
(1982) 09 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1655 of 1982

Andhra Pradesh Co. Ltd., Vijayawada

APPELLANT

Vs

Andhra Pradesh State Electricity Board

RESPONDENT

Date of Decision : 24-09-1982

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 18, 49

Citation : AIR 1983 AP 263

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Advocate : B.V. Subbaiah, for the Appellant; T. Anantha Babu, for the Respondent

Judgement

1. The Andhra pradesh state electricity Board issued B.P. Ms. No. 607. Commercial dated 21st of July, 1981. The validity of those proceedings is now assailed in this batch of writ petitions by several industrial concerns. The facts that give rise to this litigation are common to all the writ petitions and the questions of law that call for adjudication are also substantially the same the facts in one case are almost similar to the facts in any other case it is not therefore necessary to refer to the facts in each individual case separately. I therefore set out the facts in writ petition No. 1655/82 filed by the Andhra Cement Limited vijayawada.

2. The Andhra pradesh state Government acting under the Electricity supply Act, 1948 (hereinafter called the supply Act) constituted the Andhra pradesh state Electricity board (hereinafter called the board). The Board so constituted in law is a statutory corporation. It is a state authority conferred with statutory powers that empower it to produce electricity and distribute the same. The supply Act created the Board with monopoly powers with necessary authority to generate and distribute electricity in the state ot the exclusion of tohers Ss. 18 and 49 of the above supply Act are particularly material for considering the tenability of the

rival claims advanced by the parties in these cases. S. 18 of the supply Act charges the Board inter alia with duty to supply electricity to licensees and other persons requiring supply of electricity acting in obedience to that statutory duty the board has been supplying electricity to all its customers including the petitioner company. In discharging its duty of supplying electrical power to consumers imposed by S. 18, the Board is empowered by S. 49 of the supply Act to impose such terms and conditions as it may think fit. Various agreements concluded from time to time between the petitioner-company on the one hand and the board on the other witness those terms and conditions. The last of such agreement entered into between the Board and the petitioner is of 12th Sept 1976 That agreement is valid for a period of five years only but can go on even beyond unless rescinded by the parties. Under the above agreement which is currently in force. The board undertook to supply the petitioner-company electrical power at the contracted demand of 5000KVA. It is necessary to note the method adopted by the board in supplying the power. The Board generates electrical power at a low voltage and steps up such power at the generating point itself to high voltage and then transmits it over long distances to the distributing points where once again it steps down the electrical power to its customers. This whole process of stepping up. Transmission and stepping down is treated as a part of the Board's indivisible duty to supply electricity under S. 18(b) of the supply Act. This process of stepping up and stepping down is a technical necessity and forms an essential part of the supply process. And must therefore be accepted for the purpose of this discussion as datum. Treating this entire process of stepping up and stepping down as a part of its statutory duty to supply electricity the board is supplying electricity to the petitioner. For the purpose of supplying electricity to the petitioner, the Board has erected 11K.V. transformer the 11 K.V. transformers so erected by the Board step down the high voltage electrical power transmitted by it from the generating point to the low levels of intensity as required by the petitioner-company. It is necessary to emphasise the fact that the electrical power as transmitted by the Board at high voltage is incapable of being used by the petitioner-company without subjecting it to the above process of stepping down. In other words the Act of supplying electricity by the Board to be commercially useful to the petitioner-company cannot be performed by the Board except by stepping it down and by supplying electricity by the Board to be commercially useful to the petitioner-company cannot be performed by the Board except by stepping it down and by supplying electricity at the required levels of voltage. Otherwise as noted above, the electrical power cannot be used by the petitionercompany. The above fact demonstrates that stepping down is an inseparable part of supplying the power. It follows that in order to discharge its statutory obligation of supplying electricity imposed by sec. 18(b) of the supply Act, the board cannot but step down the electricity. The Board should supply electricity at such low voltage at can be used commercially thus treating the process of stepping down as an integral part of its duty to supply. Mere supply of the electrical power at high voltage levels by the Board. Therefore cannot constitute supply of electricity within the meaning of the

supply Act. In fact all these years. While the board producing the electrical power and transmitting it at high voltage over long distance has been stepping it down by erecting its own 11 kv transformers to the level of intensity required by the petitioner-company the petitioner in its turn has been receiving the stepped down electrical power at 11 KV through its sub-station. It is this stepped down electrical power so received by the petitioner-company that is being used by the company in its manufacturing operations.

