

A M/S. REAL FOOD PRODUCTS LTD. AND ORS. ETC. ETC.

v.

A.P. STATE ELECTRICITY BOARD AND ORS.

MARCH 1, 1995

B [J.S. VERMA, K.S. PARIPOORNAN AND S.B. MAJMUDAR, JJ.]

C *Electricity (Supply) Act, 1948—Section 78A—Direction given by the State Government—Electricity Board is to be guided by any such direction—If view expressed by the State Government exceeds area of policy—Board not bound by it—Unless it also takes the same view on merits—Direction of State Government to fix a concessional tariff for agricultural pump sets at a flat rate per H.P.—Question of policy—Mandatory for the board to follow.*

D *Constitution of India—Article 14—Electricity tariff—Preferential treatment to agricultural consumers—Not violative of Article 14—Claim of High Tension consumers to be classified alongwith agriculturists—Untenable.*

E By virtue of a direction given by the A.P. State Government u/s 78A of the Electricity (Supply) Act, 1948 the flat rate tariff system for agricultural pump-sets was introduced and the rate was varied from time to time. The Andhra Pradesh State Electricity Board was accordingly requested to take immediate necessary action. The Board introduced the concept of "Fuel Adjustment Cost" (FCA) by amending the H.T. tariffs.

F Certain 'power intensive units' filed Writ Petitions questioning the levy of FCA only upon High Tension consumers and the fixation of flat rate tariff for agriculturists. The High Court dismissed the petitions holding that it was neither irrational nor unreasonable to pass on the burden of rise in fuel cost only to High Tension consumers and the flat rate tariff system for agricultural pump sets being a concession in favour of an under-privileged category of consumers was a policy decision which was not open to challenge.

G The questions raised for determination in this court were regarding the nature and effect of the direction given by the State Government u/s 78A of the Electricity (Supply) Act, 1948 and whether the preferential treatment given to agricultural consumers was violative of Article 14 of the H Constitution.

Dismissing the appeals, this Court

HELD : 1.1 The High Tension consumers form a distinct class, separate from the Low tension consumers and concessional tariffs to the agriculturists does not violate Article 14 of the Constitution of India. The claim of the High Tension consumers to be classified along with agriculturists was untenable.

*Hindustan Zinc Ltd. Etc. Etc. v. Andhra Pradesh State Electricity Board and Ors.*, [1991] 3 SCC 299, relied on.

1.2 Section 78A of the Electricity (Supply) Act, 1948, uses the expression "the Board shall be guided by such direction on questions of policy as may be given to it by the State Government". In the instant case, the view expressed by the Government on a question of policy was in the nature of a direction to be followed by the Board. 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 was to be guided by directions of the State Government. [402-D]

1.3 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 relates 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 is different, may not be bound by. [402-E-F]

1.4 But where the Board considers even the rate suggested by the State Government and finds it to be acceptable in 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 in 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. [402-G]

1.5 In the instant case, the flat rate per H.P. for the agricultural pump sets indicated by the State Government, appears to have been found

A acceptable by the board as appropriate particularly because it was related to the policy of concessional tariff for agriculturists as part of an economic programme. At any rate, there was no material to indicate that the flat rate indicated by the State Government for the agricultural pump sets was so unreasonable that it could not have been considered appropriate by the Board. [402-H, 403-A-B]

B

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3511-22 of 1993 etc. etc.

C From the Judgment and Order dated 2.4.90 of the Andhra Pradesh High Court in W.A. Nos. 1644, 1590, 1587, 1654/89, 150/90, 1721, 1606, 1842, 1730, 1607 and 1802 of 1989.

D Shanti Bhushan, Y.P. Rao, Sanjay Parikh, for M.G. Ramachandran, Vimal Dave (NP), Anand Prasad, U.A. Rana, Rajiv Tyagi, for Gagrat & Co., P.B. Agarwala, Satish Agarwal, K.R. Chowdhary and Rakesh K. Sharma, for the appearing parties.

