

**(1970) 08 AHC CK 0028**

**In the Allahabad High Court**

**Case No : Special Appeal No. 34 of 1969**

City Board, Mussoorie

APPELLANT

Vs

State Electricity Board and Others

RESPONDENT

**Date of Decision : 13-08-1970**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 245

Electricity (Supply) (Amendment) Act, 1966 — Section 76(1)

Electricity (Supply) Act, 1948 — Section 46, 46(1), 46(3), 58, 79

**Citation : AIR 1971 All 219**

**Hon'ble Judges : S.N. Singh, J;D.S. Mathur, J**

**Bench : Division Bench**

**Advocate : S.K. Tewari and S.N. Misra, for the Appellant; K.N. Sinha and Standing Counsel, for the Respondent**

**Final Decision : Partly Allowed**

## Judgement

1. This is a Special Appeal by the City Board, Mussoorie, against the order of the learned Single Judge dismissing with costs its petition under Article 226 of the Constitution of India. The Writ Petition is against the State Electricity Board, Lucknow (to be referred hereinafter as the Board), the State of Uttar Pradesh and the Central Electricity Authority, New Delhi (to be referred hereinafter as the Authority), with the prayers that a writ of certiorari be issued to quash the two Notifications dated 24-4-1962 and 30-9-1967. Annexures "A" and "B" to the Writ Petition, and also for a writ of mandamus to direct respondents Nos. 1 and 2 not to enforce the said Notifications against the petitioner and further to direct respondent No. 1 not to realize 7 1/2% for supply of electric energy at a lower voltage of 6,600 volts, and 20% surcharge imposed under the second Notification, and also the coal charges from the petitioner. A prayer was also made for the issue of a writ of mandamus to direct respondent No. 1 to make the demand charges on the basis of the maximum demand, and not on the basis of the chargeable demand as contemplated by the two Notifications. In the end, it was prayed that if the Grid Tariff framed by respondents Nos. 1 and 2 was not

declared invalid, the petitioner be permitted to make additional charge from all its consumers and further there be no discrimination and respondents Nos. 1 and 2 should charge from the consumers at the same rates as was permitted to be charged by the petitioner.

2. The material facts of the case are that the petitioner. City Board, Mussoorie, has its generating station and supplies electricity to consumers in the cities of Mussoorie and Dehradun as a licensee under the Indian Electricity Act, 1910. As the demand for electric energy by the consumers increased, the petitioner approached the Electricity Department of the State of Uttar Pradesh, who agreed to supply to the Petitioner electric energy in bulk at certain rates. The supply was taken by the petitioner at Patel Road Sub-Station at 6.600 volts. Soon after this agreement with the Electricity Department the Board was constituted and it took over from the State Government the supply of electric energy to the petitioner. The petitioner is being supplied electric energy by the Board from the Ganga/Sarda Grid.

3. In exercise of its powers u/s 46 of the Electricity (Supply) Act 1948 (to be referred hereinafter as the Act), the Board fixed a Grid Tariff applicable to all the licensees situated in the Ganga/Sarda Grid Area and taking supply in bulk from the Board. The Grid Tariff was so fixed under the Notification dated April 24, 1962, Annexure "A" to the Writ Petition. It was under another Notification dated September 30, 1967, Annexure "B". that the rates mentioned in the Grid Tariff were enhanced by 20%.

4. In so far as the petitioner is concerned, the enhanced rates came into effect from December 1, 1967. The petitioner is a licensee as defined in Section 2(6) of the Act. and being a local authority governed by Section 58 of the Act, could not raise its tariff without the sanction of the Board. The petitioner, therefore, moved the State Government for permission to enhance the rates for supply of electric energy to consumers by 20%. No such sanction was given by the time the present Writ Petition was filed, but subsequently, on 20-4-1968, the petitioner was permitted to raise the charges for light and fan by two Paisas per unit which came to 6 or 7% of the original rates, and 10% for electric energy supplied for other purposes.