3. But it should be noted that by reason of the provisions of sec 49 of the above-mentioned supply Act the supply of electricity can be subjected by the Board to suitable terms and conditions But the power of the Board to impose those terms and conditions under sec. 49 of the supply Act should be read harmoniously with the statutory duty to supply electricity the Board is placed u/s 18(b) of the supply Act. It should therefore be held that those terms can neither add to nor subtract from the duty of the Board to supply under sec 18(b) of the supply Act. The board can impose those terms and not to impede it. The real nature of those terms is monetary. For the purpose of imposing those monetary terms and conditions. The board is following broadly the classification of electrical power made in R. 2 (1) (a) (iv) of the Indian Electrical Rules 1956 Adopting the above rules. The board has categorised its customers into four categories corresponding to the four categories of electrical power they are drawing they are low voltage medium voltage high voltage and extra-high voltage. As the petitioner-company falls within the category of high voltage consumer, the Board has been charging the petitionercompany at uniform tariff rates imposed under sec. 49 of the supply Act and applicable to all high voltage power consumers. All this would show that the terms and conditions the Board can impose do not enable the board to disown its statutory duty under sec. 18(b) of the supply Act Now Under sec. 49 of the supply Act the tariff rates the Board can impose should be uniform and be applicable to a class of consumers and not to a particular consumer.

4. Now the Board by means of the proceedings which are impugned in these writ petitions has directed the petitioner-company to avail itself of the supply of electricity at 33.000 volts in intensity instead of 11,000 volts intensity, by making necessary arrangements for erecting appropriate transformers and changing its supply system all within a period of six weeks the board threatened the petitioner of to bring in these alterationd by impodinh 2.5% extra amount on the billed amount.

5. The petitioner-company challenges th validity of the above proceeing of the board directing it to change its supply system from 11 Kv to 33 KV. The petitioner - company also challenges the above proceedings under which the board has assumed the power to impose additional charges at the rate of 2.5% as ultra vires of the power under the above supply Act. The argument of the learned counsel for the petitioner is that the board is acting ultra vires and contrary to its statutory obligations broadly noted above. It is argued that the board as a statutory corporation should supply electricity to the petitioner-

company at a voltage level that can be commercially used. The petitioner-company argues that the directions contained in the impugned proceedings of the Board are not lawful, because they are not consistent with the statutory obligation of the board under sec. 18(b) of the supply Act. The attempt to levy 2.5% extra amount should also fail according to this argument of the petitioner on the ground that the Board is imposing this extra amount as a means to coerce the petitioner to do a thing which they are not obliged to do. The petitioner-company say that the imposition of this extra charge is ultra vires of the powers of the board, because it is intended to bring about a result which is ultra vires of the powers of the Board to do. The additional charge is also questioned on the ground that it violates the conditions of the uniform tariff which are imposed by sec. 49 of the supply Act. The argument of the petitioner-company is that imposition of such an additional charge discriminates between one high voltage consumer and another high voltage consumer.

6. On the other hand the contention of the Board is that there is no statutory obligation imposed on the Board to supply electricity at the levels of voltage as required by the petitioner. According to the argument of the Board the supply at high voltage even without its being stepped down is a supply that falls within the meaning of sec. 18(b) of the supply Act and therefore constitutes compliance with the duty under that section. It is argued that the intention of the parliament is to confer the maximum of discretion on the board in all matters of supply of electrical power to the consumers and that by use of the words "terms and conditions" in sec 49 of the supply Act this intention of the parliament to confer wide discretion on the board to choose the quality of electrical power to be supplied is carried out. It is also said that this matter is essentially of a technical nature into which the Court should not readily intrude. It is also argued for the board that the impugned proceedings were issued in order to augment the revenues of the Board by avoiding transmission and transformation losses and also to avoid fluctuations in voltage in the supply of electricity. The Board argued that each particular individual consumer should not be in a position to dictate to the Board as to the type of electricity which should be supplied to him as that would lead to the breakdown of the whole system of supply. The system of electricity supply now devised by the Board is described by the counsel as a method to tone up and maintain the general health of the distributing system of the Board.

