CHITTOOR ZILLA VYAVASAYADARULA SANGHAM

v.

A.P. STATE ELECTRICITY BOARD AND ORS.

NOVEMBER 3, 2000

[A.P. MISRA AND N. SANTOSH HEGDE, JJ.]

Electricity (Supply) Act, 1948: Sections 49, 59 and 78-A.

Fixation of tariff—Uniform tariff—Agricultural sector—Policy directions regarding—Issued by State Government—Binding nature of—On the State Electricity Board—State Government directed Board to fix a uniform flat rate per horsepower per annum as policy decision—But Board fixed slab rates based on consumption of horsepower—Validity of—Held: Policy decision of State Government binding on Board only to the extent it sub-serves the Board in performing its statutory obligation under Ss. 49 and 50—While implementing the direction of the State Government Board is not required to go beyond or act contrary to the mandates of Ss. 49 and 50—If fixation of uniform flat rate per horsepower per annum does not leave such surplus as is not less than 3 percent of the revenue after meeting all its expenses, the Board is not bound to comply with such direction—Hence, imposition of slab rates of tariff not illegal—Further, slab rates not discriminatory—Constitution of India, 1950, Art. 14.

The appellant was a registered society having farmers in various districts of the State as its members. The State Government in exercise of powers under Section 78-A of the Electricity (Supply) Act, 1948 directed the State Electricity Board to revise the electricity tariff at a certain flat rate per horsepower per annum. Accordingly, flat rate of tariff was fixed. Subsequently, the Board after consultation with the State Government revised the impugned tariff. The impugned tariff rates divided the agriculturists into multi-groups based on the consumption of horsepower by the pump sets into various slabs. The appellant filed a writ petition before the High Court challenging the aforesaid slab rates, which was dismissed. Hence this appeal.

On behalf of the appellant it was contended that the impugned tariff rate was contrary to Government policy under Section 78-A of the Act as, it instead of being at flat rate, was based on slab rates; that it was also

A discriminatory *inter se* between the same class of agriculturists; that there was no justification to enhance the tariff when the loss of electricity through transmission and theft was to the extent of 33% and that the Board could have fixed a tariff at Rs. 200, 300 etc. per horsepower per annum in order to overcome its deficit.

B The following questions arose before this Court:

(a) Whether the Andhra Pradesh State Electricity Board is competent to put an end to the policy decision of the State to supply electricity to the agricultural sector at subsidised uniform flat rate and convert the same into C multi-different tariff rates discarding the principle of fixation of uniform tariff as contemplated in Section 59 of the Electricity (Supply) Act, 1948?

(b) Whether the Board is competent to fix tariff as per use of smaller or bigger H.P. motor and whether this fixing has any rational basis, which discriminates between one from the other agriculturists?

D Dismissing the appeal, the Court

HELD : 1. The State Electricity Board and the State Government are statutory functionaries under the Electricity (Supply) Act, 1948. They have E to perform their obligations within the limits they have been entrusted with. Section 78-A of the Act empowers the State Government to issue directions to the Board on question of policy; on the other hand the Board has to perform its statutory obligations under the Act and with reference to the fixation of tariff it has to act in terms of what is contained in Sections 49 and 50. But this field of policy direction is not unlimited. There cannot be any policy F direction, which pushes the Board to perform its obligations beyond the limits of the said two Sections. Any policy direction, which in its due performance keeps the Board within its permissible statutory limitations, would be binding on the Board. So, both State and the Board have to maintain its cordiality and co-ordination in terms of the statutory sanctions. If any policy direction G pushes the Board in its compliance beyond statutory limitations, it cannot be a direction within the meaning of Section 78-A. It is signifying that the opening words of Section 78-A are, "in the discharge of its functions, the Board shall be guided by such direction." So, the direction of the State is for the guidance to the Board, in the discharge of its functions. Thus, this direction has also limitation to give such direction, which will sub-serve in H performing its statutory obligation. [375-H; 376-A-D]

2. According to the Board, if tariff were charged at the flat rate per horsepower per annum, as per the direction of the State Government, loss to the Board would have been enormous. This would have gone contrary to the obligation cast on the Board under Section 59. Section 59 of the Act mandates the Board to leave such surplus not less than 3% of the revenue, after meeting all its expenses referred to therein. Thus the Board has not to supply electricity at such rate to be in deficit, leaving no hope for its extensions for the benefit of persons living in an uncovered area. It is for this and other reasons that the statute mandates the Board to maintain this surplus in every year. It is true that the government can cater to the popular demand in order to earn its legitimate favour by giving any such policy direction, but it should have to be within permissible limits. [378-B-C]

