

(1999) 01 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 625 of 1997

A. Amarender Rao and others

APPELLANT

Vs

A.P.S.E.B., Hyderabad and others

RESPONDENT

Date of Decision : 22-01-1999

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 12, 5

Citation : AIR 1999 AP 144 : (1999) 1 ALD 638 : (1999) 1 ALT 746

Hon'ble Judges : Y.V. Narayana, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. Y. Rama Rao, Mr. S.V. Muni Reddy, Mr. B.R.P. Sekhar and Mr. M.R.K. Chowdary, for the Appellant; Mr. K.N. Jwala, SC for APSEB, Government Pleader for Power and Energy and M.R.K. Chowdary, Advocate, for the Respondent

Judgement

Y.V. NARAYANA, J.—In this batch of writ petitions, the petitioners challenge the validity of the proceedings issued by the Andhra Pradesh State Electricity Board (for short, "the Board") in B.P. Ms. No.40, dated 3-9-1996, fixing different tariff rates for the energy supplied to the electric pump sets installed by the petitioners in their respective agricultural fields basing on the capacity of the pump set installed, as illegal and unconstitutional.

2, Brief facts :-- The petitioners, who are agriculturists, owning lands in various parts of the State, mainly dependant upon the ground water for the purpose of irrigating their lands. They dug borewells in their fields and by installing electric pump sets of different capacities, they are lifting water. It is their case that capacity of the motor depends upon the depth of the well. In some areas, where underground water is available in abundance at lesser depth, they need not dig deep and in such cases, motors of lesser capacity (which is measured in "Horse Power") will serve their purpose but in areas where the underground water is scarce and is at greater depth, they have to dig deep and for lifting water from such wells, they have to instal motors of higher capacity. Naturally, an electric

pump set of higher capacity will consume more energy (han the pump set of lesser capacity. In areas where the depth of the wells is less, pump sets of even 3 II.P. capacity may be sufficient for lifting water but in areas where the depth is more, pump sets of higher capacity ranging from 5 H.P. to 10 H.P. have to be installed for the very same purpose. Those who installed motors of lesser capacity are fortunate enough in paying nominal amount of electricity charges whereas the farmers who had to instal motors of higher capacity are already over-burdened to pay more amounts towards charges of electricity supplied by the Board, as they consume more energy when compared to the farmers who installed motors of lesser capacity. While so, the Board initially used to charge the fanners at uniform rates for the energy consumed by them by fixing fiat rate, i.e., @ Rs.50/- per Horse Power per year for each pump set upto the capacity of 75 H.P. (vide B.P. Ms. No. 110, dated 5-6-1995). But, subsequently, in the year 1996, the Board revised the tariff rates in the State by issuing B.P. Ms. No.32, Operation & Commercial, dated 29-7-1996 enhancing the tariff rates basing on the capacity of the pump set. The following are the rates introduced through the said proceedings :

Capacity of the Motor Tariff rate

1. Upto 3 HP Rs. 250/- per HP per year.
2. Above 3 HP & upto 5HP Rs. 350/- -do-
3. Above 5 HP & upto 10 HP Rs. 450/- -do-
4. 10 HP and above. Metered supply @ Re.0.50 ps. per unit subject to a minimum of Rs. 600/- per HP per year.

When there were widespread representations from the agriculturists community from all corners of the State requesting to reduce the tariff rates, the Board considered the issue and decided to reduce the tariff rates by issuing the impugned proceedings i.e., B.P. Ms. No.40, dated 3-9-1996, refixing the rates as under:

Capacity of the Motor Tariff rate

Drought prone Areas Other Areas

1. Upto 3 HP Rs. 100/- per HP per year. Rs. 150/- per HP per year
2. Above 3 HP & upto 5 HP Rs. 200/- -do- Rs. 250/- -do-
3. Above 5 HP & below 10 HI Rs. 300/- -do- Rs. 350/- -do-
4. 10 HP and above Rs. 400/- -do- Rs. 400/- -do-

