

ANDHRA PRADESH HIGH COURT

Poddar Projects Ltd

Vs.

A.P.S.E. Board

Writ Petns. Nos.3572 of 1978

(Madhava Reddy and Punnayya, JJ.)

10.04.1981

JUDGMENT

Madhava Reddy J.

1. This batch of Writ Petitions by some of the mini Steel plants of Andhra Pradesh are directed against the Andhra Pradesh State Electricity Board (for short Electricity Board) and the Government of Andhra Pradesh. In most of the Writ Petitions, the Petitioner pray that B.P. Ms. No.78 dated 20-1-1978 by which the revised tariff of 12.02 P per unit was applied to some of the mini steel plants named therein subject to the monthly minimum charges, be declared illegal, void and unenforceable as also Clause 41 of the terms and conditions of B.P. Ms. No.690 dt. 17-9-75. In some, a writ of mandamus is sought to give effect to G.O. Ms. No.8.32 dated 2-11-1977 under which the Government directed concessional power tariff at Order 11 P. per unit should be made available to five steel plants named in the G.O. for a period of three years from 1-11-1977 to 30-10-1980 and seek a consequential direction against the Andhra Pradesh State Electricity Board not to give effect to and proceed to collect the bills issued in derogation of that G.O. In some of the other Writ-Petitions, the petitioners pray for a direction to quash G.O. Ms. No.146 Irrigation and Power dated 12-3-1979 by and under which, the Government accepting the recommendation of the Committee appointed by it, directed to withdraw the power tariff concessions granted to mini steel plants in G.O. Ms. 832 Irrigation and Power dated 2-11-1977.

2. To appreciate the contentions raised in this batch of writ petitions, it would be convenient to notice a few relevant facts in their chronological order with reference to W.P. No.3151/78 filed by M/s Andhra Steel Corporation which is a limited company registered under the Companies Act, 1956, It manufactures and deals in Iron and Steel products. The Electricity Board notified Revised Terms and Conditions of Electricity Supply in B.P. Ms. No.690 (Coml.) dated 17-9-1975 with effect from 20-10-1975. Clause 41 of the Terms and Conditions empowered this Board to restrict the consumption of Electricity by consumers. The Board notified the revised tariffs in B.P. Ms. No.689 dated 17-9-1975 with effect from 20-10-1975. The Petitioner Company entered into an agreement with the Andhra Pradesh State Electricity Board on 27-11-1975 for availing high tension electric supply, the contracted demand fixed therein being 4,500 K.V.A.

The Andhra Pradesh State Electricity Board revised the terms and conditions of supply hitherto in force under B.P. Ms. No.690 (Coml.) dated 17-9-1975 which became effective on 20-10-1975. Due to the failure of the monsoon in the catchment area of Mauchkhund river and operational troubles of Thermal units in the State, restrictions were imposed on the consumption of high tension supply and cuts were imposed to ensure equitable distribution of available power restrictions were imposed under B.P. Ms. 297 dated 1-4-1977 under which the quota for each unit was directed to be based on the consumption of the particular unit during the month of Oct. 1976 for arriving at 30 per cent cut. According to the said formula the petitioner's quota was computed at MD 2083 KVA/Units 4,26,888. In a further proceeding. B.P. Ms. No.348. dated 15-4-1977, the Board directed the fixation of quota on the recorded consumption from Oct. 1976 to Dec. 1976 whichever months consumption was advantageous to the Petitioner. As the Petitioner's recorded consumption was higher in Dec. 1976, that was taken for fixing the quota and that worked out to MD 2845 KVA/Units 4,64,310 and was communicated to the Petitioner by S. E. (Operation) Visakhapatnam in L.R. No. Rev/R.A. III/ ASAB/D. No.1138/77 dated 20-4-1977. In the meantime the Board in B.P. Ms. No.376 dated 23-4-1977 placed the mini steel plants and re-rolling mills under rotational scheme with 20 working days and 10 days of closure so that the workers may not be let down or retrenched during the closure period and addressed them to give their consent. The Petitioners and others did not agree to the rational scheme of working. The petitioner addressed a letter dated 25-4-1977 requesting the Electricity Board to fix the quota at 2,716 K.W.A. as M.D. and 5,56,734 Units, taking Nov. 1976 as the base. In view of this latest request, for revision, the quota for the petitioner was fixed and communicated to the petitioners through the Superintending Engineer's letter No. Rev. R3. 111/A.8, A.B./1455/77 dated 20-5-1977. On the improvement of the supply position, restrictions on the consumption of electric energy were lifted in B.P. Ms. No.896 dated 15-8-1977.

