

Hyderabad Engineering Industries Ltd. and Others

Vs

A.P. State Electricity Board and Others

Civil Appeals Nos. 793 to 807 of 1988

(Sabyasachi Mukharji, G.L. Oza JJ)

08.03.1988

JUDGMENT

OZA, J. -

1. Leave granted.

2. These special leave petitions have been filed against the judgment of the Division Bench of the Andhra Pradesh High Court delivered on June 25, 1987 wherein the learned Judges set aside the orders passed by learned Single Judge of the High Court in Letters Patent appeal. The petitioners had filed writ petitions before the High Court which were heard by a learned Single Judge and who by his orders quashed the notification issued by the respondent Board dated July 21, 1981 unilaterally altering the conditions of supply. The learned Single Judge held that the Board had no authority unilaterally to alter the conditions of supply of electricity but on appeal the learned Judges of the Division Bench set aside the judgment passed by the Single Judge and held that the Board respondent had the statutory authority under Section 49 of the Electricity Supply Act, 1948 ('Act' for short) to lay down the conditions of supply and if any doubt exists Section 18 clause (c) of the Act confers powers on the Board. It is against this judgment of the Division Bench in all these petitions which were disposed of by a common judgment that these special leave petitions have been filed and therefore these matters are before us.

3. On July 21, 1981 the respondent A.P. State Electricity Board issued a notification exercising powers under Section 49 of the Act. By this notification the Board unilaterally altered the conditions of supply for the high tension consumers of electricity. Admittedly these consumers are the industries which consume high tension power. This notification stated that the industries will be supplied the power for the contracted demands between 1501 KVA to 5000 KVA, at 33 KV whereas industries whose contracted demand is above 5000 KVA shall avail supply at 132 KV or 220 KV. To comply with this requirement high tension consumers i.e. the present appellants before this Court will either have to replace the existing transformers and high tension control gears or to instal transformers with control gears to step down supply from the now proposed voltage to the existing voltage and these modifications have to be made by the industries concerned within a period of 6 months from the date of this notification. It was further provided that after the lapse of six months if the consumers i.e. appellants have not made arrangements for receiving the supply at the proposed voltage and continue to receive supply at the voltage at which they were receiving on the date of the notification they will have to pay additional surcharge ranging between 2.5 per cent. to 13 per cent. on their power bills.

4. It is alleged that after this notification the appellants and other similarly situated consumers made

a representation to the Board and they were told that as the transmission and transformation losses in respect of supply to these high tension consumers is very much it has been decided by the Board to minimise these transmission losses and it is for that purpose that it has been decided to supply at high voltage as transmission of high voltage current results in lesser losses of transmission and by this process energy which is lost in the transmission will be saved and it was for this purpose that this policy has been adopted by the Board. According to the appellants consumers their grievance was that for the purpose of receiving power at a high voltage they will have to instal their own transformers which would involve heavy capital investments and for supply of power at high voltage even the Board will have to lay new lines of supply and all this would not be economical as compared to the contemplated loss of power on account of transmission but as Board did not accept the representation, the petitioners filed their petitions before the High Court and the learned Single Judge of the Andhra Pradesh High Court by his judgment dated September 24, 1982 allowed the writ petitions. Against the judgment of the learned Single Judge, in appeal before the Division Bench the judgment of the learned Single Judge was set aside and the Division Bench took the view that Section 49 of the Act coupled with Section 18(c) of the same Act empowered the electricity board to unilaterally alter the terms and conditions of supply and it is against this judgment of the Division Bench that these appeals are before us. Before this notification the electricity was being supplied to high tension consumers at 11,000 volts or 33,000 volts. By this notification they were expected to receive supply at higher voltage specified in the notification.

5. The main contention advanced before the High Court in the writ petitions was that it was not open to the Board to direct the existing consumers to take the supply at a higher voltage than the voltage at which they were receiving supplies or to impose an additional charge on the supply.

