Kerala State Electricity Board

Vs

M/s. S. N. Govinda Prabhu and Bros. and Others

Kerala State Electricity Board, Trivandrum

Vs

Travancore Electro-Chemical Industries Ltd. and Others

Kerala State Electricity Board

Vs

M/s. M. R. F. Ltd. and Others

Civil Appeals Nos. 1639-1863 of 1985

(O. Chinnappa Reddy, M. M. Dutt JJ)

26.08.1986

JUDGMENT

CHINNAPPA REDDY, J. -

1. These appeals preferred by the Kerala State Electricity Board raise the question of the extent of the authority of the Board to increase the electricity tariff under the Electricity supply Act, 1948. The upward revision of tariff made by the Board in 1980, 1982 and 1984 was successfully challenged in the Kerala High Court. The first two revisions were struck down by a full Beach of three judges by a majority of two to one and, later, all three revisions were struck down by a Full Bench of five judges by a majority of four to one. The principal ground of challenge and that which was accepted by the High Court was that the Kerala State Electricity Board acted outside its statutory authority by formulating a price structure intended to yield sufficient revenue to offset not merely the expenditure properly chargeable to the revenue account for the year as contemplated by Section 59 of the Act but also expenditure not so properly chargeable. Had Section 59 been strictly followed and had items of expenditure not chargeable to the revenue account for the year been excluded, the revised tariff would have resulted in the generation of a surplus far beyond the contemplation of Section 59 of the Act. According to High Court, in the absence of a specification by the government the Board was not entitled to generate a surplus at all and it acted entirely outside its authority in generating a surplus to be adjusted against items of expenditure not authorised to be met from the revenue receipts. The notifications prescribing revised tariffs were therefore, struck down. The view of the High Court, as might be seen, was based primarily on their construction of Section 59 of the Electricity Supply Act.

2. In order to understand the questions at issue, it is necessary to set out Section 59 as it stood prior to 1978, as amended by Act 23 of 1978, and finally as amended by Act 16 of 1983 :

#----------Section 59 prior to Section 59 as amended1978 by Act No. 23 of 1978---------- (1) (2)----------General principles for General principles forBoard's finance. - The Board's finance. - (1)Board shall not, as The Board shall, afterfar as practicable and taking credit for anyafter taking credit subvention from thefor any subventions State Government underfrom the State Section 63, carry onGovernment under its operations underSection 63, carry on this Act and adjust itsits operations under tariffs so as to ensurethis Act at a loss, that the total revenuesand shall adjust its in any year of accountcharges according from shall, after meetingtime to time : all expenses properly chargeable to revenues, including operating, maintenance and management expenses,Provided that where taxes (if any) onnecessary any amounts income and profits,due for meeting the depreciation and interestoperating, maintenance payable on all debentures,and management bounds and loans,expenses of the Board leave such surplus, asor for the purposes of the State Governmentclauses (i) and (ii) may, from time to time,of Section 67 may, to specify.such extent as may besanctioned by the (2) In specifying theState Government, surplus underbe paid outof capital. sub-section (1), the 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 (b) where in respect of the Board, a notification has been issued under sub-section (1) of Section 12-A, a reasonable sum by way of return on 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-section (1) of Section 66-A.----------Section 59 as further amendedby Act No. 16 of 1983---------- (3)---------- General principles forBoard's finance. - (1) TheBoard shall, after takingcredit for any subventionfrom the State Governmentunder Section 63, carry onits operations under this Actand adjust its tariffs so asto ensure that the totalrevenues in any year ofaccount shall, after meetingall expanses properlychargeable to revenues,including operating,maintenance and managementexpenses, taxes (if any) onincome and profits,depreciation and interestpayable on all debentures,bonds and loans, leave suchsurplus as is not lessthan three per cent, orsuch higher percentage,as the state Governmentmay, by notification inthe Official Gazette,specify in this behalf, ofthe value of the fixedassets of the Board inservice at the beginningof such year.Explanation. - For thepurposes of this sub-section,"value of the fixedassests of the Board inservice at the beginningsof the year" means theoriginal cost of suchfixed assets as reducedby the aggregate of thecumulative depreciationin respect of such assetscalculated in accordancewith the provisions ofthis Act and consumers'contributions forservice lines.(2) In specifyingany higher percentageunder sub-section (1),theState Government shallhave due regard to theavailability of amountsaccrued by way ofdepreciation andthe liability forloan amortizationand leave -(a) a reasonable sum tocontribute towards thecost of capital work; and(b)where in respect ofthe Board, a notificationhas been issued undersub-section (1) ofSection 12-A, areasonable sum by way ofreturn on the capitalprovided by the StateGovernment undersub-section (3) of thatsection and the amountof the loans (if any)converted by the StateGovernment into capitalunder sub-section (1)of Section 66-A.----------##

We may mention here that we are not really concerned with Section 59 as amended by Act 16 of 1983 since that came into effect from April 1, 1985 only. We have, however, extracted that provision also for a better understanding of Section 59 as it stood before the 1983 amendment. We consider that for the purpose of understanding and construing Section 59, as it stood before the 1983 amendment, we are entitled to take into consideration the parliamentary exposition contained in the 1983 amendment. (We will come back to the question of proper construction of Section 59 later.)