3.1. On facts of this case the policy decision by the State Government can only be construed to mean to supply the electricity to ryots at the subsidised and concessional tariff rates. The other part of the assurance, namely, to supply electricity at an uniform fixed rate per horsepower per annum which results into the aforesaid loss to the Board cannot be construed to be part of the policy direction under Section 78-A. [378-E-F]

3.2. The Board has accepted broadly the policy of the State Government to supply electricity to the ryots at the subsidised and concessional rate but could not have accepted the uniform fixed rate per horsepower per annum, as it would have run contra to Section 59. [379-B]

Real Food Products Ltd. v. *A.P. State Electricity Board,* [1995] 3 SCC 295, held inapplicable.

4. There is no merit in the submission that if flat rate as a policy was to be charged the Board could have fixed at Rs. 200, 300 etc. per horsepower per annum in order to overcome the deficit then it would have been in consonance with policy decision. If this had been implemented, it would have put heavy burden on small farmers who are using minimum electricity and would have run contra to the central theme of the policy. Even the submission that the small agriculturist who gets water at the deeper level has to consume more electricity than the bigger farmers who get water at higher level, thus consuming more electricity and paying more in slab system cannot be accepted. Big farmers have to irrigate larger area than small farmers and have to consume more electricity. There may be a small range of farmers in the situation as submitted but for this there is no material on the records

A to sustain such a submission. The imposition, on the facts of this case, of the slab system is in keeping the interest of small farmers to pay less for consuming less electricity hence is reasonable and cannot be faulted. In doing so, it also does not violate Section 49 as submitted, by not framing uniform tariff. Firstly, the pattern of tariff fixed is uniform even otherwise in terms of Section 49(3); the Board could make departure from it, for any B relevant factor. Hence there is no illegality. [379-D-G]

5. The submission of the appellant that the loss incurred by the Board is on account of theft and transmission loss which is as high as 33% on average and the Board if not able to control this, the burden should not be C passed on to the consumers including the poor agriculturist, cannot be accepted. It is true transmission losses by theft are on the higher side. It is an onerous duty of the Board to be vigilant and keep on guard and check such transmission losses. However, such losses by itself would not be sufficient for this Court to strike down the impugned tariff. [380-F-H]

D 6. On the facts of this case, the letter of the Government could not be construed to be a binding direction under Section 78-A of the Act except to the extent which is implicit, to supply electricity to the Ryots at the subsidized and concessional rate, which the Board has followed. [379-H]

E 7. The Board has not put an end to any policy decision of the State. In fact, it has followed such direction falling under Section 78-A, by supplying electricity to the Ryots at subsidised and concessional rate, and imposition of tariff based on slab system cannot be said to be illegal. The slab system applied by the Board on the facts and circumstances of this case is not discriminatory but has rationale behind it in the interest of smaller farmers. F The impugned revised tariff is valid. [381-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6182 of 2000.

From the Judgment and Order dated 22.1.99 of the Andhra Pradesh High G Court in W.P. No. 752 of 1997.

WITH

Civil Appeal No. 6183-6187 of 2000.

H WITH

Civil Appeal No. 6188 of 2000 A

WITH

Civil Appeal No. 6189-6191 of 2000

P.P. Rao, Shanti Bhushan and Ashok Grover, P.S. Narasimha, P. Sridhar, B
K.N. Jha, V.G. Pragasam, B. Kanta Rao, Ms. Sudha Gupta, Dilip Tandon and Rakesh K. Sharma for the appearing parties.

The Judgment of the Court was delivered by

MISRA, J. Leave granted in all the special leave petitions. C

The questions raised in these appeals are:

(a) Whether the Andhra Pradesh Electricity Board (hereinafter referred to as 'the Board') is competent to put an end to the policy decision of the State to supply electricity to the agricultural sector at subsidised D uniform flat rate and convert the same into multi different tariff rates discarding the principle of fixation of uniform tariff as contemplated in Section 59 of the Electricity (Supply) Act, 1948.

(b) Whether the Board is competent to fix tariff as per use of smaller or bigger H.P. motor and whether this fixing has any rational basis E which discriminates between one from the other agriculturists.