6. It was contended before us that in view of Section 26 of the Act read with Clause 6 of the Schedule to the Indian Electricity Act, 1910 it is not open to the Board to unilaterally impose supply at a higher voltage. According to the learned counsel as a particular customer has requisitioned supply of power at a particular voltage and Board had agreed to do, it was not permissible now to alter the conditions. On the contrary on behalf of the Board it was contended that Section 26 of Electricity (Supply) Act, 1948 no doubt puts an obligation on the Board to supply power as were the obligations of the licensee under the 1910 Act and also the provisions of Clause 6 of the Schedule will apply to the Board but it was contended that it has not been provided anywhere in Clause 6 that it is the choice of the consumer to require supply at a particular voltage. It was also contended that Clause 6 sub-clause (5) provides the requisition to be in the form and the prescribed form does not indicate that it is open to the consumer to require the supply at any particular voltage. It was also contended that in fact Section 26 itself talks of subject to the provisions of this Act and Section 49 of the Act confers power on the Board to lay down the conditions of supply. It was also contended on behalf of the respondent Board that the Board chose to switch over to supply of high voltage in order to minimise the transmission losses as according to them if the electricity is transmitted at 33,000 volts instead of 11,000 volts the transmission loss will be reduced to 1/19th and if the supply is further increased to 132 KV the transmission loss will be further reduced to 1/44th with the result that the transmission losses could be reduced to 99.3 per cent. It was also contended on behalf of the petitioners that in case of some industries the question of transmission losses is not substantial as some of them are situated just near the supply station and even if there is some loss it is negligible as compared to the heavy cost of installation which will have to be put up. An attempt was also made to suggest that when the distance is very short the transmission loss will be very low but one fact to be kept in consideration which was lost sight of at some stage is that transmission loss is not only related to the distance that the power travels but also the quantum of power that travels. Admittedly all these petitioners are consumers who are consuming huge quantities of power which

is clearly indicated from the bills, charts of which were filed by the petitioners themselves before this Court indicating that their yearly power bills run into crores and it is in this context that the question of transmission loss will have to be considered.

7. The main controversy which was before the High Court was as to whether the Board has power unilaterally to alter the conditions of supply. On behalf of the petitioners it was contended the Section 49 only confers powers on the Board to revise the tariffs periodically and it was contended that a little before the present disputed notification was issued the tariffs were revised and that revision of tariffs was done keeping in view all the relevant considerations including all losses in transmission and transformation and therefore immediately after the revision of the tariffs there was no occasion for exercise of power under Section 49 by issuing the impugned notification. It was contended that Section 26 read with Clause 6 of the Schedule is an obligation on the Board to supply the power as requested by the consumer. Section 26 reads :

26. Board to have powers and obligations of licensee under Act 9 of 1910. - Subject to the provisions of this Act, the Board shall, in respect of the whole State, have all the powers and obligations of a licensee under the Indian Electricity Act, 1910 (9 of 1910) and this Act shall be deemed to be the licence of the Board for the purposes of that Act :

Provided that nothing in Sections 3 to 11, sub-sections (2) and (3) of Section 21 and Section 22, sub-section (2) of Section 22-A and Sections 23 and 27 of that Act or in Clause I to V, Clause VII and Clauses IX to XII of the Schedule to that Act relating to the duties and obligations of a licensee shall apply to the Board :

Provided further that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced.

It is clear from a perusal of this provision that the obligation under Section 26 is subject to the provisions of this Act. Clause 6 pertaining to requisition for supply to owner and occupiers of the electricity provides for conditions under which a licensee will be bound to supply and sub-clause (5) of Clause 6 of the Schedule under 1910 Act requires the requisition to be in a form prescribed and the form prescribed does not indicate that the consumer is free to ask for the supply at a particular voltage only.

8. On behalf of the petitioners it was vehemently contended that Section 49 confers powers on the Board only to revise the tariffs and it has not conferred any power on the Board to alter unilaterally the supply at a particular voltage. The main contention on behalf of the petitioner was that Section 49 only empowered the Board to fix uniform tariffs and in support of the contention reliance was placed on the case of Maharashtra State Electricity Board v. Kalyan Borough Municipality ((1968) 3 SCR 137 : AIR 1968 SC 991) and Bisra Stone Lime Company Ltd. v. Orissa State Electricity Board ((1976) 2 SCR 307 : (1976) 2 SCC 167 : AIR 1976 SC 127). In these cases no doubt Section 49 has been considered but the only question in these cases was pertaining to tariff and there was no occasion to consider the scope of Section 49 clause (1) which empowers the Board to lay down conditions of supply. Section 49 reads :

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 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 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;

(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.

