
(1988) 02 RAJ CK 0016

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 210, 209, 204 of 1975 and 2972 of 1974

Ashok Foundry and Metal Works (P) Ltd.

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 10-02-1988

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Electricity (Supply) Act, 1948 — Section 10, 11, 18, 21, 22

Citation : (1988) WLN 219

Hon'ble Judges : Guman Mal Lodha, Acting C.J.;Pana Chand Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.C. Jain, J.—In these writ petitions, the petitioners who are manufacturers in engineering goods, have challenged the Notification No. GSR 38 dated 28th May, 1974, by which new tariffs for the supply of electricity were introduced by respondent No. 2. The challenge of the petitioners is confined to minimum charge in respect of engineering industries.

2. The facts of the case lie within a very narrow compass and may be stated thus.

3. The Rajasthan State Electricity Board (here in after referred to as the Board), which is a corporation constituted by the State of Rajasthan u/s 5 of the Electricity (Supply) Act, 1948, is supplying electricity to the petitioner's factories situated in Jaipur at High tension voltage of 11 KV. The facts of the cases are more or less similar, we, therefore, refer the facts of the case of M/s Ashok Foundry and Metal Works (P) Ltd., Jaipur v. The State of Rajasthan D.B. Civil Writ Petition No. 210/1975. When the petitioner M/s. Ashok Foundry and Metal Works (P) Ltd., commenced its work in 1971, the petitioner company was governed by the tariff under Notification No. PS/ CH/F. 219/D. 1315 dated 18th March, 1964 and Schedule 8 Large Industrial Loads (Schedule HS/LP/HT-1). The two part tariff was applicable. Under the said tariff different rates were prescribed for different types of service. The tariffs prescribed in 1964 were revised by the

respondent Board by Notification dated 28th May, 1974 and the new tariff came into force from the billing month of July 1974 or the consumption month of June, 1974. In the new tariff, the two part tariff was done away with and the charges were fixed on the total consumption of energy at the following rates:

Rate of charges:

(1) First 5 lacs KWH at rate of 18 Paise KWH; (2) Next 10 lacs KWH at rate of 16 paise per KWH; (3) Over and above 15 lacs KWH at rate of 14 paise per KWH.

4. Monthly minimum charges had also been fixed at 150 Units per KVA per month of the contract demand.

5. It may be mentioned here that the petitioner and respondent No. 2 entered into a written agreement on 4th December, 1970 under which the contract demand was fixed at 1000 KVA, meaning thereby that respondent No 2 was committed to supply electricity about 1000 KVA continuously during the period of agreement to the petitioner and the petitioner was not committed to take extra energy over and above 1000 KVA. Under the said agreement, the petitioner was liable to pay electric charges as below:

Demand Charges Rs. 6,150/- Energy charges at rate of 7 paise for first 50,000 units, 6.75 paise per unit for the next 1,50,000 Units; 6.50 Paise for the next 3,00,000 Units and Rs. 6.25 Paise over 5,00,000 Units

The average consumption of the petitioner company being about 42,000 Units per month the monthly energy charges came to Rs. 2,940/- Rs. 2,940/-
_____ Rs. 9,090/- _____

6. In the agreement, the petitioner has averred, inter alia, that it provides a clause by which the petitioner was bound to consume electric energy and to pay the minimum charges even if no actual consumption was made. The case of the petitioner is that while formerly when the old tariff was in force, the petitioner was paying Rs. 10,500/- including 15% surcharge for consuming 42,000 units electricity, but it is now required to pay for 1,50,000 units by way of minimum charges per month according to the following formula:

1000 KVA x 150 Units = 1,50,000 units at rate of 18 paise per Unit i.e. Rs. 17,000/-

7. It is, thus, contended by the petitioner that the new tariff has increased the expenditure of industry of power alone by more than 275% which no industry can bear especially engineering industries which are facing recession. It is further stated by the petitioner that its factory cannot be run every day for all the 24 hours and there are strikes, lock outs, breakage of machinery, civil commotion want of availability of raw materials, reduction in sales etc. It may also be pointed out that formerly if the factory was closed, the minimum charges that the petitioner was required to pay were Rs, 6,150/-; but, now if the factory is closed, the minimum charges the factory is required to pay are Rs. 27,000/-.