The present appeals are directed against the orders of the Andhra Pradesh High Court dismissing appellant's writ petitions, holding that the Board decision in fixing different rates based on the capacity of motor is neither arbitrary nor discriminatory. F

In order to appreciate the controversy we are herein giving short matrix of facts. The appellant is a registered society having farmers in various districts of Andhra Pradesh as its members. According to the case of the appellant, a farmer-consumer of electricity for his agricultural purpose is G classified by the respondent-Board as a low tension consumer entitled for a subsidised price in the light of the policy of the State Government. In pursuance to the same, the Board reduced the tariff rates for a very short period, in the light of the assurance given on the Floor of the Assembly in January, 1995 by the then Chief Minister. Accordingly the tariff was reduced to Rs. 50 per H.P. per annum with effect from 1.4.1995 under B.P.Ms. No.110, H

dated 5.6.1995. Subsequently the Board after consultation with the State revised the impugned tariff. The question raised is, whether revision of this tariff could be justified when it runs counter to the said policy decision of the State, based on the assurance of the Chief Minister and in view of the social and statutory obligation, both on the Board and the State to supply electricity economically towards its subject. The revised new tariff rate through B.P.Ms. No.32, dated 29.7.1996 was:

		Tariff rate
(i)	Upto 3 H.P.	Rs. 250 per H.P. per year
(ii)	Between 3 H.P. to 5 H.P.	Rs. 350 per H.P. per year
(iii)	From 5 H.P. to 10 H.P.	Rs. 450 per H.P. per year
(iv)	10 H.P. and above	Metered supply @ Rs. 0.50 per unit subject to a minimum of Rs. 600 per H.P. per year.

Thereafter on the representation from the farmers this tariff was reduced, first through B.P.Ms. No.35, dated 14.8.1996:

		Tariff rate
(i)	Upto 3 H.P.	Rs. 200 per H.P. per year
(ii)	Between 3 H.P. to 5 H.P.	Rs. 300 per H.P. per year
(iii)	From 5 H.P. to 10 H.P.	Rs. 400 per H.P. per year
(iv)	10 H.P. and above	Rs. 500 per H.P. per year

Finally, came the impugned revised rates as per B.P.Ms. No.40, dated 3.9.1996 which is:

	Tariff rate	
	DPAP Area	*Others*
(i) Upto 3 H.P.	Rs. 100 per H.P. per year	Rs.150
(ii) Between 3 H.P. to 5 H.P.	Rs. 200 per H.P. per year	Rs.250
(iii) From 5 H.P. to 10 H.P.	Rs. 300 per H.P. per year	Rs.350
(iv) 10 H.P. and above	Rs. 400 per H.P. per year	Rs.400

Before reaching this stage, it is necessary to give some historical background of the imposition of the tariff from the year 1982 till the date of the impugned tariff. The TDP Government headed by Mr. N.T. Rama Rao in exercise of powers under Section 78A of the aforesaid Act, directed the Board, through letter dated 15.12.1982 from the Secretary to the Government of Energy, Environment, Science and Technology Department to revise the electricity tariff for Borewell/Tubewell pumpset to Rs. 50 per H.P. per annum without installation of meters. The relevant portion of the said letter is quoted hereunder:

> "While agriculturists owning lands under flow irrigation from major projects for both reliable and cheap irrigation, farmers depending on ground-water based irrigation, most of whom are small and marginal farmers, have to incur relatively higher expenditure in lifting water, besides being vulnerable to recurring drought resulting in lowering of the water table in the wells. Moreover, in rural areas maintenance of electricity meters and the billings of individual farmers based on meter reading is be set with administrative defects leading to loss of revenue, hardship to the farmers and high collection cost. Keeping all the above factors in view, the Government feels that the present power tariff for agricultural pump sets needs rationalisation and that a flat rate system based on the horse-power of each pump-set would be more appropriate in such cases. Government have therefore, decided that with effect from 1st November, 1982 the revised power tariff for agricultural pumpsets in the State should be a flat rate of Rs. 50 per H.P. per annum.
>
> With a view to mitigate hardship to small and marginal farmers depending solely on well irrigation and to give a fillip to agricultural production in the State, the Government under Section 78-A of the Electricity (Supply) Act, 1948 direct that, in supersession of the instructions issued in the letter cited (dated 20.1.1982), the APSEB shall revise the electricity tariff for irrigation wells to Rs. 50 per H.P. per annum, and that this rate shall take effect from 1.11.1982."

Accordingly the Board fixed the tariff at Rs. 50 per H.P per annum.