7. The pivotal point of this controversy as it appears is whether the Board's duty to supply electricity to the petitioner under S. 18(b) of the supply Act is discharged by merely supplying electricity at high voltage without the board itself stepping it down. To put it in other words. Whether the Board is not obliged under sec. 18(b) of the supply Act to supply stepped down power which can alone be used by the consumer commercially . in order to answer the above question. We have to read sec 18(b) of the supply Act 1948 section 18(b) of the supply Act is in the following terms:-

"Subject to the provisions of this Act the Board shall be charged with the following gneral duties namely:

(a).....

(b) to supply electricity as soon as practicable to a licensee or other person requiring such supply if the Board is competent under this Act so to do".

In this writ petition as no question regarding the legal and technical competence of the Board to supply electricity to the petitioner arises nor any question relating to the requirement of supply of electricity by the petitioner arises. We need not consider those aspects. The only question that falls for consideration is: What meaning should be given to the words "to supply electricity" occurring in sec. 18(b) of the supply Act?

8. It cannot be disputed that the Board being a statutory corporation can only Act in conformity with the provisions of the supply Act under which it is created Halsbury's Laws of England, vol 9. 4th Edition describes the power of a statutory corporation in these general terms:-

"Statutory corporations have such rights and can do such acts only as are authorised directly or indirectly by the statutes creating them....." (see para 1326)

The fundamental question that, therefore. Arises is whether the proceedings of the board which ar eimpugned in this batch of writ petitions are things and acts which can be regarded as having been authorised to be done either expressly or by necessary implication, by the terms of the above supply Act and can they be traced to the exercise of power of the Board under sec 18(b) of the supply. Act. In this connection we may note the argument of the Board that it is not altogether denying supply and cannot therefore be charged with non-compliance of duty under S. 18(b) of the supply Act. The Board is prepared to supply electrical power to the petitioner-company at high voltage. In a restricted and narrow sense that may be regarded as supply but neither the petitioner-company nor for that matter, any other consumer can ultise any electrical power of such high voltage without stepping it down. As already said above, stepping down is a technical necessity. The high voltage electrical power that the Board transmits has to be stepped down before it can be used. The question then is: Do the words in sec. 18(b) of the supply Act imposing a suty on the Board to supply electricity empower the board to supply may choose leaving to its customers to step down such high voltage electricity to an intensity that can be used by them commercially.

9. The Board is set up in the place of private parties for the purpose of supplying electricity for the consumers. The electricity is purchased by these consumers for running therir industries. HItherto the private parties that were producing and supplying electricity to the consumers were supplying electricity only after stepping it down. Even then the private operators were acting under the

regulation of law. All that has now happened is the Board has taken it over. There is no evidence anywhere in the supply Act to alter these arrangements between the consumer and the board.