5. The validity of the Notifications, that is, the Grid Tariff framed by the Board u/s 46 of the Act, is challenged on many grounds which shall be commented upon one by one. At the same time it is contended that the petitioner should have been permitted to raise the charges for the supply of electric energy by 20%. It was mentioned that respondent No. 1 itself supplied electric energy to consumers close to the area of supply of the petitioner at a much higher rate.

6. Section 76(1) of the Act was deleted under Act 30 of 1966, in consequence of which the present dispute between the petitioner and the Board cannot be a subject of arbitration. The only remedy available to the petitioner is to challenge the Grid Tariff by invoking the jurisdiction of this Court under Article 226.

7. It is a settled law that while exercising jurisdiction under Article 226 the High Court does not and cannot usurp the functions of a Court of Appeal. It can interfere only if there is any error in the exercise of jurisdiction, or there exists an error apparent on the face of the record; in other words, the public authorities had acted arbitrarily in disregard of the provisions of the law,

8. It is strongly contended that the Grid Tariff framed u/s 46(1) of Act must be in accordance with the regulations made in that behalf u/s 79(h) of the Act. and when no regulations had been made. no Grid Tariff could be fixed. The petitioner's case, therefore, is that in the absence of the regulations no Grid Tariff could be fixed and the Board can charge for the electric energy at the old rates, that is, the rates agreed upon between the petitioner and the Electricity Department of the State of Uttar Pradesh.

9. It is the admitted case of the parties that by the time the two Notifications in dispute were issued, no regulations had been framed. In this connection two points have to be considered: firstly, whether the provisions of Section 79 of the Act are mandatory or discretionary; and secondly, whether a Grid Tariff could be fixed u/s 46(1) of the Act in the absence of such regulations.

9A. Section 79 of the Act runs as below:--

"The Board may make regulations not inconsistent with this Act and the rules made thereunder to provide for all or any of the following matters, namely:

The use of the word "may" and the words "for all or any" strongly suggest that the provision is merely directory, and not mandatory. In suitable circumstances, the Court can regard a provision to be mandatory even though the frame of the enactment used the word "may". We have to consider what the intention of the legislature was. and also whether the purpose of the enactment shall not be achieved without making regulations.

10. u/s 79 regulations can be made in respect of the matters detailed in Clauses (a) to (k) thereof. The proviso to Section 79 lays down that-

"Regulations under Clauses (a) and (d) shall be made only with the previous approval of the State Government and regulations under Clauses (h) and (i) shall be made with the concurrence of the Authority."

The word used in the proviso is "shall" When the legislature used the word "may" at one place and "shall" at the other, it must be held, unless there exist strong circumstances to the contrary that the making of regulations was not obligatory and the Board could make the regulations, or not make any regulations on the matters detailed in Section 79; but once the regulations were made under Clauses (a) and (d), they must be made with the previous approval of the State Government and the regulations under Clauses (h) and (i) with the concurrence of the Authority.

11. Clauses (a) and (d) of Section 79 detail the two matters on which the

previous approval of the State Government is necessary, which are as below:--

"(a) the administration of the funds and other property of the Board, and the maintenance of its accounts;

(b) all matters necessary or expedient for regulating the operations of the Board u/s 20." To say that the funds and other properties of the Board cannot be properly administered in the absence of the regulations, nor can the accounts be properly maintained, shall be wrong. The Board shall act like a prudent person, and can be expected to administer its funds and other properties. Accounts can be maintained in accordance with the existing practice: in fact, no detailed regulations need be made for the administration of funds or other properties and the maintenance of accounts. Regulations can be made on important matters, and discretion to a large extent shall have to be given to the Board for the due administration of the properties and the maintenance of accounts.