3. Based on the above. Bill for Sept. 1977 was issued to the petitioner. The Petitioner challenged the bill issued to him for Sept. 1977 in W.P. No.4452/77 *inter alia* contending that condition No.141 of the Terms and Conditions was *ultra vires* and that the agreement for supply of electricity ceased to be in force. The Government issued G.O.Ms. No.832 dated 2-11-1977 applying concessional tariff of 0.11 P. per unit for a period of three years commencing from 1-11-1977 and ending with 31-10-1980 in respect of the following five consumers (1) Andhra Steel Corporation Ltd. (2) Poddar Projects Ltd. (3) A.K. Corporation Ltd. (4) Andhra Steels, Visakhapatnam and (5) A.K. Corporation Visakhapatnam. Later the Government issued G.O.Ms. No.876 dated 26-11-1977 to enhance by way of revision the concessional tariff from 0.11 P. to 12.2 P. The Electricity Board at its meeting held on 26-11-1977 resolved not to extend this concession to the Writ Petitioner as it had already filed a writ petition *inter alia* claiming that its agreement was no longer in force. In respect of others, the Board issued B.P.Ms. No.78 dated 20-1-1978 extending the concessional tariff of 12.2 P. subject to escalations and subject to other terms and conditions of supply and a fixed minimum consumption of 403.325 units/KVA to the four Mini Steel Plants. The Board issued B.P.Ms. No.436/Coml. Dated 3-5-1978 directing the Four Mini Steel plants (excluding Andhra Steel Corporation) to be charged at a tariff rate of 16 Ps. per unit instead of 12.2. paise ordered in B.P.Ms. No.78 dated 10-1-1978 (20-1-1978?) without reference to the maximum demand charges from 1-3-1978. The Board by its letter No. DE (Coml) 1205-11/76-32, dated 27-11-1978 sought clarification from the Government with regard to fixation of minimum consumption of 403.325 units/KVA and fixation of concessional tariff at 0.16 P per unit in view of the new levy of Central Excise duty and in view of the increased cost of generation. The Government issued G.O.Ms. No.697 dated 5-12-1978

clarifying that G.O.Ms. No.832 and 876 dated 26-11-1977 referred to above do not preclude the Board from applying the normal terms and conditions of supply and prescribing the monthly minimum charges and the working out of the escalated rate from time to time. On the representation of the Board, the Government issued G.O.Ms.146 dated 12-3-1979 withdrawing the concessional tariff issued in G.O.Ms. No.832 and G.O.Ms. No.876. Thereupon the Electricity Board cancelled G.P.Ms. Nos.78 and 436 with effect from 12-3-1979 through its B.P.Ms. No.830 dated 2-4-1979. To complete the narration of facts it may also be noted the Government issued G.O.Ms. No.10 dated 16-1-1980 clarifying its earlier G.O.Ms. No.697 dated 5-12-1978 that it was the intention of the Government to allow the concessional tariff rate notified in G.O.Ms. No.876 without limiting the concession by imposition of minimum consumption charges till the end of March, 1979.

The Electricity Board however requested the Government to cancel the said G.O., for the reasons set out in its letter dated 28-1-1980. Thus while 30% cut in the electric energy was imposed and was in force bills for electric consumption were issued to the petitioners on the contracted maximum demand and not on the basis of actual consumption. In some of the writ petitions these bills relating to the period during which consumption quota was fixed are questioned.

4. The Andhra Steel Corporation also urges that while applying the concessional tariff of 0.11 P per unit for a period of three years to the three other mini steel plants it was singled out and discriminated by refusing similar concession to it. The bills issued in respect of this period are questioned by it.

5. It is contended by the petitioners that Clause 41 of the terms and conditions vests unbridled and arbitrary power in the Board to impose restrictions on the right of the consumer to utilise energy as and when required and B.P.Ms. No.896 dated 15-8-1977 is ultra vires. It is also contended that the Board was bound to give effect to the concessional power tariff to all mini steel plants as ordered by the Government in G.O.Ms.832 dated 2-11-1977. Even in respect of Andhra Steel Corporation the action of the Board in refusing to apply the concessional tariff ordered in G.O.Ms. No.832 dated 2-11-1977 is *mala fide* and the Board's proceedings No.78 dated 20-1-1978 excluding the petitioner is arbitrary illegal void and unenforceable. The petitioners claim that they are entitled to the concessional tariff and the Board has no power whatsoever to collect the minimum demand charged at the regular tariff.

6. The broad questions that fall for consideration for the disposal of this batch of writ petitions are whether G.O.Ms. No.832 dated 2-11-1977 is a directive issued under Section 78-A of the Electricity (Supply) Act 1948 (Act No.54 of 1948) whether the Electricity Board is bound to implement the same, and further whether the consumers of electric supply acquire a right to seek a direction against the Electricity Board to implement the said G.O.

7. In *Indian Aluminium Company v. Kerala State Electricity Board*¹, the Supreme Court held that the power to make regulations must obviously be exercised consistently with the

¹ AIR 1975 SC 1967

provisions of the Act and the Regulations made in exercise of this power cannot go beyond the Act. If the power to enhance the rates unilaterally and in derogation of the contractual stipulations does not reside in any provisions of the Act it cannot be created by Regulations made under the Supply Act. Either this power can be found in some provision of the Act or it is not there at all. Regulations which are in the nature of Subordinate legislation cannot confer authority

on the Board to interfere with the contractual rights and obligations unless specified power to make such Regulations is vested in the Board by some provision in the statute expressly or by necessary implication. No such power is to be found in Section 79 (j) or in any other provisions of the Act. Matters of tariff that may be prescribed by the State Electricity Board in respect of various categories of consumers are governed by Section 49 of the Electricity (Supply) Act which reads 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 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 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."