10. It is to be noted that acceptance of the claim of the Board would amount to altering the ordinarily accepted meaning of the word "supply" . it is part of our conventional economic wisdom that man satisfies his economic wants and desires by obtaining supply of goods and services of his choice only. In general parlance, supply of goods or services to a person, is therefore spoken of as referring only to supply of such services or goods as desired and wanted by the consumer and not as dictated nor dumped by the supplier. The goods and services supplied to the consumer to satisfy his own wants and desires should be as the consumer lays down and not as the supplier dictates. The consumer alone can prescribe the quality and quantity of goods he chooses to purchase. Such goods alone can satisfy his wants. Supply being for the satisfaction of the wants of the consumer supply should be according to the desires of the consumer. This basic economic principle which survived so much of change in economic thought and science continues to form the foundation for the reign of consumer's sovereignty in market place even in its attenuated form. The language of sec. 18(b) of the supply Act and the obligation of the Board to supply electricity should be understood in the light of this basic economic principle. It should particularly be so where the goods and services are of a type like electricity which is so essential for the survival of modern life surrender of choice to the Board here means surrender of liberty of the individual in a vital area. Thus understood the supply of stepped down electricity by the Board alone can be construed as satisfying the legal requirements of sec. 18(b) of the supply Act. The contrary argument would involve imputing to the supply Act a far-reaching design to affect the basic rights of the consumer. The purpose of the supply Act is not to bring about such changes by subordinating the preferences of the consumer to the dictates of the Board. The supply Act merely replaces the private operators by a state authority in the matter of generating and distributing electricity. In the matter of consumer's right to purchase electricity his position is made by the supply Act no worse than it was before. The Electricity Board is selling electricity. The petitioner pays for it. Even in a totalitarian economy the preferences of the consumer in such a matter are not totally disregarded. Never those preferences can be thrown overboard so completely. Unless the language of a statute is so intractable the statute should not be interpreted in our mixed economy to take away the right of the consumer to choose the type of electricity which he requires for his business operations. I am therefore of the opinion that sec. 18(b) of the supply Act imposes a duty on the Board to supply stepped down electrical power that can be used by its customers commercially. It follows that it is part of the Board's duty to erect the required transformers that would step down the high voltage power. In Directing the petitioner to change the supply system from 11KV to 33KV the board is virtually directing the consumer to step down the electricity of high voltage supplied by the Board to low voltage. What

the statute expects the Board to do the Board is illegally compelling the consumer to do. It cannot therefore be considered as valid. Such duties which are expected by the supply Act to be done and to be performed by the Board itself and not by the customer cannot be transferred by the Board by its own acts to be done by the consumer. This is not a case where the petitioner is asking for the supply of electricity of an intensity of unknown voltage. For all these years, the petitioner has been receiving electric supply at 11 KV which is of a standard intensity. In view of the above. I hold that the impugned proceedings are liable to be struck down as being ultra vires of the statutory obligation of the Board to supply electricity of the Board to supply electricity u/s 18(b) of the supply Act I hold that the supply of electricity by the Board at commercially usable levels of voltage alone can be counted as fulfilment of the statutory obligation to supply electricity under sec. 18(b) of the supply Act and for that reason the impugned proceedings as invalid and Ultra vires.

11. But it is argued by Sri Anantha Babu for the Board that sec. 18(b) of the supply Act should be read not along with but subject to sec. 49 of the supply Act. Is this argument correct? S. 49(1) of the supply Act reads thus:-

"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 purpose of such supply frame uniform tariffs".

The argument of the learned counsel for the Board is that as sec. 49 of the supply Act authorises the Board to impose such terms and conditions as it thinks fit as a part of discharge of its duty under sec. 18(b) of the supply Act the impugned proceedings should be upheld by reading the duty to supply electricity under S. 18(b) of the supply Act as fixed and modified by the terms and conditions imposed by the board under S. 49 of the supply Act. I must say that this attractive argument is difficult to accept. The foundations for this argument lie in a faulty assumption that the statutory duty under sec. 18(b) of the supply Act can be subordinated to terms and conditions the Board may impose under sec. 49 of the supply Act. It is no doubt true that very wide language is used in sec 49 . but I think that that is its very undoing. A statutory duty of such vital importance for carrying out the intention of the supply Act into effect could not have been intended by another part of that very Act expressed in general and vague terms to be defeated by the exercise of an unspecified and general will of the very authority which is placed under that specific duty. Reading sec. 49 of the supply Act in the way suggested by the learned counsel for the Board would clearly offend the rule of interpretation that calls for a harmonious construction of all the parts of a statute Further sec. 49 speaks itself to be subject to the other provisions of the Act which include section 18(b). Being later in subordination, subordination of sec 49 to section 18 should prevail for the above reasons it appears to me that the duty to supply under sec. 18(b) of the supply Act which is statutorily paramount cannot be subordinated at least in its essential

parts of sec. 49 of the supply. As the power under sec. 49 of the supply Act cannot therefore be used by the Board to relieve itself from its obligation under 18(b) of the supply Act. The power under sec. 49 to impose terms and conditions according to the above reasoning can only be used to facilitate the discharge of the statutory duty of the board to supply and not to enable the Board to deflect from duty. Accordingly, I hold that the impugned proceedings cannot be regarded as imposing terms and conditions within the meaning of sec. 49 of the supply Act and therefore, reject the argument of the Board advanced in that behalf.