12. u/s 69(1) a duty is cast upon the Board to keep proper accounts and other records, including a proper system of internal check, and to prepare an annual statement of accounts, including the profit and loss account and the balance-sheet in such form as may be prescribed by the State Government in consultation with the Comptroller and Auditor-General of India. Under Sub-section (2) the accounts of the Board shall be audited by the Comptroller and Auditor-General of India. Under Sub-section (4) the accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person authorised by him in this behalf together with the audit report thereon are forwarded annually to the State Government and the Government can issue such instructions to the Board in respect thereof, as it deems fit and it is necessary for the Board to comply with such instructions. Sub-section (6) further provides:--

"The State Government shall-

(a) cause the accounts of the Board together with the audit report thereon forwarded to it under Sub-section (4) to be laid annually before the State Legislature; and

(b) cause the accounts of the Board to be published in the prescribed manner and make available copies thereof on sale at the reasonable price."

13. u/s 75(1) the Board has to prepare and submit to the State Government in such form as may be prescribed a report giving an account of its activities during the previous financial year and also an account of the activities, if any which are likely to be undertaken by the Board in the next financial year. This report is also placed before the State Legislature. Under Sub-section (2) the State Government can also call upon the Board to furnish statistics and returns and such particulars in regard to any proposed or existing scheme.

14. Section 78A(1) further provides:--

"In the 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."

15. u/s 78(1) the State Government can make rules to give effect to the provisions of the Act.

16. The Act lays down ample restrictions on the powers of the Board. Consequently, if no regulations have been made under Clause (a) of Section 79, the Board cannot administer the funds and other properties in an arbitrary manner. The administration shall be under the supervision and control of the State Government, and in one way of the State Legislature also. Similarly, when the accounts are to be audited, they cannot be maintained haphazardly. The making of the regulations u/s 79(a) is thus not very necessary.

17. Section 20 of the Act empowers the Board to engage in undertaking other than the generation, distribution and supply of electric energy. It cannot be said that in the absence of regulations the Board can engage in other undertakings without the control of the State Government. Sub-section (3) of Section 20 by itself lays down that a separate account of such undertakings shall be maintained. In the circumstances, on receipt of the annual statement and the report the State Government shall be aware of the other undertakings undertaken by the Board, and it can, if necessary, issue directions to the Board. At this place, it may also be observed that u/s 65(1) of the Act the Board can borrow money for the purposes of the Act only with the previous sanction of the State Government. Like other State Departments it is necessary for the Board to submit to the State Government a statement in the prescribed form of the estimated capital and revenue receipts and expenditure for the ensuing year. This statement is also laid before the State Legislature, and the Board has to take into consideration any comments made on the said statement in the State Legislature (vide Section 61). u/s 62 of the Act the Board cannot incur expenses beyond the statement submitted u/s 61 unless there arise circumstances of extreme urgency. Restrictions have been imposed upon incurring expenditure beyond the limits included in the statement submitted u/s 61.

18. Clause (h) of Section 79 empowers the Board to make regulations to provide for the principles governing the fixing of Grid Tariffs. The desirability of making such regulations cannot be overemphasised; but in the absence of the regulations Grid Tariffs fixed in accordance with the provisions of Section 46 shall not be invalid. A contrary view could be taken only if Section 46 gave unrestricted and unguided powers to the Board to make the Grid Tariff. This point shall be commented upon later.

19. It may here be mentioned, though at the risk of repetition, that in the absence of regulations the Board cannot make Grid Tariff arbitrarily so as to make a huge profit.