Sub-section (1) of this section clearly provides that the Board could lay down conditions of supply and for purposes of such supply it may also frame uniform tariffs. Sub-section (1) therefore clearly authorises the Board to lay down the conditions of supply and have to fix uniform tariffs as provided for in sub-section (2). If there is any doubt sub-section (4) makes it clear that in exercise of powers under this section Board could fix the conditions of supply and also fix the tariffs and it was therefore contended on behalf of the respondent Board that although the Division Bench referred to Section 18(c) still the Board has enough power under Section 49 itself to lay down the conditions of supply. This question about the conditions of supply specifically came up before this Court in the case of Jagadamba Paper Industries (Pvt.) Ltd. v. Haryana State Electricity Board ((1984) 1 SCR 165 : (1983) 4 SCC 508 : AIR 1983 SC 1296) and it was observed at page 172 : (SCC pp. 513-14, para 7)

We are of the view that the Board has been conferred statutory power under Section 49(1) of the Act to determine the conditions on the basis of which supply is to be made. This Court in *Bisra Stone Lime Company Ltd. v. Orissa State Electricity Board* ((1976) 2 SCR 307 : (1976) 2 SCC 167 : AIR 1976 SC 127) took the view that enhancement of rates by way of surcharge was well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act. What applied to the tariff would equally apply to the security, that being a condition in the contract of supply. Each of the petitioning consumers had agreed to furnish security in cash for payment of energy bills at the time of entering into their respective supply agreements. There was no challenge in these writ petitions that the demand of security at the time of entering into supply agreements has to be struck

down as being without jurisdiction. Section 49(1) of the Act clearly indicates that the Board may supply electricity to any person upon such terms and conditions as the Board thinks fit. In exercise of this power the Board had initially introduced the condition regarding security and each of the petitioners had accepted the term.

9. It is not disputed that although under the original agreement the Electricity Board was bound to supply power at a particular voltage but after the lapse of that agreement by lapse of time subsequent agreement provided the clause where the right has been reserved by the Board to alter the conditions of supply and that is why the only contention advanced by the petitioners was that under Section 49 the respondent Board had no authority unilaterally to alter conditions of supply and as discussed above this contention cannot be accepted.

10. The Division Bench relied on provisions contained in Section 18 sub-clause (c) which reads :

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.

11. It is no doubt true that under these provisions the Board exercises control in relation to generation distribution and utilisation of electricity and the learned Judges of the Division Bench felt that although specific power is not there under Section 18(c) but it is wide enough to authorise the Board to alter the conditions of supply. It is no doubt true that Section 18(c) confers power of control on the Board but as indicated above, in our opinion the specific power under Section 49 sub-section (1) is clear enough wherein Board has been authorised to lay down the conditions of supply.

12. On the merits of the contention various controversies were raised in respect of the calculations and mathematics of calculating the transmission loss. An attempt was also made on behalf of petitioners to suggest that the way of calculations suggested by the respondent Board does not appear to be correct but it is not disputed and it cannot be disputed that where power travels through the transmission lines there is always some loss of power. It is also a fact which could not be disputed that loss of power will be related to the quantum of power which travels through the transmission line and the distance through which power has to travel. It is also a fact which could not be disputed that if power is transmitted at high voltage the loss during transmission is less as compared to the loss when the power is transmitted at a low voltage and in view of these accepted scientific facts it is not necessary for us to go into the calculations and mathematical part of it to find out as to whether the calculations submitted by the Board is correct or those suggested on behalf of the petitioners are correct. The fact remains that lower the voltage higher the transmission loss, higher the voltage lower the transmission loss and it is also not in dispute that these appellants are high tension consumers consuming substantial power and therefore when power travels through transmission lines even for short distances it is not smaller quantities of power but heavy quantities of power is transmitted and in this view of the matter it could not be said that the policy decision taken by the Board to supply these high tension consumers power at high voltage so that transmission loss and transformation loss should be minimised could not be said to be any wrong decision or a decision not supported by scientific reasoning.

13. It was also contended that six months' time granted was too short in view of the fact that these consumers were expected to instal transformers and equipments which ordinarily are not easily available in this country and which involved high capital investment. It was also suggested that even the respondent Board has not been able to lay lines for supply at high voltage as during the course of this litigation most of the appellants have accepted to receive the supply at the high voltage and

therefore it was contended that the enhanced rate for supply at low voltage which was brought into force immediately after six months of the issue of this notification is not only not justified as it was termed by learned counsel for the petitioners to be penal but it was contended that it is not reasonable as in spite of the fact that the petitioners accepted to receive supply at high voltage and some of them have even installed the transformers and other equipments but still Board was not in a position to lay supply lines for the high voltage supply of power and on this basis in substance it was vigorously contended that this enhanced rate should not be made chargeable from the date immediately after the expiry of six months after the issue of this notification.

14. In one of the cases i.e. A. P. Paper Mills it has been specifically alleged that in spite of the fact that the petitioner has installed a transformer but the respondent Board could not lay down the lines as there was some injunction issued against the Board when the work for laying the lines started still although the Board is not in a position to supply the power at high voltage yet the appellant is compelled to pay the higher rate as he is not receiving power at the high voltage indicated in the notification.

