
(1994) 01 GUJ CK 0004
In the Gujarat High Court

Consumer Education and Research Centre and Others	APPELLANT
Vs	
Gujarat Electricity Board and Others	RESPONDENT

Date of Decision : 21-01-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 226
Electricity Act, 1910 — Section 18, 2(6), 26, 27, 49

Citation : (1995) 2 GLR 1356

Hon'ble Judges : D.G. Karia, J;A.P. Ravani, J

Bench : Division Bench

Judgement

A.P. Ravani, J.—When the petition is called out on January 17, 1994 learned Counsel appearing for the petitioners requested for time. It was stated that the petitioners were desirous to engage a Senior Counsel. It was further stated that the Senior Counsel who was to be engaged was present in Court. After consulting the Senior Counsel the request for next date of hearing was made in presence of the learned Advocate and the Senior Counsel who was to be engaged. The next date, i.e., January 21, 1994 was fixed as per the convenience of the learned Advocates. It was expressly made clear to the learned Advocates that the petition shall proceed further in accordance with law on the next date. Still, however, today when the petition is called out neither the Advocate on record nor any Senior Advocate is present on behalf of the petitioners. The Court has waited for sufficiently long time. The Advocates appearing for the respondents are present. No one on behalf of the petitioners is present. Therefore, we see no other alternative but to proceed further with the petition even in absence of the learned Advocates appearing for the petitioners.

2. As stated in the petition petitioner No. 1 is a public charitable trust registered under the Bombay Public Trusts Act, 1950. It is a consumer education and research centre. It is claimed that it is committed to public justice and probono publico service and to consumer protection in various fields. Petitioner Nos. 2, 3, 4 and 5 are consumers of electric energy in one or other form supplied by

respondent No. 1, i.e., Gujarat Electricity Board. Respondent No. 2 is the State Government of Gujarat, and respondent No. 3 is the Union of India.

3. The present petition is filed some time on December 24, 1979. The petitioners have prayed for the following reliefs. It would be better to reproduce the same in extenso.

(A) Quashing and setting aside the tariff dated 1-11-1978 increasing tariff rates issued by the respondent-Board and the tariff revision of rates charged by the respondent Board pursuant thereto.

(B) Declaring the words "under Indian Electricity Act, 1910" contained in the main part of Section 26 imposing on the Board obligations of the licensee only under Indian Electricity Act and not extending to the Board the obligations under Electricity (Supply) Act, 1948 and the definition of term "licensee" contained in Section 2(6) and the first and the second proviso of Section 26 in so far as they exclude the Board from the obligations of the licensee under Electricity (Supply) Act read with Schedule VI as unconstitutional, ultra vires and void;

(C) Declaring that the respondent-Board has all the powers and obligations of a licensee under the Electricity (Supply) Act also and further declaring that Section 57A relating to Rating Committee read with Schedule VI apply equally to the Board and that Rating Committee may be appointed to examine tariff rates fixed by the Board;

(D) Declaring Sections 26, 27, 57A read with Schedule VI and Section 49 read with Section 59 and Section 18 and the other provisions of the Act sympathetic to it as unconstitutional, illegal and void in so far as they do not provide definite criteria and standards applicable to the Board while fixing its tariff rates and a complete administrative machinery of appeals and revisions and/or Rating Committee and Commissions to review and examine the rates fixed by the Board and factual monopoly increment;

(DD) Declare Section 2 of the Electricity (Supply) Amendment Act, 1983 as unconstitutional, illegal and void. - (Introduced by way of amendment in the petition).

(E) In alternative declaring that provision contained in Electricity Act and Electricity (Supply) Act referred to herein and other provisions sympathetic with it which confer a virtual monopoly on respondent-Board as unconstitutional, illegal and void;

(F) Allowing the petitioners to file the present petition in representative capacity under Order 1 Rule 8 on behalf of the consumers of electricity in the State of Gujarat and be pleased to make suitable orders for advertisement, etc.;

(FF) During the pendency of this special civil application the respondent-Board may be restrained from implementing tariff dated 1-11-1978 and enhancing the rates in any manner;

(G) Awarding the cost of this petition;

(H) Directing the respondent-Board to refund the petitioners and all consumers of electricity whom they represent the amount of increased tariff rates recovered from them under the impugned tariff dated 1-11-1978 with interest at 12%" (Introduced by way of amendment in the petition).

4. As stated hereinabove, no one is present on behalf of the petitioners. Learned Counsel appearing for the respondents have stated that after the petition was filed in December 1979, several increases have been made in tariff by the Gujarat Electricity Board with the permission of this Court. Reference is made to a decision of this Court rendered in Civil Application No. 1136 of 1981 in this Special Civil Application, decided on April 20, 1981. The said decision is reported in 22 GLR 1076. It appears that respondent-Board was restrained by order dated February 6, 1980 from enhancing tariff rates except to the extent of enforcing fuel adjustment clause. The respondent-Board had made application either for vacating the previous order or for modifying the order by permitting the Board to raise the tariff to such an extent as to enable it to raise additional revenue of Rs. 40 crores per year. The Division Bench of this Court Coram: M.P. Thakkar, J. (as he then was) and R.C. Mankad, J., after hearing the learned Advocates appearing for the parties passed an elaborate order and allowed the application filed by the respondent-Board.