After the change of the Government the tariff were again revised. Thereafter when again Government of Mr. N.T. Rama Rao came into power, it gave assurance to the State Legislature on 20.1.1995, as aforesaid that the farmers in the State would be supplied with power @ Rs. 50 per H.P. per

A annum. Based on this assurance, followed by the communication of the Government dated 27th May, 1995 the Board issued B.P.Ms. No.110, dated 5.6.1995, revising tariff to Rs. 50 per H.P. per annum for all pumpsets upto 75 H.P.. At that point of time B.P.Ms. No.147 dated 18.11.1992 issued by the Board was in operation as amended from time to time through B.P.Ms. No.100, dated 29.12.1992, B.P.Ms. No.471, dated 15.3.1994, through B.P.Ms. No.64 B dated 24.4.1995, B.P.Ms. No.70 dated 8.5.1995 and through B.P.Ms. No.72 dated 9.5.1995.

With the change of the Government again the present impugned B.P.Ms. No. 40, dated 3.9.1996 was issued.

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Submission for the appellant is, this impugned B.P.Ms. has divided the agriculturists into multi groups, based on the consumption of the horse power by the pumpsets into various slabs - which runs contra to the uniform tariff as contemplated under Section 49 of the Act.

D Learned Senior counsel Mr. P.P. Rao appearing for the appellant submits, the impugned tariff rates are contrary to the Government policy issued under Section 78A, in pursuance to the assurance given by the Chief Minister, as it instead of being at flat rates, is based on slab rates and is also discriminatory *inter se* between the same class of agriculturists. He also submits, even E otherwise the revision of rate is based on factual misrepresentation by showing deficit to the Board for 1996-97, the year in question, wherein as per figures placed before the public in the Power Development in Andhra Pradesh (Statistics) 1997-98, shows surplus for the same year. In fact this inconsistency was placed before the High Court by some of the connected appellants through review petition but the High Court without application of mind F rejected the same. In support of the first part of submission, it is submitted that the policy decision of the State cannot be changed by mere consultation. The change could only be broughtforth by the issuance of fresh policy order by the State under Section 78 A and communicating the same. He submits under General Clauses Act (Central) and also under Section 15, State General G Clauses Act, a thing can only be undone in the same way as it was done earlier. In other words, when there is an order under Section 78A based on the assurance of the Chief Minister there has to be another such order by the State withdrawing the same under the same Section. In the present case, submission is, admittedly even as per Board there was no such order passed. He also referred to Section 49 to show that Board while supplying the H electricity has to frame uniform tariffs and while fixing such tariffs it has to

take into consideration what is stated under sub-section (2). A

He also laid emphasis that justification to enhance the tariff cannot be sustained when admitted losses of electricity through transmission and theft etc. are to the extent of 33%. He fairly admits, under Section 78A direction by the State Government would be confined to the policy decision only and the fixation of rate of tariff is within the domain of the Board. B

On the other hand, learned senior counsel for the respondent-Board Mr. Shanti Bhushan submits, the impugned tariff does not suffer from any illegality and have been validly revised. In fixing the tariff, the Board has kept in view, Sections 49 and 50 of the Act. For ready reference Sections 49 and 50 are quoted hereunder: C

Section 49.

"49. Provision for the sale of electricity by the Board to persons other than licensees. - (1) Subject to the provisions of this Act and of regulations, if any made in this behalf, the Board may supply electricity D to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.

(2) In fixing the uniform tariffs, the Board shall have regard to all or any of the following factors, namely:- E

(a) the nature of the supply and the purposes for which it is required;

(b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas F not for the time being served or adequately served by the licensee;

(c) the simplification and standardisation of methods and rates of charges for such supplies; and

(d) the extension and cheapening of supplies of electricity to sparsely G developed areas.

(3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any H

A area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person".

B *Section 59*:

"59. General Principles for Board's finance - (1) The Board shall, after taking credit for any subvention from the State Government under section 63, carry on its operations under this Act and adjust its tariffs so as to ensure that the total revenues in any year of account shall C after meeting all expenses properly chargeable to revenues, including operating, maintenance and management expenses, taxes (if any) or income and profits, depreciation and interest payable on all debentures, bonds and loans, [leave such surplus as is not less than three per cent, or such higher percentage, as the State Government may, by D notification in the Official Gazette, specify in this behalf, of the value of the fixed assets of the Board in service at the beginning of such year.

Explanation - For the purposes of this sub-section, "value if the fixed assets of the Board in service at the beginning of the year" means the E original cost of such fixed assets as reduced by the aggregate of the cumulative depreciation in respect of such assets calculated in accordance with the provisions of this Act and consumers' contributions for service lines.