Thus, the minimum charges have increased to more than 4 times of the original amount.

8. The petitioner has, thus, contended that it has been put to heavy loss on account of the so called minimum charges apart from the increase in the rates of the charges and replacement of the old two part tariff system by one part tariff. Further the petitioner has submitted that a joint representation was sent on behalf of the Rajasthan Iron Steel and Re-Rollers Association, which comprised of a number of Iron and Steel Factory owners to the Chief Minister, the Power Minister the Industries Minister etc. on 25-10-1974; but no heed was paid to it. However, respondent No. 2 under its Notification dated 3rd January 1975, modified for the purpose of fixing the monthly minimum charges and Schedule LP-SD-I the Tariffs for Supply of Electricity, 1974 as below:

(i) For consumer having a contract 100 Units per KVA per month of demand above 125 KVA upto 1000 KVA the contract demand

(ii) For consumers having a contract 130 Units per KVA per month of demand above 1000 KVA the contract demand

9. Subsequently, respondent No. 2 under the Notification 26th Nov., 1975 has further amended the Tariffs for Supply of Electricity, 1974 and fixed the tariffs of Schedule LP/HT-I under high tension Part-II as below:

VIII. Large Industrial Loads:

Applicability: Available as primary power to large industrial power consumers and Water Works for Public Supply having a contract demand of above 125 KVA.

Rate of Charge:

ALTERNATIVE-I

First 5,00,000 Kwh. Per month: 18 P. Per Kwh Next 10,00,000 Kwh. Per month: 16 P. Per Kwh All above 15,00,000 Kwh. Per month; 14 P. Per Kwh

Note: The consumer shall not cause a demand more than his contract demand. In case he causes a demand of more than 5% (five per cent) over and above his contract demand, apart from being disconnected the consumer will be required to pay one Paisa per Kwh. extra over and above the rates mentioned above.

ALTERNATIVE-II Demand Charges: Rs. 16/- per KVA per month of the billing Plus month Energy Charges:

First 2,00,000 Kwh. Per month: 15 P. Per Kwh Next 3,00,000 Kwh. Per month: 14 P. Per Kwh For next 5,00,000 Kwh. Per month: 13 P. Per Kwh All in excess: 10,00,000 Kwh. Per month: 11 P. Per Kwh Note: The consumer shall not cause a demand more than his contract demand In case he causes a demand of more than 5% (five per cent) over and above his contract demand, apart from being disconnected the consumer will be required to pay one paisa per Kwh. extra

over and above the rates mentioned above. Monthly Minimum Charges:

(a) (i) For consumers having a contract 100 Units per KVA per Demand above 125 KVA and upto month of the contract 100 KVA demand (ii) For consumers having a contract 130 Units per KVA per demand above 1000 KVA month of the contract demand (b) For approved seasonal factories, the monthly minimum charges shall be reckoned at rate Of Rs. 75/- per KVA per year of the contract Demand, OR on the highest maximum Demand registered in any month during the year which ever is higher. This will not Include the consumption charges during the off season.

2. FOR ALTERNATIVE-II

(a) The maximum demand charge on the billing Demand defined here in after.

(b) For approved seasonal factories, the monthly minimum charges shall be reckoned at rate of Rs. 75/- per KVA per year of the contract demand. OR on the highest maximum demand registered in any month during the year which ever is higher. This will not include the consumption charges during the off season.

Payment:

The above rates are net. In the event that the monthly bill is not paid in full within the date specified on the bill, a surcharge of 2% shall be levied on the unpaid amount of the bill for each 30 days successive period or part Thereof, until the amount is paid in full.