20. Section 59 makes it obligatory for the Board not to carry on its operation under the Act at a loss, and with the same principle in view can adjust its charges from time to time. Section 16 of the Act makes a provision for the

constitution of a State Electricity Consultative Council. Under Sub-section (6) thereof annual financial statement and supplementary statement, if any, are placed before the Council, and it is necessary for the Board to take into consideration any comments made on such statement in the said Council before submitting it to the State Government u/s 61. The annual statement is also laid before the State Legislature and such a statement is open to discussion though not to vote. However, any comment made on the statement in the State Legislature has to be taken into consideration by the Board. Similarly, the budget for the ensuing financial year is submitted to the State Government and is eventually laid before the State Legislature. Instructions given by the State Government are binding on the Board. Keeping all these factors in mind, it must be held that, in the absence of the regulations, the Board cannot arbitrarily fix the Grid Tariff. If the Grid Tariff is fixed arbitrarily, the State Government can intervene and issue necessary directions- When there exists sufficient control on the exercise of discretion by the Board, it must be held that the absence of regulations is not such a factor that for that reason alone the Grid Tariff may be declared invalid, or it be held that the Board cannot fix Grid Tariff as contemplated by Section 46.

21. With regard to Clause (i) of Section 79 -- Principles governing the making of arrangements with licensees u/s 47, the Legislature has imposed one restriction, namely, that the Board shall not show undue preference to any licensee. In the circumstances, any arrangement arrived at with licensees shall be a reasonable one the charges for electric energy shall be neither low nor high.

22. When there exist sufficient safeguards and the Board cannot exercise its powers arbitrarily, the provision for the making of regulations must be held to be directory, all the more, when the wording of Section 79 suggests that it is discretionary with the Board to make for not to make such regulations.

23. u/s 46(1) of the Act the Grid Tariff is to be fixed from time to time "in accordance with any regulations made in this behalf". It is suggested that the word "any" means that the Board has the power to pick or choose, but not to reject all. The suggestion thus made is that the regulations must exist before a Grid Tariff can be fixed. The word "any" has many meanings. The above meaning can be given to this word in certain circumstances, and not all. In our opinion, the word "any" used in Section 46 has the same meaning as "if any". In other words, if any regulation has been made laying down the principles governing the fixing of Grid Tariff, the Grid Tariff must conform with such regulations; but if no regulations have been made the Grid Tariff can be fixed in accordance with the principles detailed in Section 46.

24. Section 46 of the Act runs as below:--

(1) A tariff to be known as the Grid Tariff shall, in accordance with any regulations made in this behalf be fixed from time to time by the Board in respect of each area for which a scheme is in force, and tariffs fixed under this

section may, if the Board thinks fit. differ for different areas.

(2) Without prejudice to the provisions of Section 47, the Grid Tariff shall apply to sales of electricity by the Board to licensees where so required under any of the First, Second and Third Schedules, and shall, subject as hereinafter provided, also be applicable to sales of electricity by the Board to licensees in other cases:

Provided that if in any such other case it appears to the Board that, having regard to the extent of the supply required, the transmission expenses involved in affording the supply are higher than those allowed in fixing the Grid Tariff, the Board may make such additional charges as it considers appropriate.

(3) The Grid Tariff shall be so framed as to include as part of the charge, and show separately a fixed kilowatt charges component and a running charges component:

Provided that if in respect of any area the electricity to be sold by the Board is wholly or substantially derived from hydro-electric sources, the running charges component may be omitted.

(4) The fixed kilowatt charges component in the Grid Tariff may be framed so as to vary with the magnitude of maximum demand.

(5) Where only a portion of a licensee's maximum demand for the purposes of his undertaking is chargeable at the Grid Tariff, the price payable for that portion shall not be greater than the average price which would have been payable had the whole of the said maximum demand of the licensee been chargeable at the Grid Tariff.

(6) The Grid Tariff may contain provisions for-

(a) adjustment of price having regard to the power factor of supply taken or the cost of fuel or both;

(b) a minimum charge related to a past or prospective demand of a licensee on the Board.