(2) In specifying [any higher percentage] under sub-section (1), the F State Government shall have due regard to the availability of amounts accrued by way of depreciation and the liability for loan amortization and leave -

(a) a reasonable sum to contribute towards the cost of capital works; and

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(b) where in respect of the Board, a notification has been issued under sub-section (1) of section 12A, a reasonable sum by way of return of the capital provided by the State Government under sub-section (3) of that section and the amount of the loans (if any) converted by the State Government into capital under sub- H section (1) of section 66A".

Board supplies electricity and fixes tariff from time to time under Section 49. In doing so, it has classified the consumers into low tension consumers and high tension consumers. Under low tension consumers among the 7 categories the agriculturists is category no.5 (to which we are concerned) and under high tension consumers fall factories, industries and also agriculture of high tension consumers. Different tariff rates are being fixed from the very inception by the Board for each class or category. The impugned tariff revision was undertaken by the Board keeping in view its statutory responsibility it has to undertake in terms of Section 59. In doing so, it has to ensure that the total revenue in any year, after meeting all expenses properly chargeable including operation, maintenance and management expenses, taxes (if any) on income and profits, depreciation and interest payable on all debentures, bonds, and loans, leave such surplus as is not less than 3%, or such high percentage as State Government may, by notification in the official Gazette, specify. It is one of the statutory obligation cast on the Board. It is also relevant to reproduce Section 78 A hereinunder to properly test the scope of the direction of the State.

Section 78 A:

"78A. Directions by the State Government.—(1) In the discharge of its functions, the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.

(2) If any dispute arises between the Board and the State Government as to whether a question is or is not a question of policy, it shall be referred to the Authority whose decision thereon shall be final."

The submission for the Board is, the communication by the Government dated 27.5.1995 cannot be construed to be a direction issued under Section 78A of the Act. Any direction under Section 78A could only be for the furtherance to discharge its function by the Board. Any direction which makes Board travel outside such Sections 49 and 59 cannot be covered by Section 78 A. The Board in order to honour the assurance given by the Chief Minister, notwithstanding it not to be a direction under Section 78A, through B.P.Ms. No.110 as aforesaid, brought the tariff to Rs. 50 per H.P. per annum to all the pump sets upto Rs. 75 H.P. But later, in consultation with the State Government, once again revised the tariff to bring it within the norms as envisaged by Section 59. Thus submission for the Board is, firstly issuance of letter dated 27.5.1995 is not a policy direction issued under Section 78A and even if such direction could be read implicitly as a policy decision then

A subsequent revision of the impugned tariff after consultation with the Government has also to be construed implicitly as withdrawal of the said policy direction. He submits, so far the Government policy of supply of electricity to the Ryots (agriculturists) at a cheaper and subsidised rates is still maintained by the Board and the impugned revision is still in consonance within the same. He has also placed figures before us, about which we shall B be referring later, to show that the supply of power to the agriculturists, even as per the impugned tariff, the average supply is at the subsidised rate of about 90%. The actual cost incurred by the Board in generation and supply of the electricity is Rs. 1.77 per unit.

C It is denied that any misrepresentation was made by the Board before the High Court. The submission is, that in the counter affidavit filed by the Board in the High Court it is true - it records projected losses for 1996-97 showing revenue deficit of Rs. 1,533 crores. These projected losses are shown with reference to the tariff if imposed at the rate of Rs. 50 per H.P. per annum. This figure is not actual loss. It is only to overcome these projected losses, D the tariff has been revised. Hence in the statistics of 1997- 98 rightly for 1996-97 surplus is shown. This surplus is still within 3% as referred in Section 59.

For the appellant it is submitted that the subsidies tariff @ Rs. 50 per H.P. per annum fixed by the Board in 1982 and also on 5.6.1995 was by way E of implementation of the directions issued by the State Government under Section 78A which is binding on the Board. It is relevant here to record the assurance of the Chief Minister, dated 20.1.1995 in the Andhra Pradesh Legislative Assembly:

> "We have assured that electricity will be supplied for cultivation F to Ryots at the rate of Rs. 50 per horse power per annum. I once again respectfully reiterate the assurance that for the development and welfare of Ryots electricity will be supplied at the rate of Rs. 50 only.
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> It is our responsibility to ensure that according to the Government policy Ryots are supplied electricity at the rate of Rs. 50 per H.P. per G annum".