3. We think that it is necessary at this stage itself to refer to some of the other important provisions of the Electricity Supply Act. Section 18 prescribes the general duties of the Board and, it is as follows :

> 18. General Duties of the Board. - Subject to the provisions of this Act, the Board shall be charged with the following general duties, namely -
>
> (a) to arrange, in coordination with the Generating Company or Generating Companies, if any, operating in the State, for the supply of electricity that may be required within the State and for the transmission and distribution of the same, in the most efficient and economical manner with particular reference to those areas which are not for the time being supplied or adequately supplied with electricity :
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> (b) to supply electricity as soon as practicable to a licensee or other person requiring such supply if the Board is competent under this Act so to do;
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> (c) to exercise such control in relation to the generation, distribution and utilisation of electricity within the State as is provided for by or under this Act;
>
> (d) to collect data on the demand for, and the use of, electricity and to formulate perspective plans in coordination with the Generating Company or Generating Companies, if any, operating in the State, for the generation, transmission and supply of electricity within the State;
>
> (e) to prepare and carry out schemes for transmission, distribution and generally for prompting the use of electricity within the State; and
>
> (f) to operate the generating stations under its control in coordination with the Generating Company or Generating Companies, if any, operating in the State and with the government or any other Board or agency having control over a power system.

Section 49 was not amended either in 1978 or in 1983 and it is as follows :

> 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 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 -

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

(b) the coordinated 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 not for the time being served or adequately served by the licensee;

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

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

Section 63 enables the State Government, with the approval of the State legislature, to make subventions to the Board for the purposes of the Act. Section 64 empowers the State Government to advance loans to the Board and Section 65 empowers the Board, with the previous sanction of the State Government, to borrow any sum required for the purposes of the Act by the issue of debentures or bonds or otherwise. Section 66 empowers the government to guarantee the loans proposed to be raised by the Board. Section 66-A authorises the State Government to convert any loan obtained from the government by the Board into capital provided by the Board.

4. Section 67 was amended in 1978 and again in 1983. It is useful to set out the section as it stood originally and as amended by the two amendments of 1978 and 1983 :

#----------Section 67 prior to 1978 Section 67 as amended by Act 23 of 1978---------- ---------- (1) (2)----------Priority of liabilities Priority of liabilitiesof Board. - The of the Board. - (1)revenues of the Board If any year, the revenueshall, after meeting receipts areits operating, not adequate to enablemaintenance and management compliance with theexpenses and after requirements of Section 43,provision has been the Board shall,made for the payment after meeting itsof taxes on its operating, maintenanceincome and profits, and managementbe distributed as expenses and afterfar as they are provision has beenavailable in the made for the paymentfollowing order, namely - of taxes (if any) on income and profits,(i) interest on bonds distribute the revenuenot guaranteed under receipts, as far asSection 66; they are available, in the following order,(ii) interest on stock namely -not so guaranteed; (i) payment of interest on loans not(iii) credits to guaranteed underdepreciation reserve under Section 66;Section 68; (ii) repayment of principal(iv)interest on bonds of any loan raisedguaranteed under (including redemptionSection 66; of debentures or bonds issued)(v) interest on stock

under Section 65 whichso guaranteed; becomes due for payment in the year;(vi) interest on sumspaid by State Government (iii) payment of interestunder guarantees on loans guaranteedunder Section 66; under Section 66; (iv) payment of interest(vii) the write-down on sums paid byof amounts paid from the State Governmentcapital under the in pursuance of guaranteesproviso to Section 59; under Section 66;(vii-a) the writ-down (v) payment of interestof amounts in respect on loans advancedof intangible assets to the Board byto the extent to which the State Governmentthey are actually under Section 64 orappropriated in any deemed to be advancedyear for the purpose under sub-section (2)in the books of the of Section 60;Board; (vi) repayment of principal(viii) contributions of any loanto general reserve of guaranteed by the Statean amount not exceeding Government underone-half of one Section 66 which becomesper centum per annum due for paymentof the original in the year or whichcost of fixed assets became due for paymentemployed by the Board in any previousso however that year and has remainedthe total standing unpaid;to the credit of suchreserve shall not exceed (vii) repayment of principalfifteen per centum of any loanof the original advanced to the Boardcost of such fixed under Section 64 whichassets; becomes due for payment in the year or which(ix)interest on loans became due for paymentadvanced or deemed to be in any previousadvanced to the Board year and has remainedunder Section 64, unpaid;including arrears ofsuch interest; and if any balance(x) the balance to be amount is left thereafter,appropriated to a the same shallfund to be called be utilised for thethe Development Fund other purposes specifiedto be utilised for - in Section 59 in such manner as the Board(a) purposes beneficial, may decide.in the opinion of theBoard, to electrical (2) If for any reasondevelopment beyond the control ofin the State; the Board, the revenue receipts in any year(b) repayment of loans are not adequate to meetadvanced to the Board its operating, maintenanceunder Section 64 and managementand required to be expenses, taxes (if any)repaid : on incomes and profits and theProvided that where liabilities referred to inno such loan is clauses (i) and (ii) ofoutstanding, one-half sub-section (1), theof the balance aforesaid shortfall shall, withshall be credited the previous sanctionto the Consolidated of the State Government,Fund of the State. be paid out of its capital receipts.----------Section 67 as furtheramended by Act 16 of 1983---------- (3)----------Priority of liabilities of theBoard. - The Board shall distributethe surplus referred to insub-section (1) of Section 59to the extent available in aparticular year in the followingorder, namely -(i) repayment of principalof any loan raised (includingredemption of debenturesor bonds issued) underSection 65 which becomesdue for payment in the yearor which become due for paymentin any previous year and hasremained unpaid;(ii) repayment of principalof any loan advanced tothe Board by the StateGovernment under Section 64which becomes due forpayment in the year orwhich became due for paymentin any previous year andhas remained unpaid;(iii) payment for purposesspecified in sub-section (2)of Section 59 in suchmanner as the Board may decide.----------##

Section 67-A which was introduced by Act 16 of 1983 defers payment of interest on loans advanced by the State Government until after all other expenses are met. It is in the following terms :

> 67-A. Interest on loans advanced by State Government to be paid only after other expenses. - Any interest which is payable on loans advanced under Section 64 or

> deemed to have been advanced under Section 60 to the Board by the State Government and which is charged to revenues in any year may be paid only out of the balance of the revenues, if any, of that year which is left after meeting all the other expenses referred to in sub-section (1) of Section 59 and so much of such interest as is not paid in any year by reason of the provisions of this section shall be deemed to be deferred liability and shall be discharged in accordance with the provisions of this section in the subsequent year or years, as the case may be.