12. It is also argued by Sri Anantha Babu that the impugned proceedings can be treated as valid as imposing merely monetary terms on the supply. What Sri Anantha Babu says is that it is open to the petitioner even now to receive the supply at 11 KV by paying the extra amount of 2.5% on the billed amounts as an extra charge. I think that this argument cannot be accepted for two reasons. This argument has to be rejected firstly for the reason that the imposition of extra amount of 2.5% on the billed amount is being imposed not as a monetary condition but in order to coerce the petitioner to install a new transformer to receive 33 KV power. In other words the extra charges is being imposed as an extra burden on the consumer to coerce the consumer into submission and surrender to a scheme that I have already found to be ultra vires of the powers of the Board secondly, the extra levy should also fail for the reason that even considering it as a financial measure it would be ultra vires of sec. 49 of the supply Act under which the Board can only impose uniform tariff on all the consumers of high voltage power. The Board cannot impose extra amount of 2.5% on the billed amount without violating the condition of uniform tariffs imposed by sec. 49 of the supply Act. It may be mentioned here that this condition of uniform tariff is so vitally important for the just operation of the supply Act that the courts should enforce such a condition strictly any departure by the Board from that principle which the statute treats under sec. 49(1) as basic in the matter of fixing tariffs should be readily condemned by the courts not only on the ground of sec. 49(1) of the supply Act but also on the ground of equality before law and equal protection of laws guaranteed by the Constitution. The Supreme Court held in *Maharashtra State Electricity Board Vs. Kalyan Borough Municipality and Another*, and *The Adoni Cotton Mills Ltd. and Others Vs. The Andhra Pradesh State Electricity Board and Others*, that sec. 49 of the supply Act embodies principles of equality. The Orissa High Court ruled in *Kartik Enterprises v. Orissa State Electricity Board* AIR 1930 Orissa 3 that the Board in framing tariffs should act according to the principle of equality. If the Board is free to charge different consumers differently though belonging to the same category of users. The Board would be in a position to promote the business interests of one person while impeding. If not paralysing the trade interests of the others by the same Act. The supply of electricity is so vital to the production economics and the entire industrial activity forming such a major cost component that the Board if permitted to supply electricity at individualized rates showing undue favour to one while throwing undue burdens on the other will be in a

position to shower economic prosperity on a few and economic ruin powers of the Board are deservedly decried in the above *Kartik Enterprises v. Orissa State Electricity Board* (supra) at page 10 as constituting a statutory trust. This of course does not mean that the Board cannot classify the consumers for the purposes of supply. In fact, sec. 49 of the supply Act expressly authorises classification on the basis of nature of supply and the purposes of supply. What sec. 49 forbids is miniclassification. Within the same group there should be no tariff discrimination. The Board cannot allow concessional tariff rates to some favoured few within the same tariff group. It cannot write off arrears of electricity revenue lawfully due to the Board from the other selected few. Such acts can only be described and condemned by the courts as acts grossly illegal and wholly impermissible under the term of the supply Act apart from their being thoroughly immoral. The power of the Board can never be used to the benefit of a few and to the detriment of many. On the ground that the impugned proceedings do not follow the rule of uniform tariff rates I reject this argument too of the Board.

13. Sri Anantha Babu Attempted to justify the impugned proceedings also on the basis that they were issued to off-set the transmission losses and also transformation losses. I do not think that this argument can be accepted. I have already held that the impugned proceedings are not issued as permissible terms and conditions under sec. 49 of the supply Act but only as an attempt to coerce the petitioners to take over the responsibility to step down the electricity. Further the transmission losses or transformation losses cannot be a justification to depart from fixing uniform tariffs under S. 49 of the supply Act. Under That S. 49(1) Uniform tariffs are required to be framed taking into account the nature and purposes of supply. Individual losses cannot authorise the Board to fix differential tariffs. In fact, Sri Srinivasa Murthy argued that the imposition of 2.5% extra charge cannot be justified even from that point of view because he said 25% extra charge is far more than the transformation and transmission losses. This argument also fails.