10. It is further stated by the petitioner the respondent No. 2 has further, under its letter dated 5th December, 1975, informed the petitioner that the petitioner company has been given the option of accepting either of the two alternatives within a month from the date of publication of the Notification to the Controlling Assistant Engineer under intimation to the Executive Engineer, CD-I, failing which it will be presumed that the Company has not opted for II Part Tariff as per Alternative-II and the I Part Tariff as per Alternative-I will be continued to be made applicable. The petitioner has thus, challenged the Notification on the ground that the minimum charges fixed out of all proportions and is not based upon any realistic estimates. The petitioner has also challenged the provisions of Section 59 of the Electricity (Supply) Act, 1948 on the ground that it contravenes Act. 14 of the Constitution of India in as much as naked power has been given to the Board to fix and adjust its charges according to its own sweet will without laying down any guide lines for the same. On the same grounds Section 49 of the Electricity (Supply) Act, 1948 has also been challenged. In short, the case of the petitioners is that arbitrary increase of minimum charges @ 450% is contrary to rational, economical and reasonable principles, as the minimum charges should be on the guide lines laid down u/s 46(6) of the Electricity (Supply) Act, 1948 and should relate to a past or prospective demand of the person consuming electricity. The minimum charges cannot be increased at the rates of units of

electricity consumed by the petitioner. It is contended in this regard that the petitioner is expected to work at one sheift and it is only when there is abundant supply of raw materials and ready market for the goods at proper prices that the shifts may be increased from one to two or three. For all estimates only one shift is taken into consideration for the purpose of calculating the normal production of a factory. It is also contended that no rerolling factory works at a load of more than 60% and for a factory of the type of the petitioner the load factor is 30%.

11. In the reply submitted by respondent No. 2, it is submitted that the petitioner is under a contract with respondent No. 2 and as per Clause 16(b) of the agreement the petitioner has agreed to pay the charges for electricity as may be modified or altered by the Board by issuing a notification. It is further submitted that both u/s 49 of the Electricity (Supply) Act, and Clause 16(b) of the agreement, the Board has unilateral power to fix tariff and to amend the same from time to time and the petitioner cannot question it. It is submitted that the tariffs are framed by the Board under statutory power and the same cannot be made justiciable in a court of law. It is also averred that the there are sufficient guide-lines for fixing tariffs and all such factors which are necessary for the purpose are taken into consideration before the present tariffs including the minimum charges were framed. Respondent No. 2 has also submitted that the petitioner was given an option to choose between the two systems of charging namely, the single part tariff and the two part tariff and in case the petitioner thought that the two part tariff was advantageous, it had the choice to adopt it and inform the Board. It is also submitted by the Board that the one part tariff and two part tariff are different methods of charging and in both, there is a provision for minimum charges. The Single part tariff provides minimum charge as such, while in the two part tariff the demand charges are in fact the minimum charges which are payable whether any consumption is made or not. The Board has also pointed out in the reply that minimum charges are fixed on the basis of the contracted load because the Board has to keep a part of the plant capacity reserve for the petitioner as per the agreement, which he can utilise at any time of the day. It is for the petitioner to consume electricity to the extent so as to cover the units chargeable tinder the minimum charges. If the consumer only conusmes one unit per month, it cannot be said that the cost per unit is equal to the minimum charges. The tariff is framed with the idea that the consumer will consume electricity in proportion to the contract demand. The Board has denied that the rates are being increased to the extent contended by the petitioner. It is also pointed out by respondent No. 2 that fixing of minimum charges is an integral part of the tariff. The two part tariff which was in force earlier and which has again been introduced now is divided into two components; the one proportion to Kwh consumption and the other on a quantity supposed to depend upon the maximum demand. The first component being the unit charge and the second a fixed charge independent of consumption. The fixed charge may be assessed from the so-called connected demand or the combined KW capacity of all the power consuming devices. Emphasis has also been laid by respondent No.

2 that since electricity cannot be stored; it must be generated as it is required. The further submission of respondent No. 2 is that Section 49 of the Electricity (Supply) Act, 1948 gives abundant power to the Electricity Boards to frame their own tariffs after taking into account the various factors mentioned therein and elsewhere in the Act. This power is subject to many, checks imposed upon the Boards under the various provisions of the Act. Thus, Section 49 or Section 59 of the Electricity (Supply) Act cannot be assailed on the ground of arbitrariness.

12. Thus, the case of the petitioner is that the minimum charges which have been provided in the new tariff are out of proportion, arbitrary and against the provisions of the Electricity (Supply) Act, 1948 and we are required to examine whether this contention of the petitioner is well founded.