5. Now, a State Electricity Board created under the provisions of the Electricity Supply Act is an instrumentality of the State subject to the same constitutional and public law limitations as are applicable to the government including the principle of law which inhibits arbitrary action by the government. (See Rohtas Industries v. Bihar State Electricity Board [(1984) 3 SCR 59 : 1984 Supp SCC 161 : AIR 1984 SC 657]. It is a public utility monopoly undertaking which may not be driven by pure profit motive - not that profit is to be shunned but that service and not profit should inform its actions. It is not the function of the Board to so manage its affairs as to earn the maximum profit; even as a private corporate body may be inspired to earn huge profits with a view to paying large dividends to its shareholders. But it does not follow that the Board may not and need not earn profits for the purpose of performing its duties and discharging its obligations under the statute. It stands to common sense that the Board must manage its affairs on sound economic principles. Having ventured into the field of commerce, no public service undertaking can afford to say it will ignore business principles which are as essential to public service undertakings as to commercial ventures. (See Lord Scarman in Bromely v. Greater London Council [(1982) 1 All ER 129].) If the Board borrows sums either from the government or from other sources or by the issue of debentures and bonds, surely the Board must of necessity make provision year after year for the payment of interest on the loans taken by it and for the repayment of the capital amounts of the loans. If the Board is unable to pay interest in any year for want of sufficient revenue receipts, the Board must make provision for payment of such arrear of interest in succeeding years. The Board is not expected to run on a bare year-to-year survival basis. It must have its feet firmly planted on the earth. It must be able to pay the interest on the loans taken by it; it must be able to discharge its debts; it must be able to give efficient and economic service; it must be able to continue the due performance of its services by providing for depreciation etc.; it must provide for the expansion of its services, for no one can pretend the country is already well supplied with electricity. Sufficient surplus has to be generated for this purpose. That we take it is what the Board would necessarily do if it was an ordinary commercial undertaking properly and prudently managed on sound commercial lines. Is the position any different because the Board is a public utility undertaking or because of the provisions of the Electricity Supply Act ? We do not think that either the character of Electricity Board as a Public Utility Undertaking or the provisions of the Electricity Supply Act preclude the Board from managing its affairs on sound commercial lines though not with a profit-thirst. It may be noticed here that Section 18(a) prescribes it as one of the duties of the Board to arrange for the supply of electricity that may be required within the State and for the transmission and distribution of the same, in the most efficient and economical manner and Section 49(2)(b) requires the Board to have regard, in fixing uniform tariffs, the coordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, both with particular reference to those areas which are not for the time being served or adequately supplied with electricity. The principles of efficiency and economy are, therefore, not foresaken but resolutely emphasised. Now if we turn to Section 59, what do we find ? Though at one time it appears to have been thought that it was enough if the Board did not carry on its operations at a loss it was realised that the statutory admonition to the Board should be positive and not negative and that the Board

should be given an affirmative and self-assuring direction. So Section 59 was amended in 1978. The Statement of Objects and Reasons says :

> 3. Section 59 of the Electricity (Supply) Act is proposed to be amended by Clause 8 of the Bill to give a positive direction to the Electricity Boards that after meeting all their expenses, there should be provision for a surplus for contribution towards immediate investment needs. A similar amendment is also proposed to be made in regard to the Generating Companies by inserting a new sub-section (3-A) in Section 75-A by Clause 18 of the Bill.

6. It was found that the 1978 amendment did not effectively improve matters as many state Governments did not specify the quantum of surplus. Parliament had, therefore, to intervene once again to fix a statutory minimum surplus. The Statement of Objects and Reasons relating to the 1983 amendment may also be extracted it is as follows :

> Though Section 59 of the Act, as amended in 1978, casts an obligation on the State Government to specify the surplus to be earned by the State Electricity Boards, no State Government has so far specified the quantum of any surplus. At present there is no uniformity in the manner of classification and presentation of accounts of the Boards and this renders inter-Board comparison of financial performance difficult. It is also considered necessary to rearrange the priorities with regard to distribution of revenues of the Boards. It is, therefore, proposed to amend the Act -
>
> (a) to provide that each Board shall have a surplus which shall not be less than three per cent, or such higher percentage as the State Government may specify, of the value of the fixed assets of the Board in service at the beginning of the year;
>
> (b) to rearrange the priorities for distribution of revenues of the Boards;
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> (c) to bring the financial reporting system of the Boards in line with commercial accounting practice; and
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> (d) to empower with a view to securing uniformity in the manner of classification and presentation of accounts, the Central Government to prescribe the forms in which the accounts of the Boards and other records in relation thereto may be maintained.

