar Lal for the Appellant.

Gopal Subramaniam and M<sup>rs</sup>. Shobha Dikshit for the Respondents.

F The Judgment of the Court was delivered by

G **THAKKAR, J.** The appellant invoked the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India in order to challenge the order passed by the respondent—U.P. Electricity Board levying a surcharge of 5.5 paise per unit of electricity drawn by the appellant in excess of the permissible 70 per cent authorised by the State Government. State Government had imposed a ban on drawing electricity in excess of 70% per cent of the consumption in exercise of powers under Section 22B of the Indian Electricity Act of 1910 having regard to the fact that on account of short-fall of rain the generation of electricity had been adversely affected and it was not possible to supply electricity to the consumers as per the demand. The learned Single Judge of the High Court dismissed the Writ Petition *inter alia* on the

H

ground that the equities were against the appellant (writ petitioner) in view of the fact that the respondent-Board had purchased electricity from the Damodar Valley Corporation (D.V.C.) at the rate of 4.57 per unit in order to make available the electricity as per the demand of the appellant and other industrial units at their request. Says the learned Single Judge:—

“It appears to me that there are no equities in favour of the petitioner, and on this ground also, the petitioner is not entitled to any relief. The petitioner factory and other industries had requested the State Government and the Board to augment supply of electrical energy by obtaining it from the Damodar Valley Corporation and other sources and has offered to pay additional expenses which the State Government or the Board might have to incur for it. In order to accommodate the petitioner factory and other industries the State Government and the Board did not exercise the power to disconnect their connections and obtained electrical energy from the Damodar Valley Corporation and had to pay certain sums of money therefore. They were certainly entitled to recover those amounts from the petitioner factory and other industries. It does not lie in the mouth of the petitioner now to say that the Board is not entitled to levy a surcharge for recovery of the amount which they have spent in obtaining extra electrical energy from the Damodar Valley Corporation”.

The Division Bench has confirmed the decision of the learned Single Judge.

Two contentions have been urged in support of this appeal. The first contention is that the Electricity Board had no authority to charge 5.5 paise per unit in excess of the agreed rate without giving one month's notice as contemplated by the agreement. The second contention is that the levy of the surcharge resulted in a retrospective levy and therefore, it was not in accordance with law.

So far as the principal contention is concerned we are unable to accede to the submission that the Board had no legal authority to levy 5.5 paise surcharge in respect of the supply in excess of the 70 per cent authorised by the State Government. The agreement itself does not envision the supply of electricity in violation of the ban imposed by the State Government in exercise of the power under section 22-B of the Indian Electricity Act, 1910. Nor does the agreement stipulate the rate at which such supply should be charged if notwithstanding the ban against the supply, a consumer draws electricity in excess of the

- A permissible quantity. Thus the agreement is silent on this aspect. Therefore, the Board was justified in invoking its power under section 49(3) of the Electricity Supply Act, 1948 which authorises a Board to supply electricity by charging a different tariff having regard to the geographical position of the area, the nature of the supply, purpose for which the supply is required and '*any other relevant factors*'. Section 49 (3) of the Act is wide enough to cover a situation where
- B electricity in excess of the authorised quantum is drawn in disregard of the ban imposed in view of the shortage of the supply position in the face of the ban imposed under Section 22-B of the Indian Electricity Act, 1910 as also to cover a situation where at the express request of the appellant (as per the averment contained in the affidavit filed on behalf of the respondent) electricity is purchased from some other authority (in the present case from D.V.C.) and is
- C supplied to the consumers. We are, therefore, of the view that the electricity Board had the legal authority to levy and collect surcharge of 5.5 paise per unit from the appellant in regard to the supply in excess of the 70 per cent authorised in the context of section 22-B of the Indian Electricity Act, 1910. We are buttressed in this view by a decision of this Court in *Adoni Cotton Mills etc. v. The Andhra Pradesh State Electricity Board & Ors.*, [1977] 1 S.C.R. page 133.
- D In *Adoni Cotton Mills*' case the view has been taken that the power to enhance the tariff is included in section 49 of the 1948 Act and that section 49(3) authorises a Board to fix different tariffs for the supply of electricity having regard to the geographical position etc and any other relevant factors. The expression '*any other relevant factors*' is not to be construed *ejusdem generis* and that the combined effect of Section 49 and the terms and conditions of
- E supply is that having regard to the nature of supply and other relevant factors particularly when there is shortage of electricity the Board has the power to enhance the rates. If there is shortage of electricity there is to be restriction on supply and the Board can disconnect supply if the quota is exceeded. The Board can also impose higher rates if the quota is exceeded. The imposition of higher rates is only to "sanction the rigour of ration by making persons who exceed the
- F quota liable to pay higher rates." We are, therefore, of the opinion that so far as the first point is concerned the view taken by the High Court cannot be taken exception to. With regard to the retrospective effect argument, the electricity was supplied from November, 1966 till February 20, 1967 on which date the notification imposing the levy was issued. It was, therefore, urged that so far as the period anterior to February 20, 1967 is concerned the effect of the levy
- G would be retrospective. The High Court has taken the view that it does not amount to making the tariff retrospective but the effect of the notification is to recover the surcharge in respect of the energy which was supplied in excess of the permissible quota. It was also urged on behalf of the respondents that in so far as the period anterior to February 20, 1967 was concerned the appellant was not entitled to make the recovery as it would amount to altering the tariff. This
- H argument was advanced in the context of the stipulation in the agreement that

one month's notice would be given before increasing the tariff. Since we are of the view that the Board had the statutory authority to impose the surcharge in respect of the electricity supplied in excess of the permissible quota and having regard to the fact that the supply was made after obtaining it from the D.V.C. at a higher rate and having further regard to the fact that the impost of the surcharge is construed as having been made under the statutory authority the stipulation in the agreement does not come into play. Under the circumstances, we do not see any good ground to disturb the findings recorded by the High Court. The appeal therefore, fails and is dismissed. There will be no order as to costs.

A.P.J.

Appeal dismissed.