(7) The Grid Tariff may contain such other terms and conditions, not inconsistent with this Act and the regulations, as the Board thinks fit." The mandatory parts of this provision are three in number, namely, (1) that the Board shall fix the Grid Tariff from time to time in respect of each area for which a scheme is enforced, though tariffs fixed may differ for different areas; (2) that the Grid Tariffs shall be so framed as to include as part of the charge, and show separately a fixed kilowatt charges component and a running charges component; and (3) that where only a portion of a licensee's maximum demand for the purposes of his undertaking is chargeable at the Grid Tariff, the price payable for that portion shall not be greater than the average price which would have been payable had the whole of the said maximum demand of the licensee been chargeable at the Grid Tariff. In the instant case, we are concerned with the second mandatory provision only. Consequently, the Grid Tariff must be a two part-tariff. It is

contended that reference to two part-tariff does not lay down any guiding principle. We do not agree with this contention. The running charges component shall depend upon the running expenses of the scheme, while the fixed kilowatt charges component to other factors. The first corresponds with "energy charge" of the two impugned Notifications and the other to "demand charges",

25. The two components mentioned above themselves lay down a policy -- a policy which has to be given effect to by the Board. Our attention was also drawn to many standard books on the subject. They lay down certain principles for fixing the Grid Tariff. For example, it was mentioned by the learned Advocate for the petitioner that the guiding principles for fixing the Grid Tariff are load factor, transmission efficiency and diversity factor. These can be regarded as additional factors to be kept in mind while fixing the Grid Tariff. What can be said is that Section 46 does not lay down how the two components shall be determined. It is not necessary for the Legislature to make such a detailed enactment. It must indicate its policy and the main guiding principles. The other matters can be left to the discretion of the Authority. A provision containing a general policy or broader guiding principles shall not be invalid; but if a subordinate authority acts arbitrarily against the well-established principles, it will be his order which can be declared invalid, and not the enactment itself. In our opinion. Section 46 lays down a sufficient guiding principle.

26. In this connection it must be observed that the other parts of Section 46 which are directory can also be treated as a part of the guiding principles governing the fixation of Grid Tariff. Even though these provisions are discretionary, they have to be kept in mind while fixing the Grid Tariff.

27. The directory parts of Section 46 can be summarised as below:--

(1) It is not necessary that there be one Grid Tariff for the whole of the area for which a scheme is enforced; there can be different tariffs for different areas within the scheme area;

(2) In the case of licensees not governed by the First, Second and Third Schedules, the Board can make such additional charge as it considers appropriate having regard to the extent of the supply required, and the transmission expenses. The additional charges can be imposed only when the transmission charges involved in affording the supply are higher than those allowed in fixing the Grid Tariff.

(3) The Board can omit the running charges component where in any area, that is. in a part of the scheme area, the electricity to be sold by the Board is wholly or substantially derived from hydro-electric sources.

(4) The fixed kilowatt charges component in the Grid Tariff can vary with the magnitude of the maximum demand.

(5) The Grid Tariff can contain provision for the adjustment of price having regard to the power factor of supply taken or the cost of fuel or both; and a

minimum charge related to a past or prospective demand of a licensee on the Board.

28. On reading these provisions together it must be held that the Grid Tariff is to be fixed keeping in mind the average power factor, normal transmission expenses and the diversity factor, and also the prevailing cost of fuel. It is when any of the items make the supply more expensive that additional charges can be imposed under the proviso to Sub-section (2), to cover the extra transmission expenses and under Sub-section (6) where the power factor is low or the cost of fuel varies. Further, the fixed Kilowatt component charges can be framed so as to vary with the magnitude of maximum demand- There can also be a minimum charge related to a past or prospective demand of the licensee.

29. Even though Section 46 of, the Act gives a wide discretion to the Board, to frame the Grid Tariff depending upon various factors, its provisions do indicate the guiding principles governing the fixation of Grid Tariff. To put it differently, it is wrong to say that Section 46 does not lay down sufficient principles governing the fixing of Grid Tariff, nor can it be said that it confers an unguided or unrestricted power in the Board to fix the Grid Tariff. In other words, the two Grid Tariffs could be fixed in the absence of the regulations provided that they are not inconsistent with the provisions of Section 46 of the Act.