7. A plain reading of Section 59 (as amended in 1978) plainly indicates that it is the mandate of Parliament that the Board should adjust its tariffs so that after meeting the various expenses properly required to be met a surplus it left. The original negative approach of functioning so as not to suffer a loss is replaced by the positive approach of requiring a surplus to be created. The quantum of surplus is to be specified by the State Government. What the State Government is to specify is the minimum surplus. This is made clear by the 1983 amendment which stipulates a minimum of 3 per cent surplus in the absence of specification by the State Government which has the liberty to specify a higher percentage than three. The Section 59, as it stood before 1983 contemplated a minimum surplus was also the view expressed by this Court in Rohtas Industries v. Bihar State Electricity Board [(1984) 3 SCR 59 : 1984 Supp SCC 161 : AIR 1984 SC 657] where it was said, (SCC pp. 173-4, para 17)

Under the above provision, the Board is under a statutory obligation to carry on its operations and

adjust its tariffs in such a way to ensure that the total revenues earned in any year of account shall, after meeting all expenses chargeable to revenue, leave such surplus as the State Government may, from time to time, specify. The tariff fixation has, therefore, to be so made as to raise sufficient revenue which will not merely avoid any net loss being incurred during the financial year but will ensure a profit being earned, the rate of minimum profit to be earned being such as may be specified by the State Government.

8. Shri Potti, learned counsel for the consumers placed great reliance on the observations of this Court in Kerala State Electricity Board v. Indian Aluminium Co. [(1976) 1 SCR 552 : (1976) 1 SCC 466 : AIR 1976 SC 1031], Bihar State Electricity Board v. Workmen [(1976) 2 SCR 42 : (1976) 2 SCC 231 : 1976 SCC (L&S) 323 : AIR 1976 SC 251] and P. Nalla Thampy Thera v. Union of India [(1984) 1 SCR 709 : (1983) 4 SCC 598 : AIR 1984 SC 74] to contend that the Electricity Board was barred from conducting its operations on commercial lines so as to earn a profit. In the first case [(1976) 1 SCR 552 : (1976) 1 SCC 466 : AIR 1976 SC 1031], the observations relied upon were : (SCC p. 483, para 19)

Furthermore, Electricity Boards are not trading corporations. They are public service corporations. They have to function without any profit motive. Their duty is to promote coordinated development of the generation, supply and distribution of electricity in the most efficient and economical manner with particular reference to such development in areas not for the time being served or adequately served by any licensee (Section 18). The only injunction is that as far as practicable they shall not carry on their operations at a loss (Section 59). They get subventions from the State Governments (Section 63). In the discharge of their functions they are guided by directions on questions of policy given by the State Governments (Section 78-A). There are no shareholders and there is no distribution of profits.

In the second case [(1976) 2 SCR 42 : (1976) 2 SCC 231 : 1976 SCC (L&S) 323 : AIR 1976 SC 251] the Court observed : (SCC p. 234, para 4)

The Electricity Board it not an ordinary commercial concern. It is a public service institution. It is not expected to make any profit. It is expected to extend the supply of electricity to unserved areas without reference to considerations of loss that might be incurred as a result of such extension.

In the third case [(1984) 1 SCR 709 : (1983) 4 SCC 598 : AIR 1984 SC 74] where the Court was considering the position of the Indian Railways it was observed : (SCC pp. 604-05, para 14 and p. 609, para 25)

The Indian Railways are a socialised public utility undertaking. There is at present a general agreement among writers of repute that the price policy of such a public corporation should neither make a loss nor a profit after meeting all capital charges and this is expressed by covering all costs or breaking even; and secondly, the price it charges for the services should correspond to relative costs. Keeping the history of the growth of the Railways and their functioning in view, the commendable view to accept may be that the rates and fares should cover the total cost of service which would be equal to operational expenses, interest on investment, depreciation and payment of public obligations, if any. We need not, however, express any opinion about it..

We have said earlier that the Railways are a public utility service run on monopoly basis. Since it is a public utility, there is no justification to run it merely as a commercial venture with a view to making profits. We do not know - at any rate it does not fall for consideration here - if a monopoly

based public utility should ever be a commercial venture geared to support the general revenue of the State but there is not an iota of hesitation in us to say that the common man's mode of transport closely connected with the free play of this fundamental right should not be. We agree that the union Government should be free to collect the entire operational cost which would include the interest on the capital outlay out of the national exchequer. Small marginal profits cannot be rules out. The massive operation will require a margin of adjustment and, therefore, marginal profits should be admissible.

We do not think that any of these observations is in conflict with what we have said. Pure profit motive, unjustifiable according to us even in the case of a private trading concern, can never be the sole guiding factor in the case of a public enterprise. If profit is made not for profit's sake but for the purpose of fulfilling, better and more extensively, the obligation of the services expected of it, it cannot be said that the public enterprise acted beyond its authority. The observations in the first case which were referred to us merely emphasised the fact that the Electricity Board is not an ordinary trading corporation and that as a public utility undertaking its emphasis should be on service and not profit. In the second case, for example, the Court said that it is not expected to make any profit and proceeded to explain why it is not expected to make a profit by saying that it is expected to extend the supply of electricity to unserved areas without reference to considerations of loss. It is of interest that in the second case [(1976) 2 SCR 42 : (1976) 2 SCC 231 : 1976 SCC (L&S) 323 : AIR 1976 SC 251] dealing with the question whether interest cannot be taken into account in working out profits, the Court observed, (SCC p. 235, para 5)

The facile assumption by the Tribunal that the interest should not be taken into account in working out the profits is not borne out by the provisions of the statute.