3. Challenging the said decision of the Board in fixing different tariff rates in the impugned proceedings to the Low-Tension Category-V of Agriculturists basing on the capacity of the motor installed by them, these \\vrit petitions are filed contending ttat the enhancement of tariffs by the Board in respect of farming

community is unfair, unreasonable and contrary to the provisions of Section 49(3) of the Electricity (Supply) Act, 1948, (for short "the Act"). It is further contended that the said decision of the Board in revising the tariff rates was taken only at the behest -of the State Government, which was facing severe financial crisis in the State as a result of the imposition of prohibition on all varieties of liquors, and that under the guise of Section 78-A of the Act, the Government cannot dictate terms to the Board to fix tariff rates for the energy supplied to its consumers. It is also contended that the action of the Board in mechanically implementing the instructions of the State Government without applying its mind to the pros and cons of the issue is contrary to Section 49 read with Section 78-A of the Act.

4. It is further contended that the Board is not entitled to fix different tariff rates for the energy supplied to the agriculturist community basing on the capacity of the motors installed by them. In other words, fixing of different tariff rates basing upon the capacity of the motor is contended to be violative of Article 14 of the Constitution. It is submitted that in some areas for irrigating even lesser extents of lands also, farmers had to dig deep in pursuit of underground water and had to instal pump sets of higher capacity so as to lift water from such depth and in view of the capacity of motors installed by them, they are already overburdened by paying more consumption charges to the Board when compared to the farmers who are fortunate enough to instal pump sets of lesser capacity and that the Electricity Board by issuing the impugned proceedings has virtually made it impossible for such farmers to survive on the earth by fixing higher tariff rate than to those farmers who installed pump sets of lesser capacity. It is contended that the Board is, first of all, not entitled to make classification among one class of persons. It is, therefore, hit by the equality clause as enshrined in Article 14 of the Constitution. It is also contended that the enhancement is also unreasonable and disproportionate.

5, The learned Standing Counsel appearing for the Board, however, supports the decision taken by the Board in fixing different tariffs basing on the capacity of the pump set installed by the farming community. It is contended that the Board has got certain statutory obligations in producing and supplying energy. u/s 59 of the Act, the Board is supposed to leave 3%, or even higher rate, of the total revenue, after meeting all expenses as are detailed in the provision, by way of surplus which must be kept apart and be used for the expansion and other developmental activities that are to be taken up by the Board for generating more energy. While so, the statistics pertaining to the year 1996-97 revealed a huge revenue deficit of Rs. 1,533 crores with reference to the revenue expenses to be met as per the provisions of Section 59 of the Act. Further, as per Section 59 of the Act, the Board must also leave 3% return on the value of the fixed assets, which comes to Rs.135 crores. Thus, in all, an amount of Rs. 1,668 crores needs to be mobilised by the Board through tariffs. So, for the purpose of overcoming the above situation, the Board, after due consultations with the State Government, decided to revise the tariff rates in the State with effect from

1-8-1996 onwards, by which it was expected that an additional amount of Rs. 1,0537- would be yielded. The expected income from various categories of the consumers in the State is detailed below:

1. Domestic consumers Rs. 330 crores

2. Commercial -do- Rs. 133 -do-

3. Industrial -do- Rs. 480 -do-

4. Agriculture -do- Rs. 304 -do-

5. Local Bodies -do- Rs. 6 -do-

Total Rs. 1,053 -do-

Pursuant to the said decision, the Board issued B.P. Ms. No.32, dated 29-7-1996 revising the tariff rates in the State. But, subsequently, since number of representations were received from farming community, the Board decided to reduce the tariff rates and accordingly issued the impugned proceedings. It is submitted that by virtue of such reduction in the tariff rates in respect of the agricultural sector, the additional revenue which was expected at Rs.304 crores has come down to Rs.235 crores. It is also submitted that the average realisation per unit consumed in agricultural sector works out to 0.17 paise per unit at the revised rates as against the cost of supply of 177 paise-per unit at L.T. terminals and thereby the Board is losing about 160 paise per unit in the agricultural sector. Therefore, keeping all these factors in mind and so as to minimise the loss that is going to be caused to the Board, the Board made a reasonable classification among the agricultural sector taking the capacity of the pump set installed by agriculturist as basis for fixing the tariffs for this community and that u/s 49(3) of the Act, the Board is fully empowered to fix different rates. It is, therefore, contended that there is no arbitrary exercise of power by the Board in classifying the consumers on the basis of capacity of the motor.