30. An additional point was raised in the Special Appeal and on this point affidavits of the parties were exchanged. It would be waste of time to refer in detail to these affidavits in this judgment. The facts pertaining to the point raised however, appear to be beyond controversy, namely, that the electric energy supplied to the petitioner is substantially from the hydro-electric source. One can say that the electric energy supplied to the petitioner from other sources is very very nominal. It was, therefore, contended that on account of the electric energy being substantially derived from the hydro-electric source, the running charges component should have been omitted while fixing the Grid Tariff. This contention is evidently based on the assumption that the second part of Sub-section (1) and the proviso to Sub-section (3) of Section 46 of the Act are mandatory, and there can be a common Grid Tariff for the total area for which a scheme is enforced and there must be different tariffs for different parts thereof.

31. The preamble of the Act makes it clear that the object of this enactment is to provide for the rationalisation of the production and supply of electricity, and for taking measures conducive to electrical development. With this aim in view, there can be a common Grid Tariff for the total scheme area. It is true that the consumers of the Hydro-electric area shall have to pay more, while the consumers of other areas less, if a common Grid Tariff is fixed for all. The development of the whole of the area is possible only if everyone is supplied electric energy at a reasonable price. If there cannot be a common tariff, one part of the scheme area shall be developed much more than the other parts of the scheme area. In the circumstances, the second part of Sub-section (1) of Section 46 must be held to be directory, and when the Board fixed a common

Grid Tariff for the total scheme area, it cannot be said to have acted illegally. When the total scheme area was treated as one unit, the Board could refuse to omit the running charges component in areas deriving electric energy generated substantially from hydro-electric source. The provisions of Sub-section (3) must be read along with the second part of Sub-section (1) and hence the proviso must also be held to be directory. It is thus not open to the petitioner to claim, as a matter of right, that the running charges component be not realized from him.

32. The Board had fixed the Grid Tariff for supply of electric energy at 11,000 volts, that is, for transforming the current from 66,000 to 11,000 volts. The Board imposed an additional charge of 7 1/2%, where the supply was demanded at a lower voltage and it allowed a rebate where the supply was demanded at a higher voltage. The petitioner was supplied electric energy at 6,600 volts. The imposition of this extra charge of 7 1/2% is challenged on two grounds: firstly, that the petitioner is a licensee governed by the Second Schedule, and under Clause V thereof, the Board has to bear the whole of the cost of the service apparatus required for making the supply available to the licensee and secondly, that cost of transformation from 66,000 to 6,600 volts is less than the cost of transformation of 66,000 to 11,000 volts and hence no additional charges could be imposed under the proviso to Sub-section (2) of Section 46. The petitioner has, in support of its contention, filed letters of big manufacturing concerns. Its contention appears to have substance, but because the matter shall have to go back to the Board for reconsideration, it is not necessary for us to express any final opinion, though it does appear that the cost of transforming electric energy to 6,600 volts is less than transforming it to 11,000 volts.

33. Schedule II applies to licensees in respect of whom a declaration has been made u/s 35 of the Act. It is the case of the respondents that no such declaration has been made. From the Writ Petition also it appears that there was merely an agreement between the petitioner and the Electricity Department of the State of Uttar Pradesh, and at no stage had the Electricity Department, nor the Board made the declaration contemplated by Section 35. The petitioner cannot, therefore, at present claim the benefit of the Second Schedule.

34. However, the additional charge of 7 1/2% can be imposed under the proviso to Sub-section (2) of Section 46 to cover the extra transmission expenses only. The additional charges contemplated by the proviso can be imposed "having regard to the extent of the supply required" that is, the supply required by a particular licensee and not by all the licensees of the scheme area requiring supply at a particular voltage. The additional charges contemplated by the proviso can, therefore, be imposed on a licensee only if extra transmission expenses are incurred in supplying electric energy at the desired voltage. These additional charges cannot be fixed keeping in mind the demands of all the licensees in the scheme area. It was mentioned before us on behalf of the Board that 7 1/2% additional charge was fixed keeping in mind the additional expenses

incurred in supplying energy at a lower voltage to all the licensees of the scheme area. This approach is clearly against the law and on this ground the imposition of 7 1/2% additional charge must be struck down.