In the third case [(1984) 1 SCR 709 : (1983) 4 SCC 598 : AIR 1984 SC 74], the Court appeared to take the view that the railway rates and fares should cover operational expenses, interest on investment, depreciation and payment of public obligations. It was stated more than once that the total operational cost would include the interest on the capital outlay out of the national exchequer. While the Court expressed the view that there was no justification to run a public utility monopoly service undertaking merely as a commercial venture with a view to make profits, the Court did not rule out but refrained from expressing any opinion on the question whether a public utility monopoly service undertaking should even be geared to earn profits to support the general revenue of the State.

9. One of the submissions which found favour with the High Court and which was seriously pressed before us was that in the absence of specification by the State Government the position would be as it was before the 1978 amendment, that is, the Board was to carry on its affairs and adjust the tariffs in such a manner as not to incur a loss and no more. We do not agree with the submission for the reasons already mentioned.

10. We may also refer here to the decision of the Privy Council in Madras and Southern Maharashtra Railway Co. Ltd v. Bezwada Municipality [AIR 1944 PC 71 : 71 IA 113 : (1944) 2 MLJ 25] which affirmed the judgment of the Madras High Court in Madras and Southern Maharatta Railway Co. Ltd. v. Municipal Council, Bezwada [ILR 1941 Mad 897]. One of the questions there raised was whether in the absence of rules made by the State Government, the Municipal Council was entitled to determine the capital value of property in the face of a provision which stated :

> Provided that such percentages or rates shall not exceed the maxima, if any, fixed by

> the Local Government and that the capital value of such lands shall be determined in such manner as may be prescribed.

The High Court, in that case had observed, and we agree with what has been said :

> We cannot accept the contention of the appellant that, merely because the Local Government has not prescribed the manner in which the capital value should be determined, the municipal council is deprived of the power of levying the tax under Section 81(3).

... the omission of the rule-making authority to frame rules cannot take away the right of the municipal council to levy tax at the rate mentioned in the notification issued under Clause 3. If, for instance, the Local Government refrained from prescribing the manner in which the value of such lands should be determined, it cannot, we think, be said that the municipal council has no power at all to levy the tax at a percentage of the capital value merely because the method of determining the capital value has not been prescribed by the Local Government. If the Local Government does not prescribe it, then the municipal authority is free in our opinion to fix it in any manner it chooses.

We are of the view that the failure of the government to specify the surplus which may be generated by the Board cannot prevent the Board from generating a surplus after meeting the expenses required to be met. Perhaps, the quantum of surplus may not exceed what a prudent public service undertaking may be expected to generate without sacrificing the interests it is expected to serve and without being obsessed by the pure profit motive of the private entrepreneur. The Board may not allow its character as a public utility undertaking to be changed into that of a profit motivated private trading or manufacturing house. Neither the tariffs nor the resulting surplus may reach such heights as to lead to the inevitable conclusion that the Board has shed its public utility character. When that happens the court may strike down the revision of tariffs as plainly arbitrary. But not until then. Not, merely because a surplus has been generated, a surplus which can by no means be said to be extravagant. The court will then refrain from touching the tariffs. After all, as has been said by this Court often enough 'price fixation' is neither the forte nor the function of the court.

11. The occasional excursions that have been made into that field were at the request any by the agreement of the parties. This was made clear by a Constitution Bench of seven judges of this Court in Prag Ice and Oil Mills v. Union of India [(1978) 3 SCR 293 : (1978) 3 SCC 459 : AIR 1978 SC 1296] where it was said : (SCC pp. 495-6, para 67)

It is customary in price fixation cases to cite the oft-quoted decision in Premier Automobiles Ltd. v. Union of India [(1972) 2 SCR 526 : (1972) 4 SCC (N) 1 : AIR 1972 SC 1690] which concerned the fixation of price of motor cars. It is time that it was realized that the decision constitutes no precedent in matters of price fixation and was tendered for reasons peculiar to the particular case. At page 535 of the Report Grover, J., who spoke for the Court, stated at the outset of the judgment :

> Counsel for all the parties and the learned Attorney-General are agreed that irrespective of the technical or legal points that may be involved, we should base our judgment on examination of correct and rational principles and should direct deviation from the report of the Commission which was an expert body presided over by a former judge of a High Court only when it is shown that there has been a departure from established principles or the conclusions of the Commission are shown to be demonstrably wrong or erroneous.

By an agreement of parties the Court was thus converted into a Tribunal for considering every minute detail relating to price fixation of motor cars. Secondly, as regards the escalation clause the Court recorded at page 543 that it was not disputed on behalf of the government and the Attorney-General accepted the position, that a proper method should be devised for escalation or de-escalation. Thirdly, it is clear from page 544 of the Reports that the learned Attorney-General also agreed that a reasonable return must be allowed to the manufactures on their investment. The decision thus proceeded partly on an agreement between the parties and partly on concessions made at the Bar. That is the reason why the judgment in Premier Automobiles [(1972) 2 SCR 526 : (1972) 4 SCC (N) 1 : AIR 1972 SC 1690] cannot be treated as a precedent and cannot afford any appreciable assistance in the decision of price fixation cases.

The position was again clarified in Rohtas Industries v. Bihar State Electricity Board [(1984) 3 SCR 59 : 1984 Supp SCC 161 : AIR 1984 SC 657] : (SCC p. 174, para 17)

As pointed out by this Court in Prag Ice and Oil Mills v. Union of India [(1978) 3 SCR 293 : (1978) 3 SCC 459 : AIR 1978 SC 1296] in the ultimate analysis, the mechanics of price fixation is necessarily to be left to the judgment of the executive and unless it is patent that there is hostile discrimination against a class of persons, the processual basis of price fixation is to be accepted in the generality of cases as valid.