13. Production, supply and distribution of electricity is governed by two enactments viz. the Electricity Act, 1910(hereinafter referred to as 1910 Act) and the Electricity(Supply)Act, 1948(hereinafter referred to as 1948 Act).While 1910 Act regulates the law relating to supply and use of electrical energy where the intention of the Act is to impost certain duties and liability on licensee and other persons to supply electrical energy in an area for which a licence or permission is granted. It provides the procedure for grant of licence to electrical under takings, the 1948 Act, on the other hand, was enacted when the Government felt that the 1910 Act was not adequate to deal with the emerging new situation with accelerated demand for power or to fit into the changing pattern of industrial revolution. 1948. Act, thus provides for rationalisation of production and supply of electricity and providing for taking measures conducive to electrical development. 1948 Act provides for the rationalisation of the production and supply of electricity and organisation and development of grid system on quasi-commercial lines and for the constitution of semi autonomous body like the electricity board to administer "gird system". The two enactments referred to above are supplementary to each other. The scheme of 1910 Act provides fixation of charges for electricity supply by a licensee under the said Act under an agreement between the licensee and the consumer. 1948 Act contains more specific provisions with regard to framing of tariffs by the Electricity Boards, Generally there are the following three types of tariffs:

[1] Flat rate tariff in which both the components of the charge viz. the running cost and the standing costs merged and a flat rate per Kwh of consumption is prescribed;

[2] Two part tariffs in which the charges for the supply is divided into two components; the first component being the unit charge is proportional to the Kwh consumption and the other component is a fixed charge independent of consumption which is dependent upon the maximum demand; and

[3] Block rate tariffs, wherein the fixed charge is merged into the unit charge for one or two blocks of consumption and different rates are prescribed for each block.

14. There is a general practice that while formulating the tariffs a provision is made for the levy of certain minimum charges by way of protection to the supplier against the non-use or negligible use of its service. It is an admitted case of the parties to the petition that there is a provision in tariff for minimum charges. The challenge of the petitioner in the writ petition is that the minimum charges have been disproportionately increased and while increasing the rates the Board has not taken into consideration the various obligations which are placed upon it by the aforesaid enactments. Shri Paras Kuhad, learned Counsel for the petitioner has submitted that though the Board has statutory obligation to supply available electricity to every person on his requisition and the liability of the consumer is to pay the minimum charges which are based on a reasonable return to the Board on the capital expenditure incurred by the Board to meet the possible maximum demand of the consumer and this amount, as indicated by the first proviso to Clause (6) could not exceed 15% of the cost of the service line, required to comply with the requisition of the consumer. Thus, the contention of the learned Counsel for the petitioner is that enhancement of the electricity charges as per the new tariff is violative of Clause (6) of the Schedule to 1910 Act, as the reasonable return, as indicated by the statute cannot exceed 15% of the cost of the service line required for making the supply to the consumer. In this regard, Shri Paras Kuhad, learned Counsel for the petitioner, has placed reliance on DCM Ltd. and Anr. v. Assistant Engineer (HMT Division), RSEB, Kota and Anr. 1987 (2) RLR 1. He has also placed reliance on Saila Bala v. Darjeeling Municipality AIR 1935 cal 265 and, on the basis of that authority it is submitted that a minimum charge is not really a charge which has for its basis the consumption of electrical energy. It is really based on the principle that every consumer's installation involved the licensee in a certain amount of capital expenditure in plant and mains on which he is to have a reasonable return. He gets a return when energy is actually consumed, in the shape of payments for energy consumed;

15. In order to appreciate the contention of the learned Counsel for the petitioner, let us examine what is the meaning of minimum charges and maximum demand. Maximum demand has been defined as under:

(8) "Maximum demand" in relation to any period shall, unless otherwise provided in any general or special order of the State Government, mean twice the largest number of kilowatt-hours or kilovolt-ampere hours supplied and taken during any consecutive thirty minutes in that period.