35. The provision for the coal charges is said to be illegal, all the more, when the electric energy supplied to the petitioner is substantially met from the hydro-electric source. The last point has already been commented upon above. It can here be simply observed that the Board can fix a common Grid Tariff for the total scheme area and once this is done it is open to the Board not to omit the running charges component in the case of that part of the scheme area where the electricity supplied is substantially derived from hydro-electric sources. Clause (a) of Sub-section (6) of Section 46 by itself makes it clear that the Grid Tariff can make a provision for adjustment of price having regard to the cost of fuel. The provision for coal charges in the two Notifications is thus not illegal.

36. In the two Notifications the fixed kilowatt charges component has been referred to as "demand charges" and the demand charges are correlated to the "chargeable demand" as defined therein, and not the "maximum demand as laid down, in Section 2(6) of the Act. It was strongly contended that chargeable demand could not be the basis of fixing the fixed kilowatt charges component, and this part of the Tariff must be correlated to the maximum demand. This contention is also based upon the assumption that Sub-section (4) of Section 46 is mandatory. As already observed above, this sub-section has been so worded as to leave the matter to the discretion of the Board.

37. On reading Section 46 of the Act as a whole, it can be said that the Legislature contemplated a Grid Tariff consisting of two parts: (1) fixed kilowatt charges component and (2) running charges component the fixed kilowatt charges component to vary with the magnitude of the maximum demand. At the same time the Grid Tariff could lay down a minimum charge related to the past or prospective demand of the licensee; but the Legislature gave freedom of action to the Board to fix the Grid Tariff in a different manner not necessarily depending upon the maximum demand. When discretion was vested in the Board, and it decided to fix the fixed kilowatt charges component on somewhat different principles, it cannot be said to have acted illegally and this Court cannot interfere with the discretion of the Board.

38. When there is a rise in the cost of generation of electric energy and the new works for or in connection with the generation of electric energy cost more, the Board can either completely revise the Grid Tariff, or suitably increase the two components thereof. The running charges component shall ordinarily be proportionate to the rise in price index. It is, therefore, possible to say that the running charges have gone up by 20% but the same cannot be said of the fixed kilowatt charges component. The increase thereof shall be less or more depending upon the new works taken in hand. Broadly speaking, therefore, it can be said that the general surcharge of 20 % on "demand charges" is arbitrary and hence illegal; but the Courts of law have to give a decision on facts, and not on

assumptions. The petitioner merely pleaded that the imposition of 20% surcharge was illegal and in contravention of the rules. Basis of the attack was not indicated, nor was it alleged that the costs of new works were not such as to justify an increase of 20%. When no data was furnished by the petitioner, the respondents had no opportunity to show that there was a rise of 20% under this head also. In the absence of material, the imposition of 20% surcharge on both the components cannot be declared illegal.

39. The imposition of this 20% surcharge was also challenged on the ground of discrimination because the petitioner was not permitted to increase to the same extent the rates of electric energy supplied by the petitioner to the consumers. An increase of 6 or 7% for light and fan and 10 % for others was sanctioned after the filing of the writ petition. The fixation of Grid Tariff u/s 46 is in no way dependant on the tariff policy of the licensee. A licensee, who is a local authority, can be permitted u/s 58 of the Act to raise the tariff only after the tariff of the licensee is taken up after the fixation of a Grid Tariff. Hence the Grid Tariff shall not be invalid simply because a subsequent action was not taken properly, nor can the Grid Tariff be declared invalid simply because the licensee was not permitted to revise its tariff to the same extent.