The sale of electricity to any person not being a licensee may be on such terms and conditions as the Board may think fit. The discretion of the Board is only subject to the provisions of the Act. Section 79 itself provides that the Board may make regulations not inconsistent with the Act and the rules made there under to provide for all or any of the matters mentioned in clauses (a) to (k) Of Section 79 which, among other things, include the principles governing the supply of electricity by the Board to persons other than licensees under Section 49.

"79. power to make regulations:- The Board may make regulations not inconsistent with this Act and the Rules made thereunder to provide for all or any of the following matters, namely :-

(a) the administration of the funds and other property of the Board, and the maintenance of its accounts:

(b) the summoning and holding of meetings of the Board the times and places at which such meetings shall be held the conduct of business thereat and the number of members

necessary to constitute a quorum;

(c) the duties of officers and servants of the Board and their salaries allowances and other conditions of service

(d) all matters necessary or expedient for regulating the operations of the Board under Section 20;

(e) the making of advances to licensees by the Board under Section 23 and the manner of repayment of such advances

(f) the making of contributions by the Board under Section 24;

(g) the procedure to be followed by the Board in inviting considering and accepting tenders

(h) principles governing the fixing of Grid Tariffs:

(i) principles governing the making of arrangements with licensees under Section 47

(j) Principles governing the supply of electricity by the Board to persons other than licensees under Section 49

(k) any other matter arising out of the Board's functions under this Act for which it is necessary or expedient to make regulations:-

Provided that regulations under clauses (a) and (b) shall be made only with previous approval of the State Government and regulations under clauses (h) and (j) shall be made with the concurrence of the authority."

8. The power to frame Rules is vested in the Government in the following words: It is in this context that the ambit of the Government's power to issue direction under Section 78-A is to be understood. Section 78-A reads as under:-

"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."

9. A Division Bench of this Court in *Andhra Pradesh State Electricity Board v. N. Ramachandra Rao*², dealing with the power of the Electricity Board to appoint its employees and call for applications in this regard vis-a-vis the power of the State Government to give directions under Section 78-A, held that the State Government, under Section 78-A can only issue directions on questions of policy for the guidance of the Board in the discharge of its functions. The power to give directions on matter of policy by the State Government would not take away the statutory power given under Section 15

to the Board for appointing its employees to carry out its functions under the Act.

² AIR 1969 And Pra 328

It was also held that "on a harmonious construction of Sections 15 and 78-A. it is clear that the spheres of the aforesaid two sections are distinct and different and one is not controlled or governed by the other. We cannot read something which is not there in Section 78-A. A reading

of the relevant provisions of the Act would clearly disclose that the Board is an autonomous corporate body having statutory powers The G.O.s have no statutory force and they cannot override the unfettered statutory power of the Board conferred on it by Section 15 of the Act empowering it to appoint all its officers and servants except the Secretary." (at p.332)

10. A Full Bench of the Kerala High Court in *A.M. Mani v. Kerala State Electricity Board*³, had also an occasion to consider the scope of Section 78-A and Sections 79(c) and 27 of the Electricity (Supply) Act in the context of the Kerala Service Rules framed by the Electricity Board raising the age limit for retirement of its employees to 58 and later reducing it to 55 years of age. The Full Bench held:

"Section 78-A of the Act allows the Government of Kerala to issue directions to the Board in the discharge of its functions as a guide, on questions of policy, Section 27 enumerates functions of the Board but the same are not exhaustive. Under Section 79 the Board as one of its functions is empowered to make rules and regulations. Being an autonomous body, its powers cannot be destroyed by all manner of directives issued by the Government. The 'Functions' which the Board is supposed to discharge means the functions which the authority was constituted to perform, which means essential and primary functions and not incidental functions necessary to carry out the essential functions. Function under Section 78-A means a special kind of activity proper to anything. A direction issued under Section 78-A cannot extend to framing of rules regarding conditions of service of its employees."

11. In this view of the matter, the action of the Board in framing rules entirely based on Government directives to increase the age of retirement to 58 and again reducing it to 55 years was held to be illegal.

11A. It would be convenient now to read the said G.O.Ms. No.832 dated 22-11- 1977 which reads;

"Government of Andhra Pradesh"

Abstract.

Tariff - power-Tariffs-Concessional Power tariff for the Mini Steel Units in Andhra Pradesh - Orders - Issued.

.....

Irrigation and Power (Power-II) Department G.O.Ms. No.832. Dated 2-11-1977

(1) From Sri S.K. Poddar letter No. SK/MIL/79/77 dated 11-5-1977.

(2) From the Director of Industries letter No.2981/SK/(I)(3)/76 dated 7-6- 1977.

(3) From M/s. Poddar Projects Limited. Hyderabad, Letter No. PPL/3652/77 dated 9-7-1977.