This was followed by a letter dated 25.5.1995 from the Secretary of the State Legislature to the Member-Secretary to the Government of Andhra Pradesh referring to the assurance given by the Chief Minister and this was followed by letter dated 27.5.1995 from the Joint Secretary of Government to H the Member-Secretary of the Board. It records:

"Sub: A.P. Leg. Assembly Assurance regarding supply of power at the rate of Rs. 50 per one Horse power to the Agriculturists - implementation report - A

Ref: From Secy. To Legislature, Lr. No.1959 (assu/95-1, dt: 20.5.95).

I am directed to enclose herewith a copy of the reference cited, together with Assurance No.1959, dt: 20.1.95, regarding supply of power at the rate of Rs. 50 per one horse power to the Agriculturists and request you to send the implementation report, immediately. B

The question is whether such letter could be an order under Section 78A and to be such as to bind the Board for its compliance. C

Strong reliance has been placed by Mr. Rao on the certain observations made by this Court in *Real Food Products Ltd. And Ors.* v. *A.P. State Electricity Board & Ors.*, [1995] 3 SCC 295. The reliance is on the following observations:

"It does appear that the view expressed by the State Government on a question of policy is in the nature of a direction to be followed by the Board in the area of the policy to which it relates... D

In the present case, the flat rate per H.P. for the agricultural pump-sets indicated by the State Government, appears to have been found acceptable by the Board as appropriate particularly because it is related to the policy of concessional tariff for the agriculturists as a part of the economic programme. E

The submission is, this decision holds State Government policy direction has to be followed by the Board and flat rate of charging tariff is part of the policy of the State Government. Hence, the letter dated 27.5.1995 is a direction of the State Government under Section 78A according to which the rate of tariff has to be Rs. 50 per H.P. per annum which is binding on the Board. The Board notwithstanding this, when it revised its tariff upwards is in contravention of this direction hence liable to be quashed. Emphasis is that fixation of flat rate, namely, in the present case Rs. 50 per H.P. per annum is a part of the policy though it is open to the Board to escalate the rate, *viz.*, it may be Rs. 100 per H.P. per annum, Rs. 200 per H.P. per annum but it cannot vary the policy from flat rate to slab rate. F G

It is necessary first to examine the periphery of the statutory fields within which the Board and the State Government has to function. Admittedly H

A both are statutory functionaries under the Central Act. They have to perform their obligations within the limits they have been entrusted with. Section 78A empowers the State Government to issue directions to the Board on question of policy, on the other hand the Board has to perform its statutory obligations under the said Act and with reference to the fixation of tariff it has to act in term of what is contained in Sections 49 and 50. But this field of policy B direction is not unlimited. There cannot be any policy direction which pushes the Board to perform its obligations beyond the limits of the said two sections. Any policy direction, which in its due performance keeps the Board within its permissible statutory limitations would be binding on the Board. So, both State and the Board have to maintain its cordiality and co- ordination in terms C of the statutory sanctions. If any policy direction pushes the Board in its compliance beyond statutory limitations, it cannot be a direction within the meaning of Section 78 A. It is significant that opening words of Section 78 A is, " in the discharge of its functions, the Board shall be guided by such directions". So, the direction of the State is for the guidance to the Board, in the discharge of its functions. Thus this direction has also limitation to give D such direction which will subserve in performing its statutory obligation. We would be returning later to test, if direction to charge tariff at the rate of Rs. 50 per H.P. per annum would have been followed by the Board, whether it would have travelled beyond Section 59.

E Now, we proceed to see to what extent the Board as per impugned revised rates is charging the tariff from agriculturists. Learned counsel for the Board has placed before us the rate per unit charged from the agriculturalists in question from 1983-84 till 1997-98. It is said in spite of this upward revision of tariff, even now the rate is heavily subsidised.

F	*Year*	*Flat rate per unit Charged*
	1983-84	9.20 Paisa.
	1984-85	6.12 P.
	1985-86	5.57 P.
G	1986-87	4.87 P.
	1987-88	4.72 P.
	1988-89	4.27 P
	1989-90	4.29 P.
	1990-91	2.87 P.
H	1991-92	3.27 P.

1992-93	8.10 P.	A
1993-94	6.40 P.	
1994-95	5.27 P.	
1995-96	2.81 P.	
1996-97	13.51 P.	B
1997-98	16.18 P.	