5. In para 1 of the reported decision the Division Bench posed the following question:

Can a public sector undertaking be obliged by a Court order to gradually commit suicide by incurring continuous losses upon a petitioner claiming to represent the consumers declaring in emphatic words that it is being run inefficiently and in an uneconomic manner according to the petitioner? Can the Court exercising jurisdiction under Article 226 of the Constitution of India virtually turn itself into a Commission of Inquiry to investigate into the alleged inefficiency and prevent the Public Undertaking from raising its tariff to meet the demands of cost increase merely because it is a public sector undertaking (Private sector being immune from the purview of Article 226 of the Constitution of India from this perspective) in disregard of the constitutional vision of co-existence of Public and Private Sector? Can this be done when for obvious reasons the petitioner would not agree to or be in a position to reimburse the losses incurred on account of the restraint order passed by the Court? The Court cannot do so, for, the Court as an institution cannot look at the Public Sector as an evil to be corrected in its forum. And pray can efficiency be increased by uttering words like open sesame or chanting a mantra? Surely it cannot be said that Public Sector is deliberately indulging in inefficiency in order to incur losses or to harm the citizens by increasing the tariffs. Inefficiency can exist in private sector as well (What about the sick Units ultimately nursed back to health by the State?) And it is a charge which can be levelled against any institution. But, can the Court prevent a Public Corporation by a restraint order from taking steps to prevent further losses on an

involved argument built on the allegation of inefficient and uneconomic functioning when no statutory provision is violated? These questions leap to the eye and answer themselves.

6. After referring to the prayers made in the main petition and the prayers made in the application for vacating the interim relief, in para 9 of the decision the Division Bench observed as follows:

It is extremely debatable as to whether this Court exercising jurisdiction under Article 226 of the Constitution of India in the light of the aforesaid prayers embodied in the main petition can virtually convert itself into a Commission of Inquiry in order to find out whether or not the Board is conducting its affairs in an inefficient manner as contended by the other side. It is extremely debatable whether it would be possible to enter into minute details pertaining to the expenditure incurred and the manner in which efficiency can be increased as contended by the petitioners. But assuming that we will be able to do so, that is not a question to which we should address ourselves at the present juncture. Surely, it cannot be said that the Board is deliberately conducting its affairs in an inefficient manner and lending itself into losses. Whether the Board can be made to function in an efficient manner to the satisfaction of the petitioners by effecting economy by methods indicated by the petitioners, it may ultimately turn out, is not a justiciable issue at all, for, it is easier to preach but difficult to practise. Counsel for the petitioners stated on an earlier occasion that similar petitions have been instituted by the petitioners in some other States as well. As thousands of such public companies exist at State level and National level all over India it is a question of very great importance. It is so because every Corporation will have to face long drawn out litigations all over India. We have no reason to doubt the bona fides of the petitioners of this petition. Indeed the Consumer Education Research Centre, prima facie, appears to be an organization genuinely litigating in the sphere of public interest as one can infer from the circumstance that according to the statement made by learned Counsel for the petitioners at the earlier stage, the State Government itself is giving them a grant (of course grant is also obtained from a foreign Foundation viz., Ford Foundation as indicated by learned Counsel earlier.) But what would happen if such litigations are commenced all over India by parties whose good faith can be questioned? The functioning of the Corporations would be thrown out of gear and the Courts will be flooded by litigations which will push themselves forward in the queue by claiming priority and elbow out the litigants who have been waiting in the queue since years with tears in their eyes for redress of their grievance? This question will, therefore, have to be examined seriously and in great depth at the final hearing of this petition. At this juncture, at any rate, we cannot pronounce upon the efficiency or inefficiency of the Board. Nor is it possible to fix up the matter for final hearing and dispose it of in the immediate future. An application made by the petitioners for directing the Board to answer certain interrogatories was heard at considerable length and we have yet to pass an appropriate order on this application. The cause list is full of many matters where petitioners