12. On the question of appropriate pricing policy we may conveniently refer, at this juncture to what the Planning Commission had to say in the Seventh Five Year Plan. At page 128 of Vol. II in para 6.31 it was said :

> 6.31. The Sixth Plan had emphasised the need to give high priority to the evolution of a structure of energy prices which reflect true costs, curb excessive energy use and promote conservation of scarce fuels. Except in the case of oil, timely adjustments have not been made in the prices of coal and electricity to reflect the real costs. Energy pricing has not promoted, to the desired extent, inter-fuel substitution. Energy users have generally not adopted conservation measures already identified. While action is being taken to promote technologically energy-efficient equipment and processes, on the one hand, appropriate energy pricing policy would have to be followed, on the other hand, in order to induce economics in the use of energy in all sectors and encourage desired forms of inter-fuel substitution, including renewable energy wherever viable. The pricing of energy should not only reflect the true costs to the economy but also help to ensure the financial viability of the energy industries. This is particularly relevant in respect of coal and power industry. As we have said in the past, it is wrong to think that an adjustment in the prices of a basic input like energy would aggravate the inflationary situation; the costs to the economy are not reduced by not reflecting them in proper pricing. Indeed the continuance of wrong pricing policy has a far more deleterious effect on the health of the economy than is often realised. The formulation of an integrated energy pricing structure on the above lines should receive the highest priority in the beginning of the Plan period.

13. Turning back to Section 59 and reading it along with Sections 49, 67, 67-A etc. we notice that the Electricity Supply Act requires the Electricity Board to follow a particular method of accounting and it is on the basis of that method of accounting that the Board is required to generate a surplus. Broadly, Section 59 requires that a surplus should be left from the total revenues, in any year of account, after meeting all expenses properly chargeable to revenues. It has to be remembered that

apart from subventions which may be received from the State Government, which depend entirely on the bounty of the government, the only revenues available to the Board are the charges leviable by it from consumers. Bearing this in mind, we may now consider what expenses are properly chargeable to revenues under the Electricity Supply Act. For this purpose, we may not be justified in having recourse to the principles of corporate accounting or the rules which determine what is revenue expenditure under the Income Tax Act. It appears to us that the Electricity Supply Act prescribes its own special principles of accounting to be followed by the Board. To begin with Section 59(1) specifies 'operating maintenance and management expenses', 'taxes (if any) on income and profits', 'depreciation and interest payable on all debentures, bonds and lcans', as included in 'expenses properly chargeable to revenues'. Section 59(2) further stipulates that in specifying the surplus, the government shall have due regard to the availability of amounts accrued by way of depreciation and the liability for loan amortization. It also stipulates that a reasonable sum to contribute towards the cost of capital works and a reasonable sum by way of return on the capital provided by the State Government should be left in the surplus. This sub-section, therefore makes it clear that the Board is to provide for (1) loan amortization; (2) contribution towards the cost of capital works; (3) return on the capital. We may now turn to Section 67 which prescribes the priority to be observed by the Board in the matter of discharging the liabilities enumerated therein out of its revenues. First the operating maintenance and management expenses have to be met, next provision has to be made for payment of taxes on income and profits and thereafter various items of expenditure are mentioned in order of priority. If any amount is left after the discharge of the liabilities enumerated in Section 67 it is further provided that the balance shall be utilised for the other purposes specified in Section 59 in such manner as the Board may decide. Payment of interest is expressly mentioned among the liabilities to be discharged, as also repayment of principal of loans becoming due for payment in the year. Clause (vi) of sub-section (1) of Section 67 makes it clear that repayment of principal of any loan guaranteed by the State Government will include loans which become due for payment in the year as well as loans which became due for payment in any previous year and had remained unpaid. The submission strenuously urged on behalf of the consumers before the High Court and before us was that while interest which accrued during the year might be properly considered to be revenue expenditure, arrears of interest which accrued during the previous years and had not been paid could not be so considered. We fail to see why that should be so. Under the scheme of the Act principal amount falling due in any year has to be met from the revenue receipts of the year. It is difficult to understand how any payment towards principal could be made or accepted if interest of previous years continued to be outstanding. The very provision for repayment of capital necessarily implies payment of all interest accrued up to the date of repayment of the capital. If as argued on behalf of the consumers arrears of interest cannot be paid from revenue receipts, how then may such arrears be paid ? Not from the capital receipts. What may be paid out of capital receipts and the circumstances under which the payment may be made are expressly provided in Section 67(2) which says that if for any reason beyond the control of the Board of revenue receipts in any year are not adequate to meet the operating, maintenance and management expenses, taxes on income and profits, and the liabilities referred to in clauses (i) and (ii) of Section 67(1), then the shortfall shall be paid out of its capital receipts with the sanction of the State Government. We do not therefore, have any doubt that arrears of interest are, under the scheme of accounting contemplated by the Act, required to be paid out of revenue receipts of the Board and are expense properly chargeable to revenues within the meaning of that expression in Section 59 of the Act. The legislature has presently clarified the position by the Amending Act 16 of 1983 which came into force from April 1, 1985. By this Act a separate section, Section 67-A has been introduced along with a consequential amendment of Section 67 providing that interest on loans advanced under Section 64 or deemed to have been advanced under Section 60, which is

charged to revenues in any year may be paid out of revenue receipts of a year only after all other expenses referred to in Section 59(1) are met and further providing that so much of interest as is not paid in any year by reason of the priority mentioned in Section 67-A shall be deemed to be a deferred liability to be discharged in accordance with provision of Section 67-A in the subsequent year or year. In our view these provisions show beyond doubt that payment of arrears of interest is an expense properly chargeable to the revenues under the scheme of the Act.