(4) From M/s. Poddar projects Limited, Hyderabad, PPL/3817/77 dated 18-7-1977.

³ AIR 1968 Ker 76

ORDER :

The question of granting concessional power tariffs to the Mini Steel Units in Andhra Pradesh has been under examination of the Government for some time now. The matter has again been examined on the representation from M/S. Poddar Steels (formerly Multisteels (India) Ltd., prior to merger with M/S. Poddar Steels Limited) in consultation with the Director of Industries and the Andhra Pradesh State Electricity Board. The Government felt that some relief has to be granted to all the mini steel plants based on electrical smeltings as they are very seriously affected by the recession in steel consumption, recession in building industry etc. Keeping in view the investments made in the projects and also in larger interest of the State, the Government also felt that the concession of 11 paise per unit plus escalation due to fuel costs which is available to such plants, which may be started recently should be made available to the steel plants which were in existence on 30-6-77 for a short period to enable these units to work satisfactorily.

(2) The Government accordingly direct that the concessional power tariff of 11 paise per unit should be made available to the following plants which are in existence for a period of three years from 1-11-1977 to 31-10-1980, subject to fuel escalation clauses.

(a) Andhra Pradesh Steels

(b) Poddar projects Limited

(c) Partap Steels

(d) Andhra Steels, Visakhapatnam

(e) A.K. Corporation, Visakhapatnam.

(3) This order issued with the concurrence of Finance and Planning Department vide their U.O. No.3355/FPSP/77-1 dated 29-10-1977.

(By order and in the name of the Governor of Andhra Pradesh)

Sd. M.V. Natarajan,

Deputy Secretary to Government."

It would be seen that the said G.O., though issued by order and in the name of the Governor of Andhra Pradesh, does not expressly refer to be a directive, under Section 78-A of the Electricity (Supply) Act. As already noted above, under Section 78-A, the State Government is empowered to issue directions. The Authority referred in Section 78-A is the one defined in Section 2(1) of the Act i.e., the Central Electricity Authority constituted under Section 3 thereof. A reading of Section 3 would disclose that the Central Government is empowered to constitute the Central Electricity Authority to exercise such functions and perform such duties under the Act and in such manner as the Central Government may prescribe or direct. These duties and functions are those enumerated in sub-clauses (i), (ii), (iii) and (iv) of sub-section(1) of Section 3. They are generally matters of policy and are matters on which a uniform and co-ordinated action is required to be taken. The Central Electricity Authority is required to act as an arbitrator in matters arising between the State Government or the Board and a licensee or other persons. The Authority referred to therein does not concern itself with any dispute between the State Electricity Board and the consumers of electricity produced by the Board directly.

It would be pertinent to note that the fixation of the terms and conditions upon which the Board may sell or supply electricity to any person is subject to the provisions of the Act and the regulations but not specifically subject to the directions issued by the State Govt. under Section

78-A. This is as it ought to be. While the directions under Section 78-A are issued by the State Government to the Board so that the Electricity Board may be guided on questions of policy, these directions are not intended to regulate the contractual relationship between the Electricity Board and consumers of electric energy supplied by it. Of course, the Electricity Board has to be guided by the directions of the State Government; but the State Government is empowered only to give directions on questions of policy in general and not in relation to any particular consumer. Further, any non-compliance with these general directions on question of policy may only be the subject-matter of an arbitration by the Authority constituted under Section 3(1) of the Electricity (Supply) Act and not a matter which a third party may seek enforcement through a Court of law.

12. Though this G.O.876 dated 26-11-1977 refers to the question of granting of concessional tariff to the mini steel units in Andhra Pradesh as they are very seriously affected by the recession in steel consumption, the Government on an examination of the various aspects did not issue any general directive on "questions of policy" as envisaged by Section 78-A(1). It only gave direction in relation to five named Mini Steel Plants for a period of three years. Granting concession to individual consumers cannot be deemed to be determination of a policy or a direction on a question of policy. Section 78-A does not authorize granting of concessions to individual consumers. Further, what is directed under the said G.O. is a concessional power tariff at 11 paise per unit for a period of three years.

As observed above, fixation of power tariff is a matter governed by Section 49 of the Electricity (Supply) Act which enjoins the Board to supply electricity to any person and to frame rules for such supply at uniform tariffs. Singling out five mini steel plants for supply of electricity at concessional tariff contravenes Section 49 of the said Act. Under the guise of exercising power conferred under Section 78-A no direction which is not one of policy and which would run directly counter to the statutory mandate contained in Section 49 can be issued.

13. Assuming that this is a direction under Section 78-A, the direction is of the State Government to the Electricity Board and if the Board has failed to comply with the said direction, no third party acquires any right thereunder. This is a dispute between the Board and the State Government which could be only referred to the Authority constituted under Section 3. Such a matter cannot be enforced or implemented at the instance of the consumer which is not given any right as such under the said G.O., and who is not released from the obligations which he has incurred under his contract with the Electricity Board. The fact that the Government has not referred in the G.Os as to what is to happen to the rights and obligations of the Electricity Board and the consumers who are the contracting parties, is very significant. The direction given under Section 78-A does not alter these obligations which arose out of a contract as made under Section 49 read with the rules and regulations framed under the Act. Neither Section 49 nor the regulations framed under the Act in this behalf are expressly made subject to Section 78-A.