Submission is this chart shows, in spite of increase in the cost escalation in every field, even in the impugned tariff for 1996-97, the year in question, the Board is merely charging 13.51 per unit when the cost of production is Rs. 1.77 per unit. In other words, it is subsidised approximately 90% of the C average cost. On the other hand, if the same tariff, in terms of the letter dated 27th May, 1995 would have been charged there would have been heavy loss to the Board and thus compliance of the same would have resulted in contravention of Section 59 of the Act.

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Now, we proceed to examine what this Court held in the *Real Food Products Ltd.*, (supra). This Court examined the nature and effect of the direction given by the State Government under Section 78-A. It was examined in the context of charging a flat rate per H.P. for agricultural pumpsets. It holds, view expressed by the State on a question of policy to be followed by the Board in the context of Boards function under Sections 49, 59 and other E provisions of the Act. This Court held, that the flat rate per H.P. for the agricultural pump set was found acceptable by the Board. What does, acceptable to the Board means? It only means, it to be within the parameters of Sections 49 and 59 of the Act. In other words, Board has not to travel outside its obligations under Section 59. This decision records:

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> "However, in indicating the specific rate in a given case the action of the State Government may be in excess of the power of giving a direction on the question of policy, which the Board, if its conclusion be different, may not be obliged to be bound by...if the view expressed by the State Government in its direction exceeds the area of policy, G the Board may not be bound by it unless it takes the same view on merits itself...
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> .....At any rate, there is no material in the present case to indicate that the flat rate indicated by the State Government for the agricultural pump- sets was so unreasonable that it could not have been considered H

A appropriate by the Board".

Thus it is clear Board would not be bound to follow every policy directions. According to the Board, if tariff was charged at the rate of Rs. 50 per H.P. per annum, as per the direction in question, loss to the Board would have been to the extent of Rs. 1,553 crores for the year 1996-97. This would have B gone contrary to the obligation cast on the Board under Section 59. Section 59 mandates the Board to leave such surplus not less than 3% of the revenue, after meeting all its expenses referred to therein. This Board has not to supply electricity at such rate to be in deficit, leaving no hope for its extensions for the benefit of persons living in an uncovered area. It is for this and other reason statute mandates Board to maintain this surplus in every year. If it has C to perform this statutory obligation, how can it do so, if it follows any such direction which takes it away from it. It is true government can cater to the popular demand in order to earn its legitimate favour, give any such policy direction, but it should have to be within permissible limit.

D It seems Board initially, in order to maintain cordiality and cohesion in functioning did honour the said assurance by issuing B.P.Ms. No. 110 dated 5.6.1995 and reducing the tariff to Rs. 50/- per H.P. with effect from 1.4.1995. However, subsequently, in view of the aforesaid facts, the Board it seems did bring it to the notice of the State by consulting it and thereafter issued the aforesaid impugned increased tariff B.P. No. 40 dated 3rd September, 1995. On E the facts of this case the policy decision by the State Government, for the year in question, can only be construed to mean to supply the electricity to ryots at the subsidised and concessional tariff rates. The other part of the assurance, namely, to supply electricity at the rate of Rs. 50 per H.P. per annum which results into the aforesaid loss to the Board cannot be construed to be part of the policy direction under Section 78 A. The reliance by Mr. Rao F that in *Real Food Products Ltd.* (supra) the flat rate of charging tariff has been held to be a policy decision cannot be construed to be so on the facts of the present case. In that case first we find there is clear order under Section 78 A, which leaves no room of doubt it to be so. The relevant portion of the same is quoted hereunder:

G

> "With a view to mitigating hardship to small and marginal farmers depending solely on well irrigation and to give a fillip to agricultural production in the State, the Government under Section 78-A of the Electricity (Supply) Act, 1948 direct that, in supersession of the instructions issued in the letter cited (dated 20.1.1982), the APSEB H shall revise the electricity tariff for irrigation wells to Rs. 50 per H.P.

per annum, and that this rate shall take effect from 1.11.1982". A

But even this direction was only approved by this Court because such direction of the State was held to be acceptable by the Board, as there was no material in that case to indicate that the flat rate @ Rs. 50 per H.P. per annum was so unreasonable that it could not have been considered appropriate by the Board. In the present case, the Board has accepted broadly the policy B of the State Government to supply electricity to the Ryots at the subsidised and concessional rate but could not have accepted the rate @ Rs. 50 per H.P. per annum as it would have run contra to Section 59. In the present case, for the year 1996-97, according to the Board its fixed assets were Rs. 135 crores and after taking into consideration of all the expenses, as aforesaid, the net C amount to be harnessed by the Board was to the tune of Rs. 1,668 crores in terms of Section 59, which could not have been achieved if the aforesaid direction is question was applied.