The Judgment of the Court was delivered by

E **J.S. VERMA, J.** These appeals and the connected matters arise out of the common judgment of a Division Bench of the Andhra Pradesh High Court in certain writ appeals, reported in AIR (1991) AP 141 (*Andhra Pradesh State Electricity Board Vidyut Soudha and others v. The Gowthami Solvent Oils and Another*), preferred against the decision of a learned Single Judge. High Tension (Industrial) Consumers, who are the appellants in this Court filed writ petitions in the Andhra Pradesh High Court challenging the revision of tariffs in B.P.Ms. No. 671 dated 10.6.1987 (w.e.f. 15.7.1987) as well as the further revision of tariffs in B.P.Ms. No. 353 dated 15.4.1989 (given effect from 1.6.1989). The history of revision of tariffs by the Andhra Pradesh State Electricity Board (for short "the Board") in the background of which the challenge to these B.P.Ms. has to be examined, is mentioned in the impugned judgment. Accordingly, the facts material for consideration of the points required to be decided are alone mentioned herein.

G Two questions alone arise for consideration in all these matters by virtue of the order dated 10.9.1992 made by this Court, which is as under:-

H "In these 78 petitions under Article 136 of the Constitution,

certain consumers of High Tension Electricity in the State of Andhra Pradesh, whose writ petitions assailing the upward revision of the Tariffs by the State Electricity Board effective from 10.6.1987 and 15.4.1989 respectively were dismissed by the High Court, seek leave to appeal to this Court from the common order dated 2.4.1990 made by the Division Bench. A learned Single Judge had granted prayer in the writ petitions. But the Division Bench, in appeal, dismissed the petitions.

(2) We have heard learned counsel on both sides. There are several contentions raised in support of these petitions. Two of them prima facie, bear examination and it appears appropriate that on these two questions the Special Leave petitions be disposed of after hearing the parties.

(3) The two points to which the Special Leave Petitions should be confined are :

(i) Whether a direction under section 78A of the Electricity (Supply) Act, 1948 by the State Government is binding on the Electricity Board; or whether such directions are merely of guidance and the Board in formulating tariffs would yet be required to apply its mind independently to all the relevant criterion. In the two impugned revisions there is no such application of mind by the Board which has addicated its statutory functions and coligations.

(ii) Petitioners say that while their case of consumers account for consumption of 35% of the electrical energy and the class of agricultural consumers favourably treated under the revisions also consume a like percentage, the former is called upon to pay 106 paise per unit (plus FCA) while the agricultural consumes are required to pay a fixed 5.04 paise per unit; and that this preferred agricultural sector which was paying 12 paise per unit in the year 1971, 23.4 paise per unit in 1976, now pays only 5.04 paise per unit while the petitions who were paying 16.1 paise per unit in the year 1971 are asked to pay 106 paise per unit (plus FCA). The cost of production being 71 paise per unit the whole of the burden of the difference on account of the subsidised supply to this agricul-

A           tural sector is cast on the High Tension consumers.

It is urged that—whether the fixation of tariff is an administrative function or a legislative function—this discrimination is arbitrary and irrational and is clearly violative of the constitutional pledge of equality under Article 14.

B           (4) All other contentions in these special leave petitions, in our opinion, are covered by earlier pronouncements of this Court and we confine the hearing of the special leave petitions, which shall be disposed of at the SLP stage, to the foregoing two questions alone."

C           The two questions, therefore, are: (1) Nature and effect of the direction given by the State government under Section 78A of the Electricity (Supply) Act, 1948 (hereinafter referred to as "the Act"); and (2) Is the preferential treatment of agricultural consumers violative of  
D Article 14.