14. It is, however, contended that Section 49 is "subject to the provisions of this Act and of regulations, if any, made in this behalf". That provision, in our view, does not render the contract between the Electricity Board and the consumer subject to the directions of the State Government issued under Section 78-A. Section 78-A does not begin with a non obstante clause and the directions issued under it do not override the obligations arising under Section 49 and the regulations made under the Act. The general conditions of supply of electricity and the tariffs prescribed in this behalf, therefore, remain unaffected by any G.O. Under Section 78-A whatever may be the other consequences of the Board not complying with a direction of the Government

on questions of policy under Section 78-A, the G.O. does not release the consumer from the obligation to pay the minimum charges or from the obligation to comply with the rules and regulations made by the Board from time to time and the obligation to comply with obligations incurred under the contract. It does not entitle the consumers to claim supply of electricity at the concessional rate mentioned in the said G.O. Supply of electricity being a matter governed by Section 49 and the Regulations made under the Act, is outside the purview of Section 78-A and is a matter outside the domain of the State Government and no binding directions can be issued in this behalf to the Electricity Board. G.O.Ms. No.832, dated 2-11-1977, in our view, is not a directive issued under Section 78-A; and, in any event, is not binding on the Electricity Board so as to make it obligatory upon the Board to extend concessional tariffs to all or any of the mini steel plants, whether named in the said G.O. or not. That G.O. does not vest these consumers with any legal right so as to seek a writ of mandamus against the other constricting party viz., the State Electricity Board. This Court, by its judgment in W.P. No.4547/75 and batch dated 26-8-1975 and also by its judgment in C.M.A. No.236/75 dated 27-6-1980, held that the consumers are bound by the contract between them and the Board, and that they are liable to pay the minimum charges. The mini-steel plant consumers, who have entered into contractual obligations with the Board, are not released from their contractual obligations and are not entitled to a writ of mandamus against the Electricity Board.

15. The next question that falls for consideration is whether the Board has the power under Section 49 while regulating the supply of Electricity to fix higher rates for consumption of excess quota. This matter arose for consideration directly in the *Adoni Cotton Mills Ltd. v. Andhra Pradesh State Electricity Board*⁴. That was a case arising from the State of Andhra Pradesh itself. The contention raised therein was that there is a conflict between Section 49 of the Electricity (Supply) Act 1948 and Section 22B of the Electricity Act, 1910 which empowers the State Government to regulate the supply, distribution and consumption or use of electricity by issuing an order. The Supreme Court held that the Andhra Pradesh State Electricity Board has power, under Section 49 of the Electricity (Supply) Act, to regulate supply and also to fix higher rates for consumption of excess quota. There is no conflict between Section 22-B of the Electricity Act, 1910 and Section 49 of the Electricity (Supply) Act, 1948 with regard to regulating or restricting higher consumption.

16. Assuming that the concession granted in the G.O. No.832 dated 2-11-1977 to the mini-steel plants is binding on the Electricity Board, it would be seen that it does not direct the Electricity Board not to levy the minimum charges. If, therefore, the Electricity Board is proceeding to collect the minimum charges it cannot be said to have contravened

⁴ AIR 1976 SC 2414

the said G.O. It is, however, argued on behalf of the petitioners that if the payment of minimum charges is insisted upon, then the granting of concession under the said G.O., would be wholly meaningless and the effect of that G.O. would be rendered nugatory. We are, however, unable to agree with this contention. When the G.O. does not touch upon the question of minimum charges and the rights and obligations of the consumer and the Electricity Board are governed by an agreement inter se, it must necessarily mean that the G.O., never intended to release the consumer from its obligation to pay the minimum charges. This Court in *M/s. Hyderabad Vanaspathi v. A.P.S.E. Board*⁵, held that "Clause 33(b) of the Regulation which renders a consumer liable for payment of minimum charges is *intra vires* of Section 49. It is not at all unreasonable to stipulate that the consumer shall pay minimum charges even for the period

during which the supply was disconnected....." In coming to that conclusion it was recognized that once the Electricity Board enters into a contract with a consumer to supply electricity, it would be necessary for the Board to produce such quantity of electricity as would be sufficient to meet the requirement of its consumers. For this purpose, it would have to incur recurring expenditure which cannot be cut down with the fall in the consumption of electricity by some of the consumers. The expenditure required for maintaining the supply to the consumers has therefore to be incurred irrespective of whether the consumer actually utilizes the energy supplied by the Board or not. In order to ensure that this supply is maintained without interruption and enable the Board to maintain the supply in an efficient and economical manner, it was necessary for the Board to collect a minimum charge. If the Board were to be allowed to collect only for the actual energy consumed and is not empowered to collect the minimum charge, the expenditure incurred by it for producing the electrical energy that may be required by the several consumers may not be realized at all, if they do not consume for one reason or the other energy produced. It is with a view to ensure that the Electricity Board realized at least so much revenue as is necessary to maintain the electric supply, the regulation stipulates that a consumer who contracts for supply of electric energy from the board should pay the minimum charges irrespective of the actual quantity of energy consumed by him. It is now a well accepted principle of fixation of tariffs and the rates of charges for supply of electric energy that the consumer should be made liable to pay minimum charges.