14. We may now assess the factual situation. Shri Abdul Khader, learned counsel for the Kerala State Electricity Board has placed before us statements containing details of interest payable in each year of accounting, the arrears of interest due and payable, the total revenue receipts and some other relevant particulars. The statements have been prepared, taking the figures from the published annual accounts of the Kerala State Electricity Board. In the year of account 1978-79, the total revenue receipts were Rs. 8421.75 lakhs out of which the revenue earned by sale of energy to neighbouring States was Rs. 2926.73 lakhs. After meeting operation and maintenance expenses and depreciation the balance of revenue receipts was Rs. 4161.60 lakhs. The amount of interest payable in the year of account was Rs. 1946.37 lakhs. The revenue surplus left after payment of interest in the year of account was therefore, Rs. 2215.23 lakhs. The arrears on interest accrued in previous years and not paid was Rs. 4270.58 lakhs, since the revenue surplus available after meeting the current interest was Rs. 2215.23 lakhs only there was a deficit of Rs. 2055.35 lakhs. In the year of account 1979-80 the total revenue receipts were Rs. 9124.90 lakhs which included revenue of Rs. 3856.15 lakhs from sale of energy to neighbouring States. After meeting operation and maintenance expenses and depreciation the revenue surplus left was Rs. 3253.94 lakhs. The interest which became payable in the year of account was Rs. 2107.85 lakhs and after meeting it, the revenue surplus left was Rs. 1146.09 lakhs. The old arrers of interest which could not be met fully in the previous year was Rs. 2055.35 lakhs. Thus in the year of account 1979-80, there was a deficit of Rs. 909.27 lakhs. In the year of account 1980-81 the total revenue receipts were Rs. 10,686.54 lakhs and this included a sum of Rs. 4326.92 lakhs earned by sale of energy to neighbouring States. After meeting the operation and maintenance expenses and depreciation the revenue surplus left was Rs. 3615.90 lakhs and after meeting interest of Rs. 2369.42 lakhs which had become payable in the year of account a revenue surplus of Rs. 1246.48 lakhs was left. The unpaid interest of previous years was Rs. 909.27 lakhs and after meeting it we find for the first time a net surplus of Rs. 337.21 lakhs. In the year of account 1981-82 the total revenue receipts were Rs. 12,144.02 lakhs which included revenue of Rs. 4532.42 lakhs from sale of energy to neighbouring States. After meeting operation and maintenance expenses and depreciation there was a revenue surplus of Rs. 3183.77 lakhs. The total interest payable in the year of account was Rs. 3105.15 lakhs, this left a revenue surplus of Rs. 78.62 lakhs and since there was no arrears of interest what was payable (sic) the net revenue surplus was Rs. 78.62 lakhs. In the year of account 1982-83 the total revenue receipts were Rs. 11,228.40 lakhs which included revenue of Rs. 1948.63 lakhs from sale of energy to neighbouring States. After meeting operation and maintenance expenses and depreciation the revenue surplus left was Rs. 2810.60 lakhs. The interest which was payable in the year of account was Rs. 3187.62 lakhs and thus left a net revenue deficit of Rs. 376.76 lakhs. In the year of account 1983-84, the total revenue receipts were Rs. 10,518.35 lakhs including revenue of Rs. 175.76 lakhs from sale of energy to neighbouring States. The revenue surplus after meeting operation and maintenance expenses and depreciation was Rs. 2246.30 lakhs. The amount of interest which had become payable was Rs. 3426.53 lakhs, the arrears of interest was Rs. 376.76 lakhs leaving a total deficit of Rs. 1556.99 lakhs. We may mention here that the annual account for the years 1978-79 to 1983-84 have been certified by the Accountant General and the annual accounts for the year 1984-85 are awaiting certification. The accounts awaiting certification show that in the year of account 1984-85, the

revenue receipts after meeting operation and maintenance expenses and depreciation was Rs. 4692.92 lakhs, while the interest which had become payable during the year was Rs. 3719 lakhs and the interest of the previous year Rs. 1556.99 lakhs this left a deficit of Rs. 584.00 lakhs. The revised estimates for the year 1985-86 show a revenue surplus of Rs. 5567 lakhs after meeting operation and maintenance expenses and depreciation. The interest payable during the year was Rs. 4574.80 lakhs and the interst of previous year was Rs. 584 lakhs. This left a surplus of Rs. 409 lakhs. These figures show that 1978-79, 1979-80, 1980-81 and 1981-82 were extraordinary years when there was a boom in the sale of energy to neighbouring States consequent on the conditions prevailing there. In those years also it would be seen from the accounts that but for the boom in the sale of energy to neighbouring States there would have been a serious deficit in every one of those years. It is clear that the Electricity Board has not been earning huge profits and generating large surpluses as suggested by the consumers. Once we arrive at this position that there is hardly any revenue surplus left after meeting the expenses required to be met by Section 59, the complaint of the consumers that there was no justification for the tariff increase because of large surpluses earned by the Board loses all force.