15. So far these aspects of the matter are concerned admittedly they were not before the High Court. Originally what was challenged in the High Court was the power of the Board to unilaterally alter the conditions of supply. This question about from what date the higher rates should be charged and as to whether grant of six months' time to complete the preparation for receiving the supply at a higher voltage is reasonable or not were not before the High Court (Single Judge) nor before the Division Bench and in fact, facts in respect of each petitioner on the basis of which these questions could be considered are also not before us although an attempt has been made by some of the appellants by additional affidavits and documents to place it before us. But it is not sufficient nor it is proper to decide these questions. After all the respondent Board is an authority under a statute and if the appellants are able to satisfy the authority that the time of six months in the context of the circumstances when this notification was issued was not reasonable it is open to the Board to consider from what date to enforce the enhanced rates for supply at lower voltage taking into consideration all the cases and also keeping in view the circumstances in connection with installation of transformers and laying the lines which have come during the course of these hearings. It is also open to the Board that in the special facts of any particular case to provide a separate date for enforcement of the higher rate. But all these questions cannot be decided in the scope of the present appeals.

16. It was also contended by the appellants that by altering this condition of supply the appellants will have to undergo huge capital investment burden. On the other hand on behalf of the Board it was contended that if the bills of supply of power of these appellants are looked at it will indicate that what they are supposed to spend on the installation in stepping down power is not so heavy and it was contended that ultimately if this is not done by the Board the loss incurred on account of transmission has to be borne not only by these consumers who are substantially responsible for the transmission loss but by those also who are not at all responsible for heavy transmission losses.

17. An attempt was made to suggest that when power is supplied to the rural consumers mainly agriculturists and small consumers the power has to be supplied at long distance and that is also to be supplied at low voltage and therefore it was contended that in fact the long distance supply to smaller consumers is really responsible for the loss during transmission for which these high tension consumers i.e. the present appellants are being penalised as they are being called upon to pay at a higher rate but this argument suffers from a fallacy. As indicated above transmission loss no doubt is on account of low voltage when it travels long distance as it is related to distance but the quantum of

loss also is proportional to the quantum of power that travels through the transmission lines and it could not be disputed that the power that has to travel to meet the requirements of small agricultural consumers is negligible as compared to the quantum of power that is supplied to these high tension consumers, the present appellants and therefore there is no substance in the contention that the loss incurred in supply to the smaller consumers is being recovered from the present appellants, the high tension consumers.

18. It was also contended that under Section 18-A(1) read along with Section 18-A(2) of the Act, it is the duty of the Board to establish and maintain sub-stations and main transmission lines and it is not open to the Board to transfer this responsibility to the consumers by requiring them to make their own arrangements to step down electricity after taking it at a high voltage. Section 2 sub-section (7) of the Act defines the main transmission lines but all this in sub-section (7) of Section 2 refers to is about transmission of electricity from a generating station to another generating station or to a sub-station. Apparently it refers to all the lines and equipments required to be installed from the generating station to the distributing sub-station. Apparently both being that of the Board itself it has to maintain it and on this basis it could not be contended that if the consumer has to receive power at a high voltage and if he wants to utilise it at a low voltage it is not his responsibility to instal equipments for stepping down the power from high voltage to low voltage.

19. It was also contended that Sections 28 and 29 read with Sections 18 and 18-A of the Act indicate that where any scheme as contemplated under Sections 28 and 29 is to be formulated the procedure prescribed therein had to be followed and it was suggested that as the policy of the Board to change over of supply of power at a high voltage involves heavy expenditure it will fall within the scope of Sections 28 and 29 and therefore it could not be done without following the procedure indicated in these provisions. A perusal of these Sections 28 and 29 of the Act indicates that it is altogether a different function rather than what is being done by the Board in exercise of the powers under Section 49 sub-section (1) and therefore this contention that the procedure indicated in Sections 28 and 29 has to be followed, is of no substance.

20. In the light of discussions above therefore, in our opinion, there is no substance in these appeals. But as indicated earlier as regards the imposition of the higher tariff on failure to receive the supply at the voltage indicated in the notification from the date specified therein or not will be open to the Board for consideration and the parties may approach the Board and it will be open to the Board in the facts and circumstances of each case not to levy the surcharge indicated in the notification during a particular period and in so doing the Board will take into consideration the facts and circumstances of each particular case. The appeals are therefore dismissed. In the circumstances of the case, parties are directed to bear their own costs.

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