17. A bench of this court to which one of us was party earlier in *A. Krishna Murthy v. A.P.S.E. Board*⁶, held:

".....A charge for the supply of electricity may take in several items of charge such as the charge for the facility, a charge for the services rendered, a charge for the services available on demand etc. Irrespective of the actual consumption of energy the Electricity Board is required to be ready to supply the connected load of energy. For this purpose, a certain amount of expenditure has necessarily to be incurred by the Electricity Board, an expenditure which is not related to energy consumed, but which is related to the connected load. It is, therefore, rational that this part of the cost of supply of electricity should be met by a basic charge related to the connected load while the other part should be met by a charge related to the actual amount of electrical energy consumed. There is nothing illegal or even unreasonable in the levy of fixed charge or customer's charge."

⁵(1977) 2 AP LJ (HC) 358

⁶(1976) 2 APLJ (HC) 49

The liability to pay the minimum charges by the consumer is, under Clause 33(3) therefore, made absolute so long as the contract subsists. The liability to pay the minimum charge is, therefore a liability incurred under the contract and is quite reasonable. Under the said G.O., neither the Government directed that the consumer be released from the said obligation nor could it have so directed under Section 78-A of the Act. The order in the said G.O., suggesting the grant of concessions to mini-steel plants as stated therein, does not absolve the consumers of their liability under the contract or make it obligatory upon the Electricity Board to realise the amount only in accordance with the concessional rate mentioned therein and prohibit them from collecting the minimum charges and the consumption charges as per the regulations and the agreement.

18. In G.O.146 dated 12-3-1979 the concessions granted in G.O.832 dated 2-11- 1977 were withdrawn. In this regard it was argued that the concessions granted under the said G.O.832 dated 2-11-1977 could not be withdrawn unilaterally even before the expiry of the three years for which they were originally intended to be operated. It must be remembered that under the contract, the consumers were under an obligation to pay a higher amount. By the orders contained in the G.O., in question notwithstanding the protest of the Electricity Board, a unilateral decision was taken by the Government to give some concessions to the mini-steel plant units. On the representation of the Electricity Board, the Government unilaterally withdrew that concession under G.O.146, Irrigation and Power (Power-II) Department dated 12-3-1979. The unilateral concession so given in our opinion, could be unilaterally withdrawn, for after all it was a concession given to and not a right conferred on the consumers of the Electricity. That concession was not granted under any agreement or under a statutory rule or regulation. In fact even from G.O.146 dated 12-3-1979 it is evident that the mini-steel plants which were not highly power intensive units were not eligible for the grant of any concessional tariff. The Government itself after issuing the G.O.832. Power and Irrigation dated 2-11-1977 and G.O.Ms. No.876, Irrigation and Power dated 26-11-1977 giving concessional power tariff to mini steel plants realized that the mini steel plants were not eligible for the concessional tariff's and issued a clarification in G.O.697 dated 5-12-1978 stating that the prescription of a concessional tariff for mini-steel plants under the said G.Os. does not preclude the Board from applying the normal terms and conditions of supply to such consumers and in particular did not preclude the Board from collecting the monthly minimum charges and from working out the escalated rate from time to time. The Government constituted a Committee in G.O.Rt. No.890 Industries and Commerce Department dated 7-8-1978 to go into the power problem of Industries and after reviewing the position felt that the question of giving concession to mini steel units in the State does not arise as no other State in the country treated mini steel plants as power intensive. It also noted the recommendation of the Committee that the concessions to mini steel plants in tariffs was not justified. The Government accepted the recommendations and accordingly directed that G.O.Ms. No.832 Irrigation and Power Dated 26-11-1977 shall stand cancelled. From the above, it is clear that though the Government had in G.O.Ms. No.832 dated 26-11-1977 and 876 dated 26-11-1977 written to the Electricity Board to give concessional tariffs even from the beginning, the mini-plants were not entitled to the grant of concessional tariffs. In those circumstances, it was up to the Board to act on the said G. O. 832 dated 26-11-1977 or not. In any event the orders in the said Government Order certainly did not vest any right in the consumers to claim concessional tariffs.

19. It is however, argued on behalf of the petitioners that in view of the G.O., even if they had not acquired any legal right, the Electricity Board is estopped from collecting the consumption charges or the minimum charges on the basis of fixation of the quota and the escalated rate of tariff. So far as the Electricity Board is concerned, no question of estoppel, in our view arises. The Electricity Board never represented to the petitioners that they would collect electricity charges from the petitioners at the concessional rates referred to in the above Government Orders. The change in their position, if any, made by the petitioners themselves was certainly not on the basis of any representation made by the Electricity Board.