concerned in petitions instituted much earlier (many years back) are awaiting in the queue for the redress of their grievances. We are, therefore, afraid we may not be able to hear the matter as an "emergency case" forthwith. So also we cannot throw overboard the present application made by the Board at this stage on such a consideration. The application will have to be decided one way or the other on merits. It must also be realised that if it will be difficult to resolve seriously disputed questions of facts at the final hearing, it is much more difficult to do so at this stage. The statistics regarding the rise in the items of expenditure given in the application which have been adverted to in the earlier part of this judgment have not been controverted factually. We must, therefore, decide this application in the perspective of undoubted increase in the cost of production of energy disclosed by the Affidavits. We also cannot ignore or overlook the fact that the Board is obliged to comply with the undertaking given by it to the World Bank to achieve and maintain a rate of return of 9.5 per cent on the Average capital base. Can we ask it to commit a breach of it at the cost of losing credibility with the World Bank and jeopardizing larger National interest? This can be done only provided an additional revenue of the order of Rs. 4080 lacs is obtained during the relevant year as disclosed in paragraph 9 of the Application. The Board is admittedly incurring losses. We cannot oblige a public undertaking to continue to incur further losses for "X" years ("X" being unascertainable) till the petition is finally disposed of by this Court or by the appellate Court, in case there is an appeal by either side. We do not think that we can pronounce upon the question as regards the alleged inefficient manner in which the Board is conducting its affairs according to the petitioner, at this juncture. We may also mention that the petitioners have placed on record comparative statements in regard to the performance of the Board as compared to the performance of the other Boards in different States. We do not consider it proper to enter into detailed discussion in the context of these statements. We may, however, mention that the petitioners have not placed on record a comparative statement from the standpoint of performance of all the Boards in all the States in all different spheres. The comparison has been made in a selective manner, essentially with a view to highlight the spheres in which the performance of the Board compares unfavourably in the selected spheres vis-a-vis the selected State Boards. We, however, do not wish to delve deep into this question as we consider it to be premature at this point of time. We must also emphasize that the petitioners are not prepared to give an undertaking to reimburse the losses which may be sustained by the Board in case they ultimately fail. We cannot force the Board to sell energy at a price which will result in huge losses, and scuttle itself. In fact, the Board being a public undertaking would be expected to make profits which can be ploughed back for expanding and developing its activities. It must be realised that the Board has to function with a different life aim and in a different perspective (different from the profit-oriented private corporations). It has to electrify remote villages in backward areas even if it is uneconomical to do so. The Board has to work in larger public interest even if it has to incur losses in certain spheres, for, the

present losses may bring immeasurable gains in the future in the form of increased economic activity. It will modernize the rural areas, change the attitudes and quality of life of the villagers and bring smiles on the faces of the rural poor in the place of the misery writ large on their foreheads. No, fault can, therefore, be found for not enforcing the fuel adjustment clause vis-a-vis agriculturists in the rural areas in the present day circumstances. The question is in a way a political question and it may be outside the scope of a petition under Article 226 of the Constitution. The Court is not concerned with the formulation of policies or soundness or otherwise of the policies pursued by the State. The Court is concerned with justiciable questions and violation of the fundamental rights or statutory rights of the petitioners in the background of the reliefs claimed by them. Why the agriculturists should be shown some concession in the matter of fixation of tariff (to which petitioners take exception) is not a question which is justiciable and is not a question on which perhaps we can pronounce in the sphere of administration of law. So also it would be hazardous, if not impossible, on our part to indicate how the additional revenue should be raised and to what extent the additional burden should be imposed on different categories of consumers.

After making the aforesaid observations, as per the order contained in para 10 of the reported decision the application was allowed by the Division Bench. We are in respectful agreement with the observations made by the Division Bench of this Court while passing the aforesaid order.

7. In view of the aforesaid decision and in view of the fact that several tariff hikes have taken place during the pendency of the petition, the prayer with regard to quashing and setting aside the increase in tariff dated November 1, 1978 has become academic. It is stated at the Bar by the learned Counsel appearing for the respondents that after the petition having been filed and after the aforesaid prayer having been granted by this Court as per its decision dated April 20, 1981 in Civil Application No. 1136 of 1981, several tariff hikes have taken place. This fact is borne out from the record of the petition also. Every time the Court has granted permission to the Board for increasing the tariff.

8. Moreover, the material placed on the record of the petition in support of the allegation against the respondent-Board is based on the study conducted by petitioner No. 1 some time in the year 1978. No fresh material is placed on record. The aforesaid material has become irrelevant in view of the further hikes in tariff permitted by this Court. It is not possible to properly evaluate and examine the allegations made in the petition on the basis of the material which has become irrelevant and out-dated. Therefore, no prayer made in the petition can be granted on the basis of the record of the petition as it stands today.

9. Probably for the aforesaid reason and probably on account of the lapse of time and having regard to subsequent developments the petitioners seem to have lost interest in proceeding further with this petition. This may be the reason why no one is appearing in the petition at present. Be that as it may. We may observe

that even if the petitioners lost interest in the matter, and decided not to proceed further with the petition, propriety and etiquette demand that some one on behalf of the petitioners should have remained present before the Court and made their position clear.

10. As indicated hereinabove, so far as the prayer regarding legality and validity of increase in tariff dated November 1, 1978 is concerned, it has become academic. As far as the constitutional validity of different provisions of the Indian Electricity Act, 1910 and the provisions of Electricity (Supply) Act, 1948 is concerned, we may observe that the said provisions cannot be said to be in any way unconstitutional. There is always a presumption in favour of the constitutionality of the validly enacted provisions of a statute. In absence of anything contrary to show, the provisions of the validly enacted statute are required to be held constitutionally legal and valid. No one is present on behalf of the petitioners to make any submission in support of any of the prayers. We see no reason to hold that the different provisions of both the Acts referred to in the prayer clauses are in any way unconstitutional, illegal and void.

There is no substance in the petition. Hence rejected. Rule discharged. Interim relief, if any, stands vacated.