16. "Minimum charge" has not been defined under the provisions of the aforesaid enactment. There is a general practice that while formulating the tariff a provision is made for laying certain minimum charges by way of protection to the supplier against non-use or negligible use of the service. The purpose for providing levy of minimum charges has been dealt with by this Court. In Dokhal Ram v. RSEB and Ors. S.B. Civil Writ Petition 173/77 decided on 21st October, 1978 along with other writ petitions, wherein learned Single Judge of this Court

observed as follows:

The justification for such a minimum charge in the tariff lies in the fact that though the consumer does not in fact avail himself of his service, the supplier has to maintain in readiness a plant and organisation which may be tapped at any moment by a consumer by the turn of a switch in his home. The provision for a minimum charge in contracts for supply of electricity has long been in force in England and the consumer is held liable for the minimum charges notwithstanding his having consumed no electricity. The same is the position in the United States of America.

17. The levy of the minimum charge has been justified by the Punjab High Court in *Watkins Mayor and Co. Vs. Jullundur Electric Supply Co. Ltd.*, on the ground that every consumer's installation involves the licensee in a certain amount of capital expenditure in plant and mains, and labour on which he is entitled to a reasonable return.

18. In *The Amalgamated Electricity Company Ltd. Vs. The Jalgaon Borough Municipality*, their Lordships of the Supreme Court, while dealing with the provisions of minimum charges in the agreement have observed as follows:

9. More over it is obvious that if the plaintiff company was to give bulk supply of electricity at a concessional rate of 0.5 anna per unit it had to lay down lines and to keep the power ready for being supplied as and when required. The consumers could put their switches on when ever they liked and, therefore, the plaintiff had to keep every thing ready so that power is supplied the moment the switch was put on. In these circumstances it was absolutely essential that the plaintiff should have been ensured the payment of the minimum charges for the supply of electrical energy whether consumed or not so that it may be able to meet the bare maintenance expenses.

19. In order to appreciate the submissions made by Shri Paras Kuhad, let us examine as to what are the provisions which empower the Electricity Board to frame tariff. Section 18 of 1948 Act prescribes the general duties of the Board and it is as follows:

18. General duties of the Board: Subject to the provisions of this Act, the Board shall be charged with the general duty of promoting the co-ordinated development of the generation, 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 any licensee, and without prejudice to the generality of the foregoing provisions it shall be the duty of the Board(s) to get prepared and carry out scheme sanctioned under Chapter V.

20. Section 49 of the Electricity (Supply) Act, 1948 provides as under:

49. Provision for the sale of electricity by the Board of 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 condition for the supply of electricity the Board shall not show undue preference to any person.

21. Section 59, as it stood prior of 1978, was as follows:

Section 59 General principles for Board's finance: "The Board shall not as far as practicable and after taking credit for any expenses from the State Government u/s 63, carry on its operations under this Act at a loss, and shall adjust its charges accordingly from time to time;

Provided that where necessary any amounts due for meeting the operating, maintenance and management expenses of the Board or for the purposes of Clauses (i) & (ii) of Section 67 may, to such extent as may be sanctioned by the State Government, be paid out of capital.

22. In this connection, reference may be made to Clause VI of the Schedule to the Indian Electricity Act, 1910, which is as follows:

VI Requisition for supply to owners or occupiers in vicinity (1) where after distributing mains have been laid down under the provisions of Clause IV or Clause V and the supply of energy through these mains of any of them has commenced, a requisition is made by the owner or occupier of any premises situate within the area of supply requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition

or within such longer period, as the Electricity Inspector may allow supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply energy in accordance with the requisition:

Provided, first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it--

[a] within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the State Government duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will assure to the licensee at the current rates charged by him, an annual revenue not exceeding fifteen percent of the cost of the service line required to comply with the requisition, and....

23. Shri Paras Kuhad, learned Counsel for the petitioner, submits that the observations made by this Court in DCM Limited and Anr. v. A.En (HMT), RSEB Kota (supra) that the liability of the consumer is to pay the minimum charges which would ensure a reasonable return on the capital expenditure incurred by the Board to meet the possible maximum demand of the consumer and this amount as indicated by the first proviso to Clause 6 should not exceed 15% of the cost of service-line, required to comply with the requisition of the consumer, Shri Kuhad, thus, wants to make capital out of the observations made by a division bench judgment of this court in the DCM's case (supra).