40. It was also contended before us that the respondents had acted illegally by not permitting the petitioner to raise the charges to the same extent, that is, to impose a surcharge of 20 % from December 1, 1967.

41. It appears that after some correspondence lasting about one year, the petitioner was permitted to raise the tariff in the early part of the year 1967. It was when the Board revised the Grid Tariff by imposing a surcharge of 20% that the petitioner again applied for the revision of the tariff, that is, the rates on which it could supply electric energy to the consumers. The petitioner's case is that the information asked for was supplied to the Board on 6-12-1967 under Annexure "BB" to the rejoinder-affidavit. The respondents have not filed any affidavit by way of denial, may be, because before the learned Single Judge no opportunity was given to contradict the new facts given in the rejoinder-affidavit; but in paras. 26 and 27 of the counter affidavit it is mentioned that an ad hoc increase of 20 % in the rates proposed by the Municipal Board could not be approved. Therefore, the Board was asked to submit detailed proposals for the increase. It is further said that no profit and loss account had been submitted by the petitioner and hence it was not known whether it was making profits within permissible limits and to what extent increase in the rates could be allowed. It is said that the Executive Committee of the Municipal Licensees Association passed a resolution and on consideration of the matter contained in this resolution, the State Government allowed an increase of 2 Paisas per unit in the light and fan rates and a general increase of 10% in the other rates.

42. Even if it be assumed that the letter Annexure "BB" did not reach the Board, the respondents could have in their possession not only the data on the basis of which the petitioner was in the beginning of 1967 allowed to raise the

charges, but also the statements furnished by the petitioner for the financial year 1966-67. Section 11 of the Indian Electricity Act, 1910, directs every licensee, unless expressly exempted under the licence or by order in writing of the State Government to prepare and render to the State Government or to such authority as the State Government may appoint in this behalf, an annual statement of accounts of his undertaking in such form, and containing such particulars, as may be prescribed. Rule 26 (3) of the Indian Electricity Rules prescribes the Forms. It can, therefore, be assumed that the petitioner had submitted the annual statements in the prescribed form by the end of September 1967. The Board could easily take a decision and permit increase in the rates of supply of electric energy by the petitioner to the consumers on the basis of the old returns and also annual statements submitted for the financial year 1966-67.

43. From the material on record it appears that a major part of electric energy supplied by the petitioner to consumers is obtained from the Board. Hence in its case the increase allowed appears to be low. Further, as mentioned by the respondents themselves in para 27 of the counter-affidavit, the order was passed on consideration of the resolution of the Association, which would mean not on the basis of the statements and returns submitted or to be submitted by the petitioner. The increase to be permitted to licensees would vary from individual to individual. There may be a licensee who generates a major part of electric energy supplied to consumers, while there can be another who generates very small proportion of the total energy supplied to consumers. The increase allowed to the latter category of licensees would be much more than what can be allowed to the former. To fix the tariff of the licensees on the basis of the resolution of the Association cannot be said to be based on sound principles. In the circumstances of the case, it shall be proper to quash the order of the State Government dated 20-4-1968 (Annexure "6" to the counter-affidavit) so that the matter may be considered afresh by the competent authority and a suitable order passed.

44. The Special Appeal thus partly succeeds and partly fails. Only the first para of Clause (2) of the two impugned Notifications dated 24-4-1962 and 30-9-1967, Annexure "A" and "B" is declared illegal and is quashed though it shall be open to the Board to make an additional charge only to the extent of the actual extra expenditure incurred by supplying electric energy to the petitioner at 6,600 volts. The Government Order contained in Annexure "6" to the counter-affidavit and also the subsequent action taken by the Board on the basis of this G. O. are also quashed. The matter of the rates at which the petitioner could supply electricity to the consumers shall be considered again and final orders passed in accordance with the law. Costs of both the Courts easy. Stay order is vacated.

45. Pronounced under Chap. VII 1 (2) of the Rules of Court, 1952.