15. We have examined the two reports of the Tariff Committees of the years 1980 and 1982 and the revised tariffs based on those reports in the light of the legal and factual position explained by us. Before the 1980 revision, the prevailing rates were, Extra High Tension : 8.81 ps per unit, High Tension Industrial : 14.98 ps per unit, Low Tension Domestic : 38 ps per unit, Low Tension Industrial : 14.15 ps per unit, Low Tension Commercial : 38 ps per unit, Low Tension Agricultural : 14.15 ps per unit, Low Tension Commercial worked out the cost per unit at 10.9, 18.6, 57.5, 43.5, 56.5 and 53.5 ps per unit respectively in that order, but recommended, in the same order, 11.55, 21.4, 38, 27.5, 74 and 18 ps per unit respectively. However, the actual tariff rates as introduced in 1980 were 10.8, 18.24, 38, 24.5, 66 and 15 ps per unit. The 1982 Tariff Committee recommended rates of 24.5, 37.3, 47.5, 48, 55.70 and 34 ps per unit. The actual tariff introduced in 1982 was 17.65, 27.24, 42.5, 24.5, 50.70 and 15 ps per unit. We notice that in the case of Low Tension Domestic and Agricultural consumers, the change is minimal. In the case of Extra High Tension and High Tension Industrial Consumers, the change effected by the 1980 revision was minimal but on the higher side in 1982. In the case of Low Tension Industrial and Commercial Consumers, the change effected in 1980 was very steep but tended to come down in 1982. On the whole, it cannot possibly be said that the rates have been so fixed by the Electricity Board as to throw a heavy burden on any action (sic section) of the consumers without regard to their ability to pay, without regard to the nature of the supply and purpose for which the supply is required. Nor do we find that the principle of uniformity of tariffs has in any way been sacrificed. But, as we mentioned a little earlier the Low Tension Industrial and commercial Tariff was subjected to a very steep rise in 1980 and brought down again in 1982 apparently in recognition of the fact that the raise had been too steep in regard to them in 1980. In the case of Low Tension Industrial Consumers, the tariff was increased from 14.5 ps per unit to 24.5 ps per unit in 1980 and maintained at the rate of 24.5 ps per unit in 1982. In the case of Low Tension Commercial Consumers, the tariff was increased from 38 ps per unit to 66 ps per unit in 1980 but brought down again considerably in 1982 to 50.70 ps per unit. The very circumstance that the tariff was either brought down or maintained at the same level in 1982 when compared with the 1980 tariff appears to be an indication that the increase in 1980 was thought by the Board itself to be rather steep. We have already noticed that 1980-81 and 1981-82 were the years when the accounts of the Electricity Board recorded a net surplus after meeting all expenses including interest charges. In the circumstances, we think that it is desirable that the Board may reconsider the 1980 tariff for Low Tension Commercial and Low Tension Industrial Consumers.

16. Shri Potti submitted that the 1980 Committee took into consideration the anticipated augmentation of the generating capacity from the proposed new power stations of Idukki, Saharigiri and Idamalyar, whereas these projects were not commissioned till 1984 and thus the cost structure arrived at by the Committee was vitiated. We do not think so. From the figures supplied to us we find that notwithstanding the failure to commission the new projects, there was no shortfall in the production of energy. A large part of expenditure involved in the setting up of the new projects had to be met in several years preceding the actual commissioning of the projects. Therefore, it is not correct to say that the cost structure arrived at by the Committee was in any way affected by the non-commission of the new projects between 1980 and 1982. Another submission made by Shri Potti was that the Committee erred in not taking into account the financial position of the Board as brought out by the year 1978-79 which showed that the Board had already turned the corner and that there was therefore no need for enhancing the rates. This submission is again without substance. As we mentioned earlier, the rise in revenue receipts in the year 1978-79 due to the unprecedented sale of energy to neighbouring States, a special situation which was the result of peculiar circumstances which prevailed that year and continued to prevail for a few years thereafter. The sale of energy to neighbouring States was not to be taken as a permanent phenomenon every year. Yet another submission of Shri Potti was that the 1980 Committee having taken as the basis the 1982 projected cost so as to maintain price stability for a period of five years, it was not proper to revise the tariff again in 1982. But we find that the actual cost of producing energy in 1981-82 and 1982-83 had risen much above the projected 1982 cost and therefore the 1982 Committee had no option but to again consider further revision of the tariff. We are not delving into more details as we are satisfied that it is not within our province to examine the price structure in minute detail if we are satisfied that the revision of tariff is not arbitrary and is not the result of the application of any wrong principle. Relaying upon the observation : (SCC p. 451. para 25) "It would have been manifestly unjust and discriminatory that one consumer should benefit at the cost of other consumers or general taxpayers" made in DCM v. Rajasthan State Electricity Board [(1986) 2 SCC 431], it was argued by Shri Potti that it was not open to the Board to give favoured treatment to Low Tension Domestic and Agricultural Consumers at the cost of the rest of the consumers. We do not find any force in this submission. Section 449(3) expressly reserves the power of the Board, if it considers it necessary or expedient, to fix different tariff for the supply of electricity to any person having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and other relevant factor. Different tariffs for High and Low Tension Consumers and for different classes of consumers, such as, Industrial, Commercial, Agricultural and Domestic have been prescribed and the differentiation appears to us to be reasonable and far from arbitrary and to be based on intelligible and intelligible criteria.

17. In the result, we allow the appeals filed by the Kerala State Electricity Board, set aside the judgments of the High Court, uphold the validity of the notifications revising the tariffs and dismiss the writ petitions filed in the High Court, subject to direction that the Kerala State Electricity Board will reconsider the revised tariff introduced in 1980 in regard to Low Tension Industrial and Low Tension Commercial Consumers only, with liberty to fix separate rates, if necessary for the years 1980 and 1981. This direction will not affect the 1982 and 1984 tariff revisions. There will be no order regarding costs.

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