24. Controverting the submissions made by Shri Kuhad, Shri H.P. Gupta learned Counsel for the respondent Board, submits that the observations made in DCM's case (supra) should be taken into consideration in the back-ground in which these observations have been made. Shri Gupta placed reliance on Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others, and submits that the proposition of law laid down therein clinches the issue. In that case, the Supreme Court has clearly laid down that Section 49 empowers the Board for framing tariffs and the Board is to take into consideration the provisions of Section 18(a) and Section 49 of the 1948 Act while prescribing tariffs for the sale of electricity. The Supreme Court in Kerala State Electricity Board's case (supra) laid down that Section 59 clearly indicates that it is the mandate of Parliament that the Board should adjust its tariff so that the Board should not run at a loss. This was the position prior to 1978. But after Section 59 was amended and as it stands today the position is that after meeting the various expenses properly required to be met a surplus is to be left. In that case the Supreme Court pointed out that the original negative approach of functioning so as not to suffer a loss is replaced by the positive approach of requiring a surplus to be created. The quantum of surplus is to be specified by the State Government. What the State Government is to specify is the minimum surplus. This is made clear by the 1983 amendment which stipulates a minimum of 3 percent surplus in the absence of specification by the State Government which has the liberty to specify a higher

percentage than three. In *Maharashtra State Electricity Board Vs. Kalyan Borough Municipality and Another*, the Supreme Court after analysing Section 49 of the 1948 Act laid down that Section 49 empowers the Board to frame uniform tariffs and it has also indicated in Sub-sections (1) and (2) the factors to be taken into account in fixing uniform tariffs. Sub-section (3) further makes it clear that under special circumstances the Board has got power to fix different tariffs for the supply of electricity. In that case the vires of Sections 49 and 67 were also challenged, and the Supreme Court held that levy of a uniform tariff by the Board does not amount to a colourable exercise of taxing power of the Parliament. In that judgment it was also held that the provision does not give an unguided and arbitrary powers to the Board to fix tariff as it likes as there are sufficient restrictions and directions in the provision required to be complied by the Board in fixing uniform tariff or different tariffs. In *Dokal Ram v. RSEB and Ors.* (supra), this Court laid down as follows:

In my view Clause VI of the schedule is in the nature of an enabling clause which permits the respondent Board to require a consumer to assure to the Board a return on the cost incurred by the Board in providing the service line to the consumer. The said clause cannot be read in a restrictive sense so as to curtail the power of the Board to provide a minimum charge so as to assure to the Board a reasonable return on the capital expenditure on plant etc. I am also in agreement with the contention urged on behalf of the respondent Board that the Additional revenue contemplated in Clause VI of the Scheme to the 1910 Act to provide for a return on the cost of service line cannot be equated with the minimum charge which a supplier of electricity can impose under the tariff framed by it for the purpose of receiving a reasonable return on the capital expenditure on the plant. The provisions of Clause VI of the Schedule cannot, therefore be construed as a limitation on the power of the Board to frame a tariff u/s 49 of the 1948 Act so as to make provision for a minimum charge.

25. *Dokal Ram's* case was further carried in an appeal before the Division Bench and the Division Bench in *Bahadur Ram v. Rajasthan State Electricity Board, Jaipur and Ors.* DB. Special Appeal No. 2 of 1979, decided on 21st July, 1979] approved the judgment of the learned Single Judge dated 21st October, 1978. Thus, the observations made in *Dokal Ram's* case (supra) regarding Clause VI of the Schedule to the Act of 1910 make the position clear that it is merely an enabling clause and does not restrict the power of the Board to provide for minimum charges so as to ensure to the Board a reasonable return on the capital expenditure on plant etc. Further in view of the mandate of the Parliament that the Board should adjust its tariff in such a way that it does not carry on its operation under the Act at a loss, as is provided u/s 59 and as discussed in *Kerala State Electricity Board's* case (supra) clearly confers powers on the Board to fix uniform tariff within the parameters laid down u/s 49 read with Section 59 of the Act.