14. There is also another ground on the basis of which the impugned proceedings should be declared as ultra vires of the powers of the Board. In the writ petition filed by the Ferro Alloys Corporation Limited Sreeramnagar (W.P. No. 3286/82). Para 5 of its affidavit states:-

"It may be mentioned at this stage the cost of each transformer which will have to be installed at each factory who are receiving the high tension supply will exceed Rs. 1 crore as per the estimates given by 3 or 4 companies who alone are manufacturing transformers within the country and Rs. 1 crore of infructuous capital expenditure will have to be incurred by the companies for the purpose of installing transformers will be nothing but an idle formality. It will not have the effect of increasing production or productivity. It is nothing but capital wastage and in the present context of credit squeeze no financial institutions will be prepared to advance this Rs. 1 crore for the purpose of infructuous capital expenditure as advances are made only for the plant and machinery which will

have the effect of increasing production or productivity and apart from that to get liquid cash and to waste on this Rs. 1 crore is meaningless it is not going to benefit anyone and it will be a national waste and only have the effect of increasing the cost of production of various materials manufactured as not only interest of Rs. 1 crore will be taken into account while preparing profit and loss statement but also depreciation on the transformers installed. It will also have the effect to further increasing the inflation which is already prevalent in this country".

In the counter-affidavit filed by the Board on 8-6-1982 I do not find that this specific allegation has been denied. I find similar complaints in several other writ petitions also in which Mr. Srinivasamurthy appears. I am inclined to agree that the implementation of the Board's proceedings in an additional capital expenditure of about Rs. 1 crore Taking that fact into consideration and examining its implications to the capital structure of these industries the reaching of the conclusion that the proceedings of the Board are an instance of an unreasonable exercise of statutory powers appears to me to be unavoidable. Whatever may be the powers of the Board, they certainly do not include an authority to order the industries to alter the capital structure of an industry so profoundly as the Board is now attempting to do. The Board cannot, in my opinion . Legally compel a consumer to invest such huge amounts of money on its fixed capital increasing its costs structure such an exercise of power by the Board. In my opinion goes far beyond the limits of authority conferred on the Board. Alternatively it also amounts to the exercising of statutory powers unreasonably. Every legal power should be exercised fairly and reasonably. This rule of universal application is clearly applicable to the exercise of all statutory powers this rule applies with particular force to the exercise of monopoly powers this rule applies with particular force to the exercise of all statutory powers. This rule applies with particular force to the exercise of monopoly powers concentrated in the hands of a public utility, like the electricity Board that generates and distributes electricity basing on the per capita consumption of which the level of modern civilization is measured the scarcities created by God and nature are turned by man into bounties more by the use of electricity than by the use of any other power or prayer. With abundance of electrical power alone our democratic Republic can secure to its citizens justice liberty and equality. The success of the Board in economically producing electricity and rationally distributing it determines largely the degree of our economic progress. The Board has been given enough powers for the achievement of these objectives. But the all important powers of the Board should be carefully exercised so as to promote the industrial and agricultural growth. But in this case the Board by requiring the industries to instal transformers and change their internal system of receiving electricity that would cost them around Rs. 1 crore is imposing unconscionably higher costs of production. The result of such an inflated cost structure of any industry would surely be to cripple it to stand in competition with similar

industries in other states and in other countries. Such use of power cannot in my opinion. Be considered to be a reasonable exercise of power. For this reason also the impugned proceedings are liable to be set aside.

15. For all the reasons mentioned above. I allow this batch of writ petitions with costs and quash the impugned proceedings in B.P. Ms. No. 607, commercial dated 21-7-1981 and an appropriate writ will issue.

16. Writ petitions allowed.