20. The Supreme Court in *Jit Ram Shiv Kumar v. State of Haryana*⁵. laid down that "there can be no promissory estoppel against the exercise of legislative power of the State. So also the doctrine cannot be invoked for preventing the Government from acting in discharge of its duty under the law." Likewise the orders contained in G.Os.832 dated 2-11-1977 and G.O. No.876 dated 26-11-

1977 not being statutorily binding on the Electricity Board, no question of promissory estoppel operates against the Electricity Board. As held by the Supreme Court in that decision "when a public authority acts beyond the scope of its authority, the plea of estoppel was not available to prevent the authority from acting according to law." It was in public interest that no such plea should be allowed. Even otherwise assuming that the G.Os. referred to above asking the Board to supply electricity at concessional rates to mini steel plants constitutes a representation on the basis of which the mini steel plants altered their position, still it was open to the Government and more so to the Electricity Board that the Government and the Board should not be required to carry out the terms and that the promissory estoppel should not be held operative in the circumstances stated in G.O.146 date 12-3-1980. A promissory estoppel is an equitable principle evolved by the courts for doing justice and not to release them from legal and contractual obligations in view of the orders issued by an authority not competent to do so. In *Motilal Padampat Sugar Mills Co. v. State of U.P.*⁵, the Supreme Court held that "everyone is subject to law as fully and completely as any other and the Government is no exception.....The Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action..... But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position there is no reason why the Government should not be compelled to make good such promise like any other private individual. But since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it the Court would not raise an equity in favour of the promises and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public

⁵ AIR 1980 SC 1285

⁶ AIR 1979, SC 621 (at pp.643, 44)

interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies."

21. Having regard to the above, if we examine the circumstances in which the concession was granted the grounds on which the Electricity Board had opposed the grant of concessions and the circumstances which led to the making of necessary investigation of the matter by setting up a committee resulting in ultimate withdrawal of the concession, it is a case in which even if the earlier G.O. operates as a promise, neither the Government nor the Electricity Board should be held bound by it and be compelled to give effect to it on any ground of promissory estoppel.

22. It was next contended that the withdrawal of concession can operate only prospectively from the date of the issuance of the G.O.146 dated 16-3-1980 and cannot affect the earlier period during which G.O.832 dated 2-11-1977 and G.O.876 dated 26-11-1977 were in force. This contention again is based on the assumption that by the issuance of the said G.Os. the petitioners

had acquired a right to the concessional tariffs mentioned therein and that they were absolved from the payment of the charges under the agreement and under the various directions issued by the Board under the Electricity Supply Act, the Rules and regulations made thereunder. As already discussed above, the said G.Os. do not confer any such right on the petitioners. The entire correspondence that has passed between the Electricity Board and the Government clearly discloses that the Board never agreed to give any concessional tariffs to the mini steel plants and it has been insisting upon the Government to withdraw the said G.O. and the Government ultimately agreed with the Board on the recommendation of the committee constituted specifically for consideration of this issue.

23. The entire argument in these writ petitions is based on the assumption that the Electricity Board is an Authority subordinate to the Government in all matters. This assumption we must hold is not correct. Electricity Board is an Autonomous Body created under a statute. It is subject to the exercise of some statutory powers by the State Government under the Act and is not otherwise subordinate. In certain matters as in the fixation of tariff, the Electricity Board may exercise its powers as laid down in the Act and under Section 78-A of the said Act (the Government) can only issue directions on questions of policy. The failure to comply with such directions does not amount to disobedience of lawful orders issued by the statutory authority. We, therefore, deem it unnecessary to refer to several decisions relied upon by the counsel for the petitioner Shri. Jagannadha Rao to contend that where the subordinate Authority fails to comply with the directions of the statutory Authority it can be directed to act upon it by the issuance of a writ of mandamus.

24. M/s. Andhra Steel Corporation Limited has also alleged mala fides against the respondents. But this allegation is devoid of any merit. It is vague and unsubstantiated and is based merely on the ground that the Government had not included it along with the other mini-steel plants for directing grant of concessional tariffs. If even as alleged by the petitioner itself, that was because the petitioner had already approached the High Court and the matter was sub judice, if the Government did not think it advisable to disturb the status quo with regard to the petitioner mini steel plant; the Government cannot be said to have acted mala fide. This allegation is without any substance and is accordingly rejected.