26. The observations made by the Division Bench in *DCM's* case were only with

respect to the question which was raised in that petition as to whether a writ petition challenging a statutory contract is maintainable or not. The specific question that is required to be dealt within this case arose in Dokal Ram's case and, thus, the principles of law laid down in Dokal Ram's case are to be preferred than the observations made by this Court in DCM's case. The case of Dokal Ram is nearer to the instant case as far as the dispute about the power of the Board to revise its tariff is concerned and DCM's case cannot be considered as a precedent in this regard. A precedent is an authority for what it decides and not what can be deduced from it. With regard to minimum charge in Dokal Ram's case this Court agreed with the submission of the learned Counsel for the Board that Clause VI of the Schedule to the 1910 Act, does not refer to the minimum charges as commonly understood but refers to the minimum guarantee revenue which is different from the minimum charge." This Court also agreed that the minimum charge is in respect of the entire capital investment of the supplier, the minimum guarantee revenue contemplated in Clause VI of the Schedule is intended to cover the return on the additional expense incurred in providing the service-line to the consumer. And we are in perfect agreement with the view expressed by this Court in Dokalram's case.

27. Thus, we are of the view that while framing tariff the powers of the Board are not restricted to the provisions contained in Clause VI of the Schedule to the 1910 Act only. In fact, these provisions are meant for the licensee and obligation of the Board and obligation of the licensee are quite different as would be evident from the provisions of Section 26, which provide that subject to the provisions of the Act of 1948, the Board shall in respect of the whole State have all the powers and obligation of licensee under the 1910 Act. Proviso to Section 26 provides that nothing in Sections 3 to 11, Sub-sections (2) and (3) of Section 21 and Section 22, Sub-section (2) of Section 22A and Sections 23 and 27 of that Act or in Clause I to V, Clause VII and Clauses IX to XII of the Schedule to that Act relating to the duties and obligations of a licensee shall apply to the Board. Proviso to Section 26 further laid down that the provisions of Clause VI of the Schedule to that Act shall apply to the Board in respect of that area only where distribution mains have been laid by the Board and the supply of energy through any of them has commenced. Thus, it was only in a restricted way that the provisions of Clause IV of the Schedule to 1910 Act were made applicable to the Board. Shri Paras Kuhad, learned Counsel for the petitioner, also submitted that the various particulars on the basis of which the Board has framed its tariff have not been provided to the petitioner, in the absence of which he is unable to challenge the vires of the tariff in a proper manner.

28. Shri S.C. Agrawal, learned Counsel for M/s Man Industrial Corporation, submitted that the provisions in the tariff regarding minimum charges, so far it relates to petitioner's engineering industries, is bad in law as the Raj. State Electricity Board being a State within the meaning of Article 12 and a public instrumentality is not at liberty to charge any fantastic price on its caprice, it is rather bound to act reasonably in the matter of fixation of minimum charges and

further the Board was bound to file a return placing all its cards on the table by giving details of the price component. Shri Agrawal places reliance on an unreported judgment of the High Court of Gujarat, *The Association of Natural Gas Consuming Industries of Gujarat and Ors. v. The Oil and Natural Gas Commission and Anr.* Special C.A. No. 883/79, decided on 30th July, 1983 wherein the following proposition of law is laid down:

...acting reasonably even in the matter of executive action in the spirit of the Constitution which permits all State action, either statutory or executive. Even if any piece of legislation does not provide for a State agreeing to act reasonably, one must read into it, a provision of that nature in order to make that act not running counter to the Constitution.

29. In that case, the Oil and Natural Gas Commission, which is a statutory corporation under the provisions of the Oil and Natural Gas Commission Act, 1959 was attacked that it had thrown to the winds all those prima facie reasonable criteria for arriving at a price to be charged by a public undertaking. The price of the gas which was charged at Rs. 50/- per 1000 cubic metre upto the year 1971 came to be changed at Rs. 504/- for the period 1-4-1978 to 31-3-1979. The Court further observed that during the pendency of the petition it shot upto Rs. 2400/-. In the circumstances, the Gujarat High Court observed that to an ordinary man in the street and to a man with commonsense 30 times rise in the span of decade would be indicative of the prima facie unreasonable character of the escalations.