6. Since the power of the Board in making classification in the category of agriculturists (Category-V in L.T. Division) while fixing tariffs for that category as also the authority of the State Government in directing the Board to revise the tariffs, are under challenge, it is necessary for us to refer to the relevant provisions of the Electricity (Supply) Act, 1948, under which the Board is functioning.

7. The Board is constituted u/s 5 of the Act. It consists of not less than three and not more than seven members who will be appointed by the State Government and one of such members who possesses the required qualifications will be appointed by the State Government as Chairman. Sub-section (I) of Section 12-A authorised the State Government to determine the starting capital of the Board and under sub-section (2), it is further empowered to increase the maximum limit of the capital to such an extent as the State Government deems fit. Under

sub-section (3), such capital may be provided by the State Government from time to time after due appropriation made by the State Legislature. u/s 61, the Board shall submit to the State Government a statement in February of every year showing the estimated capital and revenue receipts and expenditure for the ensuing year and State Government must cause such statement to be laid on the table of the State Legislature for discussion. The Board must take into account any comments made on the said statement in the State Legislature. u/s 62, there is a restriction on the Board on unbudgeted expenditure. However, in the case of extreme urgency, the Board is permitted to spend amounts but it should be with the prior approval of the State Government. Under Sections 63 and 64, the State Government may, from time to time, make subventions and advance loans to the Board for the purpose of the Act on such terms and conditions as the State Government may determine. Similarly, the Board was empowered u/s 65 to borrow amounts from other agencies also, but the same should also be with the prior approval of the State Government. u/s 66, the State Government may guarantee the loans taken by the Board u/s 65. The Government is further empowered u/s 66-A to convert any loan amount which is borrowed to the Board into capital. u/s 59 of the Act, the Board shall, after paying all the debts due by it and after meeting all expenses, leave such surplus as is not less than three percent or such higher percentage, as the State Government may specify in that behalf, of the value of the fixed assets of the Board in service at the beginning of such year. u/s 75, the Board shall prepare annual report every year and submit the same to the State Government which shall be produced before the State Legislature. Under sub-section (2) of Section 75, the Board shall furnish to the State Government such statistics and returns and such particulars in regard to any proposed or existing scheme as the State Government may, from time to time, require. u/s 78-A, the State Government can issue suitable directions to the Board for the purpose of proper discharge of its functions. It reads thus:

"78-A. Directions by the State Government :--(1) In 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."

A combined reading of the aforementioned provisions raises not even an iota of doubt in our minds about the role of the State Government that is played in controlling the affairs of the Board. The State Government is endowed with ample powers under the Act to oversee the affairs and business of the Board and to give suitable directions whenever it feels necessary. The Act made the Board answerable to the State Government in matters touching the finances of the Board. It must submit all its annual reports to the State Government detailing its activities in the previous financial year and also the activities, if any, that will be taken up in the succeeding financial year. It should also furnish to the State

Government all the relevant statistics, if any required, in regard to any scheme proposed or any existing scheme and the State Government is bound to guide the Board by issuing suitable instructions to it from time to time for the purpose of successful implementation of the schemes. u/s 78-A, the State Government has got power to issue suitable directions to the Board in discharge of its functions and can guide the Board by such directions on questions of policy. This provision makes it abundantly clear that the State Government can intervene in the affairs of the Board which involves decision making on any particular issue and the State Government can give suitable suggestions/ instructions to the Board in that regard. Therefore, the power of the State Government in issuing directions to the Board in matters of policy u/s 78-A is not in doubt. Of course, it is always open to the Board to consider the said suggestion given by the State Government independently and if it feels that such a suggestion is in the interests of the Board, it may adopt the said advice. If its opinion is otherwise, it may omit to implement such suggestions; (see M/s. Real Food Products Ltd. and others, etc. etc., Vs. Andhra Pradesh State Electricity Board and others, .