In fact, if flat rate as a policy was to be charged, the submission of Mr. Rao is, the Board could have fixed at Rs. 200, Rs. 300 etc. H.P. per annum in D order to overcome the deficit then it would have been in consonance with policy decision. This submission lacks merit. If this would have been implemented, it would have put heavy burden on small farmers who are using minimum electricity and would have run contra to the central theme of the policy. Even submission of Mr. Rao, the small agriculturist who get water at the deeper level has to consume more electricity than bigger farmers who get E water at higher level, thus consuming more electricity and paying more in slab system, though at the first look is attractive but cannot be accepted. Big farmers have to irrigate larger area than small farmers and have to consume more electricity. There may be small range of farmer, in the situation as submitted but for this there are no material on the records to sustain such F a submission. The imposition, on the facts of this case, of the slab system is in keeping the interest of small farmer to pay less for consuming less electricity hence is reasonable and cannot be faulted. In doing so, it also does not violate Section 49 as submitted, by not framing uniform tariff. Firstly, the pattern of tariff fixed is uniform, even otherwise in terms of sub-section (3) of Section 49, Board could make departure from it, for any relevant factor. G Hence we do not find any illegality.

So, we may conclude, on the facts of this case, the aforesaid letter of the Government following assurance of the Chief Minister, could not be construed to be a binding direction under Section 78 A, except to the extent which is implicit, to supply electricity to the Ryots at the subsidised and H

A concessional rate, which the Board has followed.

Another submission on behalf of the appellant is, High Court committed error, when it decided by accepting the misrepresented figures placed by the Board. According to the learned counsel, the figure accepted by the High Court for the year 1996-97 was deficit of Rs. 1,533 crores while the very Board
B while issuing its statistics published through Power Development in Andhra Pradesh (Statistics) 1997-98 it showed the figure of Rs. 1,049 crores and Rs. 1,777.48 crores for the years 1996-97 and 1997-98 respectively as surplus. We have considered this submission and as per the submission for the Board, the figure recorded by the High Court was based on the figures in the counter
C affidavit filed by the Board, which showed these figures as projected loss, not actual loss. The submission is this projected loss was shown in case if the assurance of charging tariff at the rate of Rs. 50/- per H.P. per annum would have been accepted, while in the 1997-98 statistics published the actual figure is shown to be in surplus. This resulted on account of upward revision of tariff. The relevant portion of the said counter affidavit is reproduced below:

D

> "...*The projections for 1996-97* have revealed a revenue deficit of Rs. 1,533 crores with reference to the revenues expenses to be met as per provisions under Section 59 of Supply Act. Further the said section refers to a three per cent return on the fixed assets for which another Rs. 135 crores have to be earned as revenue. Thus an amount of Rs.
E 1,668 crores have to be mobilised through tariff revision to achieve the three per cent statutory surplus prescribed in the Act".

For the said reason the submission for the appellant has no force. We do not find any mis-representation made by the Board before the High Court.

F The last submission by Mr. Rao with vehemence is that the loss incurred by the Board is on account of theft and transmission loss which is as high as 33% on average and Board if not able to control this, the burden should not be passed on to the consumers including the poor agriculturists. It is true transmission losses by theft is on high side. It is a matter of concern. It is
G an onerous duty of the Board to be vigilant and keep on guard and check such transmission losses. The Board must take steps at the highest level to see these transmission losses of such high order does not take place in future, as this high percentage of loss is bound to have impact on the rate of tariff and the total revenue of the Board. The person found responsible should be dealt with strictly so that there is no future reoccurrence. However,
H such losses itself would not be sufficient for this Court to strike down the

impugned tariff. A

So, out of the two questions posed, to the first question (a), we hold, the Board has not put an end to any policy decision of the State. In fact, it has followed such direction falling under Section 78A, by supplying electricity to the Ryots at subsidized and concessional rate, and imposition of tariff based on slab system cannot be said to be illegal. To the second question B (b), we hold, this slab system applied by the Board on the facts and circumstances of this case is not discriminatory but has rationale behind it in the interest of smaller farmers.

Taking into consideration the overall facts and circumstances of the present case, in view of the findings we have recorded, we hold the impugned C revised increase tariff to be valid and uphold the order of the High Court, for the reasons stated above by us. Accordingly, the aforesaid appeals are dismissed with costs.

V.S.S. Appeals dismissed. D