30. We may observe that the aforesaid case of the Gujarat High Court is distinguishable. It was a case where certain duties were required to be performed by the ONGC by the Statute, but no price fixation for the sale of gas is provided in the statute as is provided in the statute dealing with electricity and road transport etc. Further u/s 49 of the Electricity (Supply) Act, 19, 48 does not give an unguided and arbitrary power to the Board to fix tariff as it likes. The Board is required to comply with directions as contained in the said provision and sufficient restrictions are also laid down therein. While Section 49 authorises the Board to revise its tariff, u/s 59 of the Act, the Board is required to adjust its tariff so as to ensure that it does not run in loss. In our opinion the said case in no way helps the petitioner. In the instant case, the Board has revised its tariff with a view to reduce its losses on account of the increase in the various commodities and the revision has taken place almost after a lapse of 10 years. The complaint of the petitioners is that they have not been given any details with regard to price fixation, which is prima facie highly excessive and extortionate. In the circumstances, naturally a question arises as to on whom the onus lies to convince the conscience of the Court that the Board has acted arbitrarily or in any way unreasonably and unjustly in the matter of fixing its prices. It cannot be disputed that initially it is for the petitioners to make the Court feel that pinch of course prima facie. We are of the opinion that no material has been placed by the petitioner to show prima facie that in escalating the rates the Board has

acted unreasonably or arbitrarily. The various reasons given by the Board for revision of tariff appear to be reasonable. It is true that if the Board starts functioning in an unreasonable and arbitrary manner, its act will be subject to a review by this Court.

31. If we read Section 49 of the Act of 1948, it reveals that while framing tariff the Board is required to take into consideration the nature of the supply and the purpose for which it is required. The nature of supply is related to the voltage or supply i.e. low tension or high tension and it does not take into consideration the nature of particular requirement of a particular consumer. It is true that the Board has to take into consideration the needs of the consumers falling in the broad categories and to frame the tariff accordingly.

32. We are of the opinion that no case has been made out by the petitioner for making any interference in the tariff framed by the Board. The Board had the power to frame tariff, to make necessary modifications in the previous tariff in order to meet the expenses required to be met. There seems to be justification for modification in the tariff as the previous tariff was framed in the year 1964 and the revision was made thereafter after a lapse of 10 years when the prices have gone up. Further there is no justification for challenging the clause with regard to minimum charges as the petitioner itself is responsible as it is not properly utilising the power supply given to it under the agreement. The petitioner could have run the factory in three shifts, but is running the factory some time in one shift and two shifts only. In case, the petitioner felt that it was unable to consume the electricity to the extent of the contract demand, the option was with it to terminate the contract by giving notice as is provided under the contract. There is no merit in the contention that the Board has changed the method of charging electricity by resorting to one part tariff from two-part tariff, because even under the new tariff both modes of charging electricity are available to the petitioner. It was required to give its option, either for two-part tariff or one-part tariff. The petitioner did not avail even that option. Thus, no case is made out for challenging the minimum charges. In view of Maharashtra State Electricity Board's case (*supra*) there is no merit in the challenge to Sections 49 and 59 of the 1948 Act.

28. In the premises aforesaid, there is no merit in these writ petition and the same are dismissed with no order as to costs.

29. Shri H.P. Gupta, learned Counsel for the respondent Board, has submitted that a huge amount is outstanding against the petitioners on account of stay orders granted by this Court. As the writ petitions are being dismissed, the stay orders are vacated. Consequently, the petitioners are required to pay arrears of electricity charges. We therefore direct that respondent No. 2 shall give details of the arrears of electricity charges to the petitioners within one month of the passing of this order and the petitioners thereafter on receipt of the demand for payment shall pay the amount due to respondent No. 2 within two months thereafter. In case the arrears are not paid within the aforesaid period, the

Electricity Board shall be at liberty to resort to the powers given to it u/s 24 of the 1916 Act for disconnecting the power supply and shall further be entitled to charge interest at rate of 12 percent from the date the amount have fallen due.