8. When coming to the case on hand, we have already noticed that the Board's financial position was in a very very critical condition. Therefore, the Board considered the pros and cons of the issue and decided to implement the advise of the State Government in revising tariff rates in the State. Such a decision taken by the Board cannot be said to be made without application of its mind nor can it be said that it had only acted pursuant to the directions of the State Government. Therefore, the contention raised in this regard has no basis and it is accordingly liable to be rejected.

9. When coming to the other contention of the learned Counsel, it is again necessary to refer to the relevant provisions of the Act which enumerated the duties of the Board as also its obligations in maintaining a balance between the generation and supply of energy. Section 18 deals with the duties of the Board, under which the Board is duty bound to arrange supply of electricity that may be required in the State and for the transmission and distribution of the same in an efficient and economical manner. Clause (e) says that the Board shall carry out schemes for transmission, distribution and generally for promoting the use of electricity within the State. Clause (f) mandates that the Board should operate the generating stations under its control in coordination with the generating company or companies, if any, operating in the State. u/s 28, the Board shall prepare and sanction any scheme or schemes for the purpose of establishment or acquisition of any generating station, tie lines, sub-stations or transmission lines and forward the same to the Central Electricity Authority (for short "Authority") for its concurrence. Thus, as per the scheme of the Act, the Board is empowered either to generate the energy by itself or to purchase the same from any generating company and supply it to its consumers. In case of purchase of energy by the Board, the Board is entitled u/s 43-A to enter into any contract with the generating company with regard to the terms and conditions and tariff for sale of energy by such company to the Board. u/s 49, the Board is entitled to

sell the energy, which was either produced or purchased by it, to persons other than licensees. Section 49 needs to be quoted here :

"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."

10. No doubt, the Board is a public utility undertaking having been established under the Act with the sole object of providing to the people of the State the basic amenity of electricity at cheaper rates and without regard to the percentage of profit which may be earned by such service. But still, it has got an obligation u/s 59 of the Act to earn some profits, which should be kept as a surplus fund. Section 59 reads thus :

"59. General principles for Board's finance :--(1) The Board shall, after taking credit for any subvention from the State Government u/s 63, carry on its operations under this Act and adjust its tariffs so as to ensure that the total revenues in any year of account shall, after meeting all expenses properly chargeable to revenues, including operating, maintenance and management expenses, taxes (if any) on income and profits, depreciation and interest payable on all debentures, bonds and loans, leave such surplus as is not less than three percent or such higher percentage, as the State Government may, by notification in the Official Gazette, specify in this behalf, of the value of the fixed assets of

the Board in service at the beginning of such year.

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In Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others, , the Supreme Court explained the reasons for bringing the abovementioned provision onto the Statute Book. The relevant paragraph is quoted hereunder :

"The Board is not expected to run on a bare year-to-year survival basis. It must have its feet firmly planted on the earth. It must be able to pay the interest on the loans taken by it; it must be able to discharge its debts; it must be able to continue the due performance of its services by providing for depreciation etc., it must provide for the expansion of its services, for no one can pretend the country is already well supplied with electricity. Sufficient surplus has to be generated for this purpose."

Thus, if the Board is to continue healthily, it should have firm background on financial front, for a company without financial stability cannot last long. Therefore, Section 59 is introduced making it obligatory on the part of the Board to leave some amount-out of the revenues of the Board, which may be determined by the State Government, as surplus fund which should be utilised for various purposes including the purpose of expansion of the industry. Therefore, there is a statutory obligation on the Board under Sections 49 and 59 to fix tariffs at the rates which will not merely avoid any loss being incurred during the financial year but will ensure a profit being earned. No doubt, u/s 49(2), the Board is required to have regard to several factors in fixing uniform tariffs but, the Board can fix different tariffs u/s 49(3) if it considers it necessary or expedient to do so for supply of electricity to any person or persons having regard to the geographical position of any area, "the nature of supply" and "the purpose for which supply is required" and also "any other relevant factors". Of course, while fixing tariffs, the Board is not expected to show any undue favour or discrimination against any person. In addition to the above factors as enumerated in Section 49, as already noticed, the Board must also bear in mind the mandate u/s 59 while fixing tariffs. Now, the Board classified the consumers in the State into various categories having regard to the nature of supply, geographical situation and also the purpose for which such supply is made and accordingly tariffs are fixed differently for different categories. One of the criteria for categorising the consumers is the percentage of consumption by such class of consumers. Persons who consume lesser quantity of energy are classified as Low Tension consumers and those who consume energy in larger proportions are classified as High Tension consumers and tariffs are fixed separately for these two types of consumers. The Board again categorised the Low Tension consumers and High Tension consumers into different categories. They areas follows :

