

Ester Industries Ltd.

Vs

U. P. State Electricity Board and Others

SLP (C) No. 18156 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

17.09.1996

ORDER

1. This special leave petition arises from the judgment and order of the Division Bench of the Allahabad High Court at Lucknow made on 8-5-1996 in Writ Petition No. 10195 of 1989.
2. The admitted position is that the Government of Uttar Pradesh had laid down a sanction for grant of 10% developmental rebate in supply of electricity to the newly set up industries on 16-7-1986 and that was to be in vogue till 1990. It is the claim of the petitioner that pursuant to that policy, the petitioner had set up his industry in Nainital District. Consequently, he is entitled to the rebate. When the bill was issued, the Board imposed its tariff rates contrary to the rebate. Resultantly, they filed the writ petition. The High Court in the impugned judgment has held that Section 78-A of the Indian Electricity (Supply) Act, 1948 (Act 54 of 1948) (for short, "the Act") being a legislative policy, the Board was not automatically bound by the directions issued by the State Government. The Board is entitled to revise tariff in accordance with its procedure. Therefore, writ could not be issued compelling the Board to follow the directions issued by the State Government. Thus, this special leave petition.
3. It is contended for the petitioner that in view of the law laid down by this Court in Real Food Products Ltd. v. A.P. SEB [(1995) 3 SCC 295 : AIR 1995 SC 2234] in particular paragraph 8, the Board is bound by the directions issued by the State Government. The view taken by the High Court is, therefore, not correct in law. We find no force in the contention. It is well-settled legal position that the fixation of the tariff is a legislative policy and the Board is entitled to revise unilaterally the tariff from time to time. The consumer is bound by the revision of the tariff duly notified in accordance with the procedure prescribed under the Act. The question is whether contrary to the conditions of the tariff entered into by the parties, the policy direction issued by the State would be interposed and be revised by the Electricity Board in consonance with the directions issued by the State Government? In this regard, the observations of this Court in paragraph 8 are worth recapitulation : (SCC pp. 299-300)

"The only surviving question is with regard to the nature and effect of the direction given by the State of Government under Section 78-A of the Act. The question has to be examined in the context of the facts of the present case which is confined to the charging of a flat rate per H.P. for agricultural pump-sets. The nature of the function of the Board in fixing the tariffs and the manner of its exercise has been considered at length in the earlier decisions of this Court and it does not require any further elaboration in the present case. Section 78-A uses the expression 'the Board shall be guided by such directions on question of policy as may be given to it by the State

Government'. 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. In the context of the function of the Board of fixing the tariffs in accordance with Section 49 read with Section 59 and other provisions of the Act, the Board is to be guided by any such direction of the State Government. Where the direction of the State Government, as in the present case, was to fix a concessional tariff for agricultural pump-sets at a flat rate per H.P., it does relate to a question of policy which the Board must follow. 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. But where the Board considers even the rate suggested by the State Government and finds it to be acceptable in the discharge of its function of fixing the tariffs, the ultimate decision of the Board would not be vitiated merely because it has accepted the opinion of the State Government even about the specific rate. In such a case the Board accepts the suggested rate because that appears to be appropriate on its own view. If the view expressed by the State Government in its direction exceeds the area of policy, the Board may not be bound by it unless it takes the same view on merits itself."

4. Section 78-A(1) of the Act postulates that 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. In other words, the Electricity Board has a statutory function to discharge in determination of the rates of tariff and terms and conditions subject to which the electrical energy be supplied to the consumers and enforcement thereof. This being a legislative policy, while exercising the power under Section 78-A policy directions issued by the Government may also be taken into consideration by the Electricity Board which has a statutory duty to perform. But so long as the policy direction issued by the Government is consistent with the provisions of the Act and the tariff policy laid down by the Board, it may be open to the Board to either accept it or not to accept the directions as such. It is for the State Government to consider whether the Board has laid down the policy or whether the direction issued by the State Government has not been properly implemented. The Court cannot give a direction to implement the directions issued by the State Government exercising the power under Article 226 of the Constitution to direct the Board to exercise its power under Section 78-A(1) of the Act. Sub-section (2) has no application for the reason that if the Board feels any doubt as to whether the direction issued by the Government is in the realm of a policy or otherwise, then it shall be referred to the authority constituted under the Act whose decision shall be final, i.e., de hors the question in this case.

5. The learned counsel for the petitioner has brought to our notice that this Court has granted leave against the judgment of another Division Bench on the question of applicability of the promissory estoppel. In this case, that question does not arise for the reason that the promissory estoppel would apply only in a case where there was no contract executed between the parties. In this case, since there exists a contract duly executed under law between the petitioner and the Board which binds them, unless it is revised, the question of promissory estoppel does not arise. Considered from this perspective, we are of the view that the High Court has not committed any manifest error of law warranting interference.

6. The special leave petition is dismissed.