By virtue of a direction given by the State Government to the Board under Section 78A of the Act, the flat rate tariff system for agricultural pump-sets was introduced, the rate being varied from time to time. This direction was given first in 1982 and later revised w.e.f. 1.11.1990 and then  
E from 1.1.1992 and 1.12.1992. The reasons together with the direction contained in the letter dated 15.12.1982 of the State Government to the Board is quoted in the impugned judgment of the High Court, as under:-

F           "While agriculturists owning lands under flow irrigation from major projects for both reliable and cheap irrigation, farmers depending on ground-water based irrigation, most of whom are small and marginal farmers, have to incur relatively higher expenditure in lifting water, besides being vulnerable to recurring brought resulting in lowering of the water table in the wells. Moreover, in rural areas maintenance of electricity meters and the  
G billing of individual farmers based on meter reading is be set with administrative defects leading to loss of revenue, hardship to the farmers and high collection cost. Keeping all the above factors in view, the Government feel that the present power tariff for agricultural pump sets needs rationalisation and that a flat rate system  
H based on the horse-power of each pump-set would be more ap-

appropriate in such cases. Government have therefore, decided that with effect from 1st November, 1982 the revised power tariff for agricultural pumpsets in the State should be a flat rate of Rs. 50 per H.P. per annum.

2. With a view to mitigating hardship to small and marginal farmers depending solely on well irrigation and to give a fillip to agricultural production in the State, the Government under Section 78-A of the Electricity (Supply) Act, 1948 direct that, in supersession of the instructions issued in the letter cited (dated 20.1.1982), the APSEB shall revise the electricity tariff for irrigation wells to Rs. 50 per H.P. per annum, and that this rate shall take effect from 1.11.1982.

3. The A.P. State Electricity Board is requested to take immediate necessary action accordingly."

The variation was made later in the flat rate of Rs. 50 per H.P. per annum from time to time which is not material for decision of the points involved.

The Board then introduced the concept of "Fuel Adjustment Cost" (FCA) by amending the H.T. tariffs, the details of which are not material for the present purpose. The concept of FCA and the flat rate tariff system was then made a permanent feature by the Board. A batch of writ petitions was filed in the Andhra Pradesh High Court in 1984 questioning inter alia the levy of FCA only upon H.T. consumers and the fixation of flat rate tariff for agriculturists, by certain "power intensive units". The High Court rejected the challenge and dismissed the writ petitions. It was held that it was neither irrational nor unreasonable to pass on the burden or rise in fuel cost only to H.T. consumers; and the flat rate tariff system for agricultural pump sets being a concession in favour of an under-privileged category of consumers was a policy decision which was not open to challenge. The decision was upheld by this Court in *Hindustan Zinc Ltd. Etc. Etc. v. Andhra Pradesh State Electricity Board and Others*, [1991] 3 S.C.C. 299.

In *Hindustan Zinc Ltd. Etc. Etc. (supra)*, a similar challenge on the ground of discrimination between H.T. consumers, including the power intensive consumers, and other consumers like L.T. consumers and agricul-

A turists was repelled. It was held that the H.T. consumers form a distinct class separate from the L.T. consumers; and that concessional tariffs to the agriculturists does not violate Articles 14 of the Constitution of India. In our opinion, the claim of the H.T. consumers to be classified along with agriculturists is untenable. This question being concluded by the earlier decision of this Court, does not require any further consideration.

B

The only surviving question is with regard to the nature and effect of the direction given by the State Government under Section 78A 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 78A uses the expression "the Board shall be guided by such directions on questions 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 the 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 there 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.

H

In the present case, the flat rate per H.P. for the agricultural pump

sets indicated by the State Government, appears to have been found acceptable by the Board as appropriate particularly because it is related to the policy of concessional tariff for the agriculturists as a part of the economic programme. At any rate, there is no material in the present case to indicate that the flat rate indicated by the State Government for the agricultural pump sets was so unreasonable that it could not have been considered appropriate by the Board. We do not consider it necessary to go into the larger question of the exact area of policy in the context of Section 78A except to indicate broadly as we have already done. We do not find any merit even in this point urged on behalf of the appellants. .

Consequently, the appeals are dismissed.

A.G.

Appeals dismissed.