Low Tension :

Category Classification of the Category

1. Domestic C-I
2. Commercial C-II
3. Industrial C-IIi
4. Cottage Industries C-IV
5. Agricultural C-V
6. Local Bodies C-VI
7. General Purposes C-VII

High Tension :

Category Classification

1. Industrial C-I
2. Non- Industrial C-II
3. Power Intensive C-III
4. Agricultural C-IV
5. Rly. Traction C-V
6. Colony C-VI

In exercise of the power u/s 49, the Board fixed separate rates for each category of consumers, and the Apex Court approved this policy of fixing higher rate to one category of consumers and lesser rate to the other category of consumers. In *M/s. Hindustan Zinc Ltd. etc. Vs. Andhra Pradesh State Electricity Board and others*, the observations of the Supreme Court while rejecting the contention of the appellants therein are pertinent to be quoted here, which reads thus :

"It was also contended on behalf of the appellants that the generation of electricity by the Andhra Pradesh Electricity Board is both thermal as well as hydro, the quantity from each source being nearly equal and the entire electricity generated is fed into a common grid, from which it is supplied to all categories of consumers. On this basis, it was argued that the rise in the fuel cost which led to the fuel cost adjustment applicable only to the H.T. consumers was unreasonable and discriminatory since the burden of rise in fuel cost was placed only on the H.T. consumers. In our opinion, this argument has no merit. The H.T. consumers, including the power intensive consumers, are known power guzzlers and in power intensive industries, electricity is really a raw material. This category of consumers, therefore, forms a distinct class separate from other consumers like L.T. consumers who are much small consumers. There is also a rational nexus of this classification with the object sought to be achieved. Moreover, the power intensive consumers have been enjoying the benefit of a concessional tariff for

quite some time, which too is a relevant factor to justify this classification."

From the above it is clear that the Board is justified in fixing different rates for different categories taking into account the percentage of energy consumed by such categories.

11. The writ petitioners in these cases come under Category-V (Agricultural) in L.T. Division. Their contention is, as already mentioned, that the Board is not empowered u/s 49 of the Act to again reclassify the category of agriculturists and fix different rates taking the capacity of the motor which they installed as basis. In other words, their contention is that there is no rationale behind making a reclassification among the class of agriculturists for fixing different rates and the decision of the Board is, therefore, violative of Article 14 of the Constitution. It is well settled proposition of law, which has been emphasised by the Supreme Court time and again, that any classification made by "State" must be founded on intelligible differentia which must have rational relation to the object sought to be achieved. Thus, the validity of the classification can be upheld if the said classification is found to have a rational nexus with the object sought to be achieved (see *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, . Let us now proceed to deal with the contention raised by the petitioners by duly keeping in mind the principle enunciated by the Supreme Court in the above case. For that, a summary narration of the fact-situation that was obtaining prior to the revision of tariffs by the Board is necessary now. In the early 1980s, fanning in this State with the help of electric pump sets was a rare phenomenon. Later, realising the importance of bringing ground water into use in view of the irregular monsoons and the scarce availability of rain-fed water, the Government decided to encourage the small farmers in the State to use ground water for their agricultural purposes and as part of the said decision, the Government used to subsidise the ryots in the State for purchasing and installing electric pump sets in their fields. The Government also took a decision to supply energy to such farmers at subsidised rates and soon (hereafter the object which was sought to be achieved by the Government by giving such subsidies to ryots in the supply of energy paid good dividends and consequently, there has been rapid increase in the number of pump sets in the State. While that being so, the policy of the Government in supplying energy to ryots at subsidised rates continued till last revision. Till then, the agriculturists used to pay a nominal amount of Rs.50/- per Horse Power per annum. Thus under this policy, a farmer who installed a pump set of 3 H.P. capacity can use his motor through out the year by paying a nominal amount of Rs. 150/- during that year. Even the farmer installing motor of higher capacity, say for example 10 H.P. motor, need to pay very meagre amount. The amount chargeable for 10 H.P. motor was just Rs.500/- per annum, regardless of the quantity of power consumed by such ryot. But, in view of the rapid increase in the number of pump sets installed in the State, it became very much burdensome for the State Government to supply energy at the very same subsidised rate. While the percentage of consumption by the agriculturists has steeply increased, the income received from this