25. W.Ps. 240/78, 783/78, 1209/78, 1552/78, 2090/78, 2507/78, 3198/78, 3601/78, 3719/73 and 3720/79 are all filed by M/s. Andhra Steel Corporation Limited. The Andhra Steel Corporation Limited had also filed W.P. No.4452/77 in respect of the Bill for Sept. 1977 issued by the Electricity Board and a writ of mandamus or any other appropriate writ or direction is prayed for against the Electricity Board and the other respondents restraining them from giving effect to the letter No. Revenue - RA/3/A9/2875, dated 6-10-1977 including the collection of consumption charges of Rs. 1,10,664/-and for a consequential direction to the respondents to collect from the petitioner only the actual consumption charges and not according to the contracted demand. In that writ petition the petitioner calls in question the fixation of the quota of the consumption of electricity and the right of the Electricity Board to bill the petitioner for the excess energy consumed. In that writ petition, it is also claimed that the agreement between the parties was no longer in existence and that Clause 41 is illegal and void. The Electricity Board contends that the fixation of the quota is quite legal and proper and that revised agreement dated 27-11-1975 was entered into between the parties and that Clause 41 was upheld as valid both by the High Court of Andhra Pradesh in *P. Anjaneyulu v. A.P.*⁷ and batch dated 26-8-1975 and the Supreme Court

in *Adoni Cotton Mills v. APSEB*⁸, and as such the petitioner was not entitled to any relief. For the same reasons the contention that Clause 41 is *ultra vires* and void fails and is accordingly rejected.

26. W.P. No.240/78 and all the subsequent writ petitions except W.P. No.3719/79 and W.P. 3720/79 filed by M/s. Andhra Steels Limited are in respect of Bills issued to it for the successive months of Nov. 1977, Dec. 1977, Jan. 1978, Feb. 1978, March 1978, April, May, June and July, 1978.

27. W.P. No.3719/79 is for the issue of a writ of *certiorari* or any other writ to quash the order of the Government of Andhra Pradesh in G.O.Ms. No.697. Irrigation and Power Department dated 5-12-1978 by which the Government permitted the Board to include escalation clause and minimum charges clause in the tariff.

28. W.P. No.3720/79 is for the issue of a writ of *certiorari* or any other appropriate writ to quash the Order of the Government in G.O.Ms. No.146, Irrigation and Power Department dated 12-3-79 under which the concessional tariff proposed by the Government to the Electricity Board to be given to mini steel plants was withdrawn. All these writ petitions are opposed by the Electricity Board and the other respondents on the ground that these G.Os. were only in conformity with the provisions of the Act and only seek to rectify the initial error committed by the Government in directing the grant of concessional tariffs to the mini steel plants.

29. M/s. poddar projects Limited filed W.Ps.4651/79, W.P.3572/78, 3941/78 and W.P.3198/79. In the first of these writ petitions, the petitioner seeks a writ of *certiorari* to quash the demand made against it under letter No. AOR/CRS/AD/ASD/348 dated 23-5-1979 and to direct the Electricity Board not to insist upon payment of additional

⁷ S.E.B.W.P. 4547/74 (75?)

⁸ AIR 1976 SC 2414

consumption deposit. The point raised in this writ petition is covered by a judgment of a Division Bench of this Court in *Kistna Cement Works v. Secretary, APSEB, Vidyut Suudha*⁹ which held that calling upon the consumers to make additional deposits is quite reasonable and is not violative of any provisions of the Act, Rules or Regulations or of the Constitution. We find ourselves in agreement with the view taken by the Division Bench in the above case and see no merit in this writ petition.

30. W.P. 3572/78 is for the issue of a writ of mandamus and for a direction against the Electricity Board and other respondents to apply the concessional power tariffs as directed in G.O.Ms.876 Irrigation and Power dated 27-11-1976 to the petitioner's unit. In view of the above discussion this relief cannot be granted.

31. W.P.3941/78 is for the issue of a writ of mandamus against the Electricity Board and the other respondents raising the same contentions as in W.P. No.3572/78 in respect of the subsequent monthly bills for electricity charges and must fail for the same reasons as W.P.3572/78.

32. W.P.3198/79 is for the issue of a writ of *certiorari* or any other direction to quash G.O.Ms. No.146, Irrigation and Power Department dated 12-3-1979 withdrawing the concessional tariff

order in the earlier G.O.

33. In view of the above discussion this writ petition also fails. So also W.P.3852/79 which calls in question G.O.Ms. No.146, Irrigation and power Department dated 12-3-1979 must fail.

34. W.P. No.3850/79 filed by A.K. Corporation questioning G.O.697, Irrigation and Power Department dated 5-12-1978 also cannot succeed.

35. In view of the foregoing discussion, we hold that the demand made under the several bills issued to each of the petitioners cannot be treated as illegal or arbitrary. In fact, the petitioners are under a legal obligation to pay the same, hence no writ of mandamus or any other writ or direction can be issued against the Electricity Board relieving the petitioners from their obligation to pay the amount due under the Bills or prohibit the Electricity Board from realising the said amount in accordance with law. Consequently all the writ petitions fail and are accordingly dismissed with costs. Two sets, one for the Board, the other for the Government. Advocate's fee rupees 250/- in each.

36. After pronouncement of the Judgment, an oral request is made for grant of leave to appeal to the Supreme Court. We do not think that this is a matter involving such substantial question of law which requires the consideration of the Supreme Court. It is not otherwise, a fit case for the grant of leave. Leave refused.

37. We do not see any reason to stay the collection of the amount due under the bills issued from time to time from 1977 onwards. The request for stay is also rejected.

Petitions dismissed.

⁹(1979) 1 Andh WR 469