

(1996) 02 SC CK 0260

In the Supreme Court Of India

Case No : Civil Appeals No. 6320 Of 1994 With Nos. 6321-25, 7398-99 Of 1994, 678, 680, 681-84, 679, 903, 1036, 3032, 5692, 5613, 5693, 5694 And 7419 Of 1995, Slps (C) Nos. 13398, 16043, 16375, 3635, 6017, 6217, 6280, 8363, 19266 And 8068 Of 1995

Bihar State Electricity Board and Another	APPELLANT
Vs	
Bihar 440 Volt Vidyut Upbhokta Sangh and Others	RESPONDENT

Date of Decision : 07-02-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 11 SCC 396 : (1998) SCC(L&S) 170

Hon'ble Judges : Kuldeep Singh, J;G. B. Pattanaik, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Bench-Petitions under Article 226 of the Constitution, challenging the validity of tariff notification of 1993 issued by the Bihar State Electricity Board (the Board) were filed before the High court. The High court by a consolidated judgment dated 18/4/1994 disposed of the petitions. These appeals/special leave petitions by the consumers and the Board are against the judgment of the High court.

2. The High court on the basis of the contentions of the parties culled out fourteen issues for its consideration. The issues are as under:

(A) Whether S. 49 and 59 of the 1948 Act are ultra vires the Constitution of India?

(B) Whether the 1993 tariff is ultra vires Article 14 of the Constitution of India, read with S. 49 and 59 of the 1948 Act?

(C) Whether the Board has been acting in a most efficient and economical manner as contemplated under Section 18(a) of the 1948 Act and if it be not so, whether the 1993 tariff is liable to be struck down on that ground alone?

(D) Whether this court can issue any direction to the Board to improve its generation capacity as also to act in an efficient and economical manner?

(E) Whether the levy of the minimum guarantee charges and the demand charges on monthly basis is justified in law?

(F) Whether the Board had any jurisdiction to charge penal rate for shortfall in the supply of the electrical energy?

(G) Whether enhancement of the amount in security in terms of clause 15 of 1993 tariff and deletion of the provision amount payment of interest on security deposit is valid in law?

(H) Whether clause 16.4 of the tariff, whereby and whereunder the transformer capacity is to exceed 150% of the contract demand is valid in law and in any event whether the same should be given a prospective effect?

(I) Whether clause 16.10 of the tariff providing for levy of operational surcharge is ultra vires S. 49 and 59 of the 1948 Act?

(J) Whether levy of fuel surcharge is valid in law?

(K) Whether the provisions relating to those L.T. consumers who had connected load more than 80 horsepower can be directed to convert the same into High Tension electrical energy is valid in law?

(L) Whether the levy of fixed charges on L.T. consumers is ultra vires?

(M) Whether the levy of fixed charges on air conditioner is permissible under S. 49 and 59 of the 1948 Act?

(N) Whether clubbing of different consumers in the same premises is permissible in law?

3. Learned counsel for the consumers have raised two questions before us. The first contention relates to the first part of issue (g). It is stated that the enhancement of the quantum of cash security from 45 days to 90 days in lieu of guarantee is arbitrary. The second question relates to issue (h). It is contended that the provisions for enhancing the transformer capacity not to exceed 150% of the contract demand and that also on the transformers which are already operating is arbitrary. So far as the quantum of security is concerned, we see no ground to interfere with the reasoning and the conclusion reached by the High court. There is nothing on the record to show that the enhancement of the security from 45 days to 90 days is arbitrary in any manner. There is no force in the second contention also. The permissible capacity of a transformer is a matter which relates to scientific know-how. The Board has framed the impugned tariff 16.4 on the basis of scientific advice. We are not inclined to interfere with the reasoning and the conclusions reached by the High court in this respect.

4. We, therefore, reject both the contentions raised by the learned counsel for the consumers.

5. Mr. Reddy, learned Additional Solicitor General has challenged the findings of the High court on second part of issue (g), issues (i) and (l). We see no force in the contention of the learned Additional Solicitor General so far as issues (g) and (i) are concerned. This court in *Ferro Alloys Corpn. Ltd. v. A.P. SEB*, (para 158) has held that the Electricity Boards which have framed a provision for payment of interest by adjusting its finances, cannot be allowed to delete such provision. Since the Board in this case has provided for payment of interest it cannot be permitted to withdraw the same. So far as the provision relating to providing for levy of operational surcharge is concerned, we are of the view that it is arbitrary on the face of it. The surcharge has been levied on a wholly vague basis. The "operation of the Electricity Board" in general has no relation with the generation of electricity. It is no doubt correct that this court has upheld the levy on fuel surcharge, but that has a direct relation to the generation of electricity. We, therefore, reject the contention of the learned Additional Solicitor General based on issue (i).

6. So far as the issue (l) is concerned, two distinct minimum guarantees have been imposed on the low tension subscribers. The said guarantees are as under:

"(A) The minimum charge which existed earlier of Rs. 50.00 per B.H.P. for L.T.I.S.-I and Rs. 70.00 per B.H.P. for L.T.I.S.-II consumers; and

(B) a new minimum energy consumption charge of 70 units per B.H.P. per month."

7. The High court has come to the conclusion that the Board is entitled to frame two types of tariffs in exercise of its power under S. 45 and 59 of the 1940 Act. But the High court has struck down the guarantee at (b) above on the following reasoning:

(I) There is no provision for adjustment.

(II) There is no provision for remission of the electricity by reason of tariff, load shedding or power cuts.

(III) Admittedly such proportionate reduction is granted in the case of High Tension consumers and, in our opinion, there cannot be any justification whatsoever for not extending such benefit to L.T. consumers. The L.T. consumers have thus, in our opinion been discriminated against.

8. We are of the view that the High court fell into patent error in reaching the conclusion that there was discrimination between the two types of consumers i.e. High Tension consumers and the Low Tension consumers. These are two distinct and separate classes. The minimum tariffs/guarantees insofar as the Low Tension consumers are concerned, have been fixed keeping in view the nature of supply to these consumers. The Low Tension consumers cannot be equated with the High Tension consumers. The High Court fell into patent error in clubbing the two categories together to prove the charge of discrimination. We, therefore, set aside the reasoning and the conclusions of the High court so far as issue (l) is

concerned and we hold that the levy on two distinct minimum guarantee charges quoted above is valid and in accordance with law. The appeals are disposed of in the above terms. In view of the disposal of the above appeals, the special leave petitions stand disposed of/dismissed accordingly. No costs.