category was very much disproportionate. As a result of such a situation, the Board had to incur huge losses. For better appreciation of the situation, we may reproduce the statement of consumption of energy by various categories of consumers and the tariff rates charged for each category here :

Category	Percentage of consumption	Sales (MU)	Rate (Rs. / KWH)	Amount (Rs. Crs.)	Percentage of Revenue
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low Tension:

C-I Domestic	14.46	3994	112.31	448.57	15.81
C-I Comercial	2.74	756	224.30	169.57	5.97
C-III Industrial	4.54	1253	251.80	315.51	11.12
C-IV Cottage Industries	0.08	23	85.50	2.20	0.07
C-V Agricultural	49.84	13763	3.34	45.99	16.21
C-VI Local Bodies	0.58	159	90.00	14.31	0.50
C VII General Purposes	0.26	72	155.00	11.16	0.39
Total L.T.	72.49	20025	50.30	1007.31	35.49

High Tension :

C-I Industrial	17.34	4955	264.92	1312.68	46.25
C-II Non Indl.	154	535	314.82	168.43	5.93
C III Power Intensive	1.63	450	262.29	118.03	4.16
C-IV Agricultural	0.18	50	135.50	6.78	0.24
C-V Rly. Tracton	2.75	760	265.00	201.40	7.09
C-VI Colony	0.43	120	160.00	19.20	0.68
Inter State	0.36	100	8.00	0.80	0.02
RESCOS	2.28	630	5.00	3.15	0.11
Total H.T.	27.51	7600	240.85	1830.47	84.51
Grand Total	100	27625	102.73	2837.78	100.00

The above statistics relate to the year 1996-97 of the Board. A cursory glance at the said statistics crystallises the whole picture. Out of 20,025 MU (million units) of energy that is supplied to various categories in L.T. Division, Category-V Agricultural sector alone consumes 13,768 MU of energy and the percentage of its consumption is nearly half of the total consumption (49.84%) whereas the rate fixed for this category is very meagre when compared with the rates fixed for other categories in that division. It is 3.34 per KWH. The next lowest rate that

is fixed in this Division is Rs.90.00 per KWH for Category VI. The revenue received from Category V is Rs.45.99 crores and the figures show that the percentage of revenue (16.21 %) is very less in proportion when compared with the revenues received from other categories. For example, Category-11! Industrial sector which is grouped in the very same L.T. Division is sold out only 1,253 MU (4.54% of the total consumption) whereas the revenue received from the said category is Rs.315.51 crores (11.12% of the total revenues). The rate fixed for this category is Rs.251.80 per KWH. . Even though it may not be proper to compare Category V with Category III in view of the basic difference in the purposes for which energy is supplied to these two sectors, but with a view to emphasise how much revenue the Board is loosing every year on Category V, this comparison is done. It is also brought to our notice by the learned Advocate-General appearing for the Board that the Board spends 177 paise per unit for generating energy whereas it realises a pally sum of 17 paise per unit by way of tariff from Category V. It is also brought to our notice that the projections revealed a huge revenue deficit of Rs.1,533 crores during the year 1996-97. It is contended that the said deficit is only because of the Government's policy to supply energy to various sections of the society at subsidised rates. Of course, under the provisions of the Act, energy can be supplied to any particular section of the society at subsidised rate with a view to give helping hand to such section and such subsidised supply can be continued till there is some amount of progress and as long as the Board does not incur losses. The State Government is free to withdraw such subsidies when the purpose which was sought to be achieved by such supply is over. In the case on hand, Category V in L.T. Division enjoyed subsidised supply of energy for quite a long time. Subsequently, in view of the tremendous increase in the quantity of energy consumed by this category and the meagre percentage of revenue that is received from them, the Board decided to put an end to the partice of subsidised supply to this category and enhance the tariff rates for them also. While enhancing tariff rates, it reclassified the category of agriculturists into sub-classes depending upon the percentage of energy consumed by them. As already stated, the percentage of energy depends upon the capacity of the motor. Thus, the ryots who installed motors of higher capacity have been grouped into a separate class and fixed higher rate of tariff for them. Similarly, the ryots who installed motors of lesser capacity have been grouped into another class and fixed lesser rate of tariff for them. Those who consume more percentage of energy, by virtue of the capacity of the motors installed by them, are now required to pay higher rate than those who consume lesser percentage of energy. Of course, even in the present revision also, flat rates are fixed for Category-V. For example, the ryot who installed motor of 3 H.P. capacity is now required to pay tariff a(the rate of Rs.450/-per annum i.e., Rs.150/- per horse power. Similarly, a ryot who installed motor of 10 H.P. capacity is now required to pay tariff at the rate of Rs.4000/- per annum i.e., at the rate of Rs.400/- per horse power, irrespective of actual energy which he consumes. Thus, the pattern of price fixation is based on the percentage of energy consumed. In *K.S.E. Board v. Ms, S.N. Govinda Prabhu and Bros. (supra)*,

the Supreme Court held that Section 49(3) of the Act expressly reserves the power of the Board, if it considers it necessary or expedient, to fix different tariffs for the supply of electricity to "any person" depending upon the geographical position of any area, nature of supply and the purposes for which such supply is required and also any "other relevant factors". The Apex Court accordingly upheld the action of the Board in that case in differentiating the tariffs for High Tension and Low Tension consumers and for different classes of consumers, as reasonable and far from arbitrary. Similarly, in *M/s. Hindustan Zinc Ltd. v. APSEB* (supra), the Supreme Court held that the Board, under the provisions of the Act, has got ample powers in fixing higher rate of tariff for such of those power-intensive consumers who consume more energy than those consumers who consume lesser quantity of energy. Thus, as per the law laid down by the Supreme Court, the Board is empowered u/s 49(3) of the Act to classify its consumers into different categories or even sub-categories basing on the percentage of energy consumed by them and fix different tariff rates for different categories or sub-categories. In the cases on hand, as already observed, the category of agriculturists in L.T. Division, is the dominant user of electricity and in view of the percentage of energy consumed by this category, it requires no hesitation to categorise this category as power-intensive category in L.T. Division. Further, even within this category also, the percentage of energy that is consumed varies from ryot to ryot. As already noticed, the ryot who installs motor of higher capacity consumes more percentage of energy than the ryot who installs motor of lesser capacity. Those who installed motors of higher capacity have, therefore, formed themselves into a different class being distinct and separate from the other class of consumers in this category who consume lesser quantity of energy. u/s 49(3) of the Act, the Board is entitled to identify such of those consumers who consume higher percentage of energy and reclassify all of them into a separate class and fix higher rate for them. This classification is based on intelligible differentia which has got its rational relation with the object sought to be achieved by the State Government as part of its new policy which is implemented by the Board under the impugned proceedings. In our view, the Board is empowered u/s 49 of the Act to classify the agriculturists into subclasses by taking into account various factors like the purpose for which the energy is supplied, the nature of supply and the other relevant factors. In this case, the factor that is most relevant for the purpose of classification among ryots is the capacity of the motor installed by them as the percentage of energy that is consumed depends upon the capacity of the motor. Therefore, the Board's decision in fixing different rates by taking the capacity of the motor as basis is neither arbitrary nor discriminatory. As a matter of fact, it is most unfortunate to hear from a consumer, whose livelihood is entirely dependant upon the services rendered by the Board, that he would only enjoy the services rendered by the Board but is not concerned with the losses caused to the Board by such services. In view of what is stated supra, we do not find any arbitrariness nor discrimination in the classification made by the Board in fixing tariff rates under the impugned proceedings. This contention is accordingly

rejected,

12. It is further contended by the learned Counsel for the petitioners that the increase in tariff rates is highly excessive. First of all, we would like to make it clear here itself that "price fixation" is neither the forte nor the function of the Court. It is for the executive to fix the rates by duly taking into account various relevant factors. In view of the above settled law position, we would not have delved much upon this contention but, since the facts and various circumstances which are brought to our notice clearly demonstrate that there is no irrationality even in the enhancement in tariffs, we are inclined to deal with this aspect also. It is asserted by some of the writ petitioners (in WP No.752 of 1997) that they are using the electricity supplied by the Board for just 200 or even less than 200 days in a year as they get sufficient rains in the remaining period because of onset of monsoon and that the energy consumed by a motor of one Horse Power in an hour is 0.75 units. According to them, the Board used to supply energy for 7 hours daily and out of these 7 hours, they consume energy for only 4 hours as it will not be possible for them to utilise the supply during the rest of the day. Basing on the above information, let us see the actual energy consumed by the farming community in the State:

Capacity of the motor installed	Energy consumed in an hour	Energy consumed in a day (4 hours)
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3 H.P.	$3 \times 0.75 = 2.25$ units	$2.25 \times 4 = 9$ units
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5 HP.	$5 \times 0.75 = 3.75$ units	$3.75 \times 4 = 15$ units
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10 H.P.	$10 \times 0.75 = 7.50$ units	$7.50 \times 4 = 30$ units
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Thus, even according to the petitioners, a motor of 3 H.P. capacity consumes 9 units in a day and similarly, a motor of 5 H.P. capacity consumes 15 units whereas a 10 H.P. motor consumes 30 units in a day. Since, as per the averments of the petitioners, they are utilising the energy only 200 days in a year, we will assume the said statement to be correct and proceed to assess the annual consumption hereunder:

3 H.P.	$9 \text{ units} \times 200 \text{ days} = 1800 \text{ units p.a.}$
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5 H.P.	$15 \text{ units} \times 200 \text{ days} = 3000 \text{ units p.a.}$
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10 H.P.	$30 \text{ units} \times 200 \text{ days} = 6000 \text{ units p.a.}$
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As per the revised tariff rates, of all the consumers, domestic consumers are being charged the least rate of tariff i.e., 80 paise per unit. We propose to take that rate as a basis for calculation in this case to see how much approximately the farmers are to pay for the energy consumed by them. The figures are as under:

3 H.P.	$1800 \text{ units} \times 80 \text{ paise} = \text{Rs. } 1440/- \text{ per annum.}$
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5 HP.	$3000 \text{ units} \times 80 \text{ paise} = \text{Rs. } 2400/- \text{ per annum.}$
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10 H.P. - 6000 units x 80 paise = Rs.4800/- per annum.

Whereas the actual tariff rates that were fixed under the impugned proceedings for this category are as under:

3 H.P. motor - Rs. 450/- per annum

5 H.P. motor - Rs.1250/- per annum

10 H.P. motor - Rs. 4000/- per annum

On a comparison of the above tables, can it be said that the revised tariffs are unreasonable and have no nexus with the amount spent by the Board in generating the energy? The answer, in our opinion, is a firm "no". We see no merits in this contention even. For all these reasons, these writ petitions are liable to be dismissed.

13. In the result, all the writ petitions are dismissed. No costs.

14. After delivery of the Judgment, the learned Counsel for the petitioners seek extension of time for payment of electricity arrears and also submit the circumstances under which the amounts cannot be paid immediately. In view of the above, time is granted till 30-4-1999 for clearing